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**(DRAFT) 2021-2030 ARIZONA INDEPENDENT REDISTRICTING  
COMMISSION AFTER ACTION REPORT**

In accordance with its decennial obligation, the 2021–2030 Arizona Independent Redistricting Commission (the “Commission”) duly performed its constitutional duties to redraw Arizona’s congressional and legislative district lines. This was the third redistricting cycle with an independent commission since the passage of Proposition 106 in 2000. Despite operating under unprecedented conditions created by a worldwide pandemic, the Commission was highly successful in managing its timeline, engaging the public, and successfully completing its constitutional directives.

This report describes lessons the Commission learned to provide guidance for successfully managing the next iteration of redistricting after the 2030 census. These lessons serve as recommendations, not mandates, for future commissions to consider as they navigate the process.

**I. INTERVIEW AND SELECTION PROCESS**

Starting earlier than prior years, leaders from the Arizona Legislature selected a team of four politically balanced Commissioners by December 2020: David Mehl, Shereen Lerner, Douglas York, and Derrick Watchman. The Commission strongly encourages selecting the commissioners as early as possible. Although constitutionally, appointments need not begin until January 31 of years ending in one,<sup>1</sup> the Commission recommends encouraging the legislature to finalize the first four appointments no later than December 15th of the previous year.

The Commission interviewed and selected Erika Neuberg to serve as its fifth member and Chair in early January of 2021. Selecting the member not affiliated with any political party not represented is extremely important because as the Chair—and the only member who does not represent one of the major political parties in Arizona—Chairwoman Neuberg (an Independent) often served as a *de facto* tie breaker.<sup>2</sup>

In the time between selecting the first four members and selecting the Independent member, the Commission was generally unable to conduct any business. Once the Independent member was sworn in, however, the early timeline became a pivotal advantage to the Commission, giving it substantially more time to learn and make decisions than many other states. The early selection process also allowed the

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<sup>1</sup> See Ariz. Const. Art. 4, Pt. 2 § 1(6).

<sup>2</sup> Some Commissioners referenced the need for future Commissioners review a ten-year history of political affiliation of Chair candidates.

Commission to hire staff, learn about its duties, and get to know one another. As such, the Commission strongly encourages the selection of the Chair prior to December 31st.

Also at this stage, the Commission had little background on any of the necessary legal or practical requirements for successfully executing its duties. To alleviate the steep learning curve required to conduct business, the Commission would have benefitted from receiving a primer on the initial process and order of operations, including the steps required to immediately select the Independent member, technology basics such as using Zoom, open-meeting-law and public-records obligations, and the timeline of the upcoming year. As such, the Commission recommends the Legislature direct the Arizona Department of Administration (“ADOA”) to start the planning process and assign a dedicated interim staff member by July 30, 2030, prior to the first four members’ appointment.

Either ADOA or the Secretary of State’s Office could appoint this temporary position. Before the Commission is formed, the interim staff member should prioritize start-up administrative support tasks such as (1) identifying temporary Commission space and equipment including laptops, phones, etc., (2) preparing recommendations for permanent Commission space and equipment procurement, (3) posting and advertising staff position descriptions, initiating recruitment, and preparing applications for Commission review, and (4) preparing, finalizing and issuing consultant Request for Proposals (“RFP”) (the mapping consultant RFP is a top priority).

Future commissions should also have a clear understanding of the redistricting timeline from the start. Based on its experience, the Commission has provided a recommended timeline for the next Commission in **Appendix A**, which can be adjusted as needed to accommodate any changes in needs and priorities.

## **II. ON-BOARDING PROCESS**

While technological developments over the next decade may change some of future commissions’ specific needs, the most important goal should be to hire the best team possible. After the commissioners assumed office, the Commission quickly began the process for releasing applications, vetting candidates, conducting interviews, and hiring various staff and consultants, including (1) an executive director and other administrative staff, (2) legal counsel, and (3) mapping consultants. The Commission highly recommends selecting its team as early as possible because of all the necessary steps that must occur before beginning the map-drawing process. Again, a dedicated ADOA staff member could assist in this process.

As an initial matter, understanding the procurement process is essential for selecting at least some members of the team. However, the Commission found the process difficult and tedious because, at least at the beginning, the Commission had

neither experience with nor knowledge of procurement. The recommended ADOA staff member should therefore be well-versed in these topics and able to guide the Commission through this initial process.

Additionally, the hiring and onboarding process was slow and somewhat difficult. Because of the Commission's unique nature, applicants do not know what to expect regarding the large time commitment, the fast pace of the process, or the significant amount of travel required. For instance, as discussed below, the Commission undertook 30 public hearings throughout the state designed to obtain feedback about communities of interest. Commissioners and staff are also expected to sometimes work long days and late nights, especially during the deliberation process. Accordingly, the Commission should ensure that applications reasonably reflect these expectations and that applicants understand the required time commitment so that staff are best prepared for the experience.

The Commission should also attempt to hire staff quickly so they can receive onboarding trainings at the same time as the rest of the Commission. Specific to the public-records process, the Commission recommends immediately issuing a letter directing staff not to destroy documents and providing the requisite training on records retention, document management, and other public records obligations as soon as possible. The dedicated ADOA interim staff person should also be available to also assist with this process.

**A. Executive Director and Administrative Staff**

The Commission recommends selecting an executive director and other staff as soon as practicable in order to facilitate selection of the rest of the team. Though the Commission was able to hire an excellent team, it did not receive many qualified applications. To mitigate this issue and ensure plenty of time for qualified applicants to plan for this unique position, ADOA should issue a job description and begin advertising during the first quarter of 2031. The Commission should also have a tailored job description ready to post before this time. A proposed job description is attached as **Appendix B.**

In selecting a candidate, the executive director should be self-driven, organized, resilient, trustworthy, have strong administrative and communication skills, have experience in state government and finance, and generally understand the redistricting process and timelines. A multi-lingual executive director or deputy executive director is especially helpful for accommodating language minorities. Additionally, the Commission recommends a balanced political party partisan staff with an effective executive director and deputy executive director who will operate in a politically neutral manner. The roles of the executive director and deputy executive director, including supervisory duties, should be clearly delineated. Of note, recent political activity by the potential candidates

for executive director and deputy executive director may be a consideration, to include not hiring such individuals that are too politically active in effort to maintain equity and non-bias between political parties.

After selection and in consultation with the Commission, the executive director can manage the hiring process for the rest of the administrative staff, who can then assist with legal and mapping team selections. Generally, staff should be politically diverse to maintain political independence.

## **B. Legal Counsel**

As authorized by the Arizona Constitution,<sup>3</sup> the Commission retained outside legal counsel to ensure it complied with the various obligations that accompanied its activities. Legal counsel is selected to advise Commissioners about open meeting laws, public records, conflicts of interest, the redistricting process, the federal and state constitutions, and the Voting Rights Act (“VRA”), and to provide litigation services if necessary. Accordingly, selecting legal counsel is one of the most important early choices the Commission will make. Before selecting a legal team, future commissions should consider priorities such as pre- and post-map litigation mitigation, fiscal responsibility, and ensuring the team will work well together.

The Commission selected its legal counsel in April 2021. Before this selection, the Commission relied on the Attorney General’s Office to advise it on open meetings law, public records, and procurement. Though the Commission appreciated this initial assistance, it found the advice inconsistent and lacking in dedicated election law expertise.

Further, the Commission would have benefitted from earlier and more robust training on its legal obligations as a public entity, especially regarding open meeting law requirements. The Commission recommends that such training occur even before the independent Chair is selected and is repeated or updated once a Chair is selected. The Commission also recommends (1) selecting its own legal counsel as early in the process as feasible, and (2) obtaining comprehensive training on open meeting laws, public records, and procurement as part of its onboarding process.

While the ideal legal counsel will be familiar with redistricting, only a few firms in Arizona have this experience. At a minimum, therefore, legal counsel should have experience in election law, the Arizona Constitution, litigation, complex e-discovery, government procurement, government appropriation, public records law, open meeting laws, and the VRA, and be able to provide advice on these matters in a non-partisan manner. The Commission should also consider a firm’s bandwidth, accessibility, and

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<sup>3</sup> *Id.* § 1(19).

potential conflicts of interest.

1. The Commission Utilized the Attorney General’s Pre-Approved List of Firms Rather than the State Procurement Process.

Because the Commission has procurement authority,<sup>4</sup> it had a choice between undergoing the full procurement process or utilizing an Attorney General-maintained list of law firms the state had already vetted. However, the procurement process constitutes a difficult and time-consuming process that restricts the amount of control the Commission has over the selection of its legal counsel. For instance, the procurement criteria may have left the Commission with a firm they would not otherwise have selected based on its own particular needs and expectations.

Accordingly, the Commission elected to consult the Attorney General’s list, which still allowed these pre-approved firms to submit proposals for consideration. This option afforded the Commission a structured solicitation process among a pool of the top election firms in the state, while maintaining its ability to manage interviews and selection without the full procurement process’s rigidity.

Generally, the Commission found the Attorney General’s list had plenty of experienced options, and it ultimately received applications from five qualified firms. From this list, the Commission still recommends a vetting proposal and has attached a proposed RFP as **Appendix C**.

2. The Commission Highly Recommends Hiring Two Firms to Provide Dual Representation.

The Commission decided to hire two separate firms with political law experience: one firm associated with the Republican Party and one with the Democratic Party. The Commission found that its two firms worked well together, and strongly recommends this dual-firm system for several reasons.

First, the bipartisan nature of their legal representation gave credence to the legal advice the firms provided. More specifically, topics were presented based purely upon legal analysis agreed upon by both firms, giving the Commission confidence that the advice was nonpartisan. Second, hiring two law firms potentially saved money because the two firms’ cooperation ensured the Commission received excellent advice free from partisan bias that could lead to future litigation.

**C. Mapping Consultant**

The mapping consultant’s expertise is also essential to the Commission’s activities, as the mapping consultant is tasked with creating proposed maps, analyzing

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<sup>4</sup> *Id.*

demographics, and providing the associated technology. Given that all 50 states are hiring from the same pool, selecting the mapping consultant should begin as early as possible because the number of available firms with both the requisite experience and capacity will be limited. Thus, as part of its preparation, future commissions should consider compiling a queue of firms with the required experience before beginning the process and then releasing the RFP sometime before March 2031, if not earlier. The entire process took the Commission over a month to complete.

The Commission ultimately received three responsive bidders to its RFP. After reviewing and discussing the applicants, the Commission selected Timmons Group and National Demographics Corporation (“NDC”) to serve as its mapping consultants. This team did an excellent job guiding the Commission through its map drawing duties, developing a redistricting database, and providing training for its redistricting software. The mapping consultants were also dedicated to maintaining transparency, especially because all directions from the Commission were public, and no private collaboration occurred between consultants and Commissioners. The Commission recommends this approach, as this avoids any scrutiny into alleged “secret meetings.”

For future commissions, the Commission’s mapping consultants recommend drafting a general RFP that can be supplemented by bidders with the requisite knowledge and experience. At a minimum, however, the RFP should require applicants to have experience conducting real-time polarization and VRA analyses, which the Commission negotiated through a change order after awarding the contract to Timmons and NDC. Additionally, as discussed below, the RFP should also include the creation of an election database to develop the competitiveness index.

In evaluating applicants, an effective mapping consultant should have experience with redistricting software, demographics, polarization, and the VRA. This position should be politically neutral, include multi-partisan team members, and work well with a diverse group of ideologies. Consultants should also be expected to communicate well with the public and make their mapping tools easy to understand and publicly accessible. Accordingly, consultants should be expected to connect with community leaders and interest groups to develop trust, provide training on drawing and submitting maps, and maintain flexible scheduling to accommodate long hours and tight timeframes later in the process. It is also helpful if the mapping consultant can translate its resources into Spanish. Future commissions should also consider whether an applicant has enough capacity to dedicate its time to the redistricting process, including how many contracts it has with other states. In sum, the Commission recommends looking for a team of consultants who can together offer the necessary technological and demographic expertise. A proposed Mapping Consultant RFP is enclosed as **Appendix D**.

#### **D. Community Outreach Managers/Public Information Officers**

The Commission chose to retain two community outreach managers for six-month contracts. The community outreach managers' role focused on disseminating public information, including communications with various stakeholders throughout the state, including local and tribal leaders, non-profit organizations, and other government agencies. To that end, the Commission worked to leverage marketing and outreach frameworks that already existed. For example, the Arizona Citizens Clean Elections Commission already has connections and resources dedicated to citizen outreach because of its work promoting upcoming elections. The various counties and cities have similar outreach efforts. Accordingly, the Commission developed relationships with these entities to utilize existing lines of public communications to maximize citizen participation in the mapping-drawing process.

#### **E. Suggestions for Additional Support Staff**

The Commission was very happy with its entire team, which included the executive director, deputy executive director, communications manager, two community outreach managers, and an executive assistant. It is recommended that these are immediate hires. However, the following positions would have been helpful additions to facilitate a smoother process:

IT Expert: Commission duties substantially involved technology, including day-to-day use of virtual meetings and state-provided computers and phones. The Commission, however, also found technology management to be difficult, especially because ADOA's support was unfamiliar with the expedited nature of the process. Accordingly, because technology plays a significant role in redistricting, the Commission recommends either hiring a dedicated individual to provide IT expertise or contracting with a specific dedicated service provider already on State contract that can meet immediate IT needs. This skillset is necessary for optimal efficiency and should include the ability to translate IT jargon for the Commissioners and staff, provide audio and visual support at public meetings, and work with ADOA to assist with domain names. The Commission highly recommends that this position be filled immediately.

Public Records Manager: As discussed, public record compliance was one of the Commission's several ongoing legal obligations. To facilitate this process, the Commission recommends hiring someone to manage public record requests. This position can fall under Public Information Officer duties or be a separate position. Continuously through the redistricting process, this person should work with the IT expert to gather electronic communications, send them to legal counsel for review, and transmit the records to the requestor. This person should also develop and update policies to standardize this process and communicate those policies with the Commission and its staff on a regular basis. It is recommended that all Commissioners, staff, and consultants sign an acknowledgment

about their individual duties to maintain public records under applicable law and Commission policies. This process should be implemented from the beginning to ensure that all records are reviewed by legal counsel for privilege. It is highly recommended that this position be filled immediately.

Project Manager: Depending on whether the Commission's initial staffing is complete and their respective skillsets, a project manager, even in a temporary capacity, may be an additional helpful resource. A project manager would primarily be responsible for managing some of the miscellaneous or project-based logistics that often fell to the 2021 Commission's executive staff, outside of their normal scope of work. For instance, a project manager could interface with the mapping consultants, serve as a liaison with ADOA, coordinate listening tour necessities such as reserving meeting spaces and approving security plans, post meeting materials, obtain interpretation services and equipment, and ensure that other logistics are handled appropriately. A project manager could also assist with onboarding and ensure that staff know how to appropriately communicate with Commissioners.

Temporary Support Staff: The level of work required to facilitate public meetings, especially listening tours, meant that certain routine tasks often fell to dedicated staff. To ensure that these staff can focus on their primary tasks, the Commission suggests hiring two to four additional temporary support staff. These individuals can assist with setting up spaces and managing sign-in sheets at community meetings, distributing information to Commissioners and staff, and otherwise helping with any manual labor needs. Because of these tasks' temporary nature, these staff need not go through the full hiring process. Instead, the Commission recommends consulting with ADOA to receive a list of state contracts with temporary recruiting agencies that could provide staff on an as-needed basis.

### **III. PRE-GRID MAP PREPARATION**

In executing its constitutional duties and its commitment to transparency, the Commission spent considerable time publicly learning about the different topics it would encounter and holding public meetings, hearings, and listening tours to consider stakeholder feedback about communities of interest in Arizona. This preparation was essential to developing maps that complied with federal and state legal requirements.

#### **A. Training**

Because of the delayed release of the 2020 census data, the Commission had more than enough time to learn about its constitutional duties, the communities in Arizona, and other information. Specifically, the Commission spent numerous meetings learning about topics such as:

- Arizona Constitutional Criteria



- Federal Constitutional Obligations (*i.e.*, One Person One Vote)
- Voting Rights Act
- Arizona Demographics
- Open Meetings Laws
- Public Records Obligations

Because of the steep learning curve involved, this type of training is essential for Commission success, but should be paced over a reasonable span of time to ensure that it is effectively absorbed. Future commissions should focus on obtaining training on each of these topics, consider which trainings to prioritize from the outset, and decide which other presentations would fulfill their particular needs.

Although the Commission found these presentations to be helpful, it especially benefitted from presentations on the VRA, Arizona demographics, and Arizona constitutional criteria. In one particularly meaningful presentation, several professors explained the various criteria and options for calculating competitiveness.

Additionally, the Commission appreciated the mapping consultants' management of "Mapping Mondays" as an effective way to provide transparency in the map-drawing process through public deliberation and to teach members of the public how to navigate the complex mapping software. These trainings on the redistricting system are important for public engagement and, if possible, should be conducted before deliberations begin so that the public can request assistance with citizen submissions. Further, if desired, these trainings can be recorded and posted on the Commission's website to avoid duplicating effort.

While the Commission did not find any trainings to be unhelpful, presentations on certain economic drivers in the state were ultimately less useful for map drawing. Further, the Commission recommends giving additional attention to competitiveness factors, given that this ended up being an important topic during the map drawing process. The Commission also would have benefitted from IT training. Other than presentations on the various legal criteria, which are essential, the Commission recommends that future commissions decide which trainings they would find most beneficial to their activities and rely on diverse panels of experts to present those trainings when possible.

## **B. Public Meetings and Outreach**

To effectuate its constitutional duties, the Commission is required to hold a significant number of meetings that are open to the public. Accordingly, the Commission held two types of meetings, engaged in substantial community outreach, and prioritized its duty to maximize transparency.

## 1. Regular Business Meetings

First, the Commission held regular meetings in which it addressed business matters, learned about its constitutional duties, and engaged in the map-drawing process. These business meetings were facilitated by the Chair, who ensured the orderly flow of business by opening and closing meetings, tracking the agenda, and handling motions. All Commission meetings were open to the public and allowed for public comment. They occurred approximately once per week, with increasing frequency during the map-drawing and deliberation process. Further, each meeting required compliance with open meeting laws, such as posting an agenda at least 48 hours in advance, ensuring public accessibility, submitting each meeting's minutes (either written, audio, or both) and transcripts on its website, and ensuring that executive sessions were procedurally proper. The Commission also allowed the public an opportunity to submit written comments, which it would review and respond to at the following meeting.

Several factors accompanied the Commission's decision about how often to meet, and whether to meet in-person or virtually. For instance, regular meetings were primarily virtual due to the ongoing COVID-19 pandemic in 2020 and 2021, although some later meetings were held both in-person and virtually. Commissioners from outside of the Phoenix metropolitan area found virtual meetings to be convenient, as they were able to attend consistently without much travel, but also found that in-person meetings helped to develop team camaraderie. Further, the mapping consultants were able to operate in both spaces, but they found virtual meetings to be more effective. And it saved time when public comments were submitted virtually. However, some staff found the map-drawing process more cumbersome when the Commission met virtually. Depending on the available technology and requisite timeline, future Commissions should consider a system that best accommodates their needs and circumstances. However, it is recommended that all meetings be streamed virtually to maximize public participation. In addition, the mechanism for receiving public comment during formal meetings should be clearly publicized to avoid unnecessary confusion related to when public comment would be received and when the Commission was conducting purely business meetings, with no public comments. Further, the Commission recommends having an early discussion about expectations for format, attendance, and participation so that it can reasonably accommodate the needs of all involved.

## 2. Listening Tours and Other Community Outreach Efforts

The Commission's intentional engagement with community members, stakeholders, and other was critical to the success of this redistricting cycle. To obtain data on communities of interest, thereby supporting its compliance with its constitutional obligations, the Commission offered a wide variety of channels by which the public could easily provide information to the Commission. For example, the Commission's website

included tools for the public to easily offer feedback, such as digitally submitting comments or citizen map submissions.<sup>5</sup> The Commission also ensured that the public remained informed and up to date by posting important updates on Twitter (@ArizonaIRC) and issuing press releases on its “newsroom” webpage.

Moreover, in addition to its regular meetings, the Commission held 30 public outreach meetings, termed “listening tours,” in which the Commission traveled the State to learn more about its various communities of interest. The Commission was able to hold this many listening tours, and therefore reach more communities throughout the state, in part because the census data’s delayed delivery meant the Commission could not begin the map drawing process until August 2021. This extended timeline benefitted the Commission by allowing it to better prepare and train for its statewide outreach efforts. However, because this delay will not likely be an issue in 2030, the next commission will need to consider how to adjust its timeline to ensure that its outreach efforts are effective.

Listening tours were held in three phases. First, before obtaining any census data or drawing any initial lines, the Commission conducted fifteen initial public hearings at a main location, and often one or two satellite locations, to hear from communities. The Commission found this first tour extremely helpful for gathering data uninfluenced by any prior map drawing, despite speakers’ tendency to focus on changes to their current legislative districts. The Commission also found that this tour laid important groundwork and saved time in the process. During the first tour, Commission staff also provided a helpful educational presentation before opening the floor to public comment. But for efficiency’s sake, future Commissions should consider recording this presentation in advance to avoid duplicating effort during each meeting.

After the Commission released the grid maps, it conducted a second listening tour. However, the Commission found this “grid map tour” to be unnecessary, as participants provided input on grid maps that served only as a starting point and would be substantially changed later. Further, the input from these meetings was very similar to that of the first listening tour.

On the other hand, the Commission’s third tour, which encompassed the 30-day draft map advertising phase required by the Arizona Constitution, was much more productive. This tour occurred after the release of the first round of draft maps and

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<sup>5</sup> The Commission’s website, which has been consolidated with archives from prior commissions, is available at <https://irc.az.gov/>. The website should be available and functional from the start for posting of meetings and agendas, communications with the public, and other vital functions, and should be continually maintained and updated throughout the decade.

included more specific input for the Commission to consider. Consequently, the Commission suggests consolidating the listening tours into two phases: one just before the release of the grid map, and one after the release of the first set of draft maps.

Listening tours were highly successful, drawing substantial participation and engaging the public in the map-drawing process. In the future, the Commission recommends providing multiple options for participation, including structured in-person, virtual, and written options for public comment. Additionally, the Commission recommends coupling the main hearing with satellite locations to expand the opportunity for more people to participate in the process. Each satellite location should be supported by a reliable Internet connection and a qualified production company to ensure that streaming is not cut off.

As a practical matter, the locations for each hearing should be selected and scheduled well in advance. For planning purposes, the Commission should determine everywhere it wants to stop ahead of the first tour so that the hearings can be evenly spaced. Although the Commission was fortunate to book venues on a tighter timeline due to the COVID-19 pandemic, future commissions should consider asking the Citizens Clean Elections Commission or ADOA to reach out to venues as early as February to ensure availability.

If possible, the Commission should select locations hosted by local government entities because they will tend to handle many of the logistics and costs. When selecting locations, public transportation to the site, off-hours meetings, and diversity in community should be considerations. The Commission should also identify its security needs for these meetings with ADOA and, if applicable, obtain the State's security contract containing the list of eligible individuals for review. Generally, all infrastructure for these meetings should be put into place by April or May 2031.

The Commission often conducted these tours alongside their regular public meetings, creating a very busy time period. Accordingly, Commissioners should remember to be cognizant of staff hours when determining the schedule and selecting locations. Further, the RFP for mapping consultants should contain parameters about the expected number of communities-of-interest hearings, including their duration, to ensure adequate preparation.

In the end, the outcome of the Commission's outreach efforts included their consideration of over 4,000 public comments, 233 citizen submitted plans, 182 suggested communities of interest groups, 910 digital survey responses, and 243 paper responses that were obtained during the listening tours.

## **V. MAP-DRAWING PROCESS**

The Commission initiated the first stages of its map-drawing and deliberation

process in August 2021, with a plan to provide the final maps to the Secretary of State in January of the following year. This process involved four stages, in accordance with Arizona constitutional requirements:

- (1) Developing a grid map in August after receipt of the census data to serve as a starting point for adjusting the maps;
- (2) Developing an initial draft map in October;
- (3) Developing a final draft map in December, in which the Commission made appropriate changes to the initial draft map in response to public comments from its third listening tour; and
- (4) Making final administrative changes submitted by the counties in January.

Ultimately, the final maps were approved by a majority of the Commission and timely transmitted to the Secretary of State on January 21, 2022. At the end of the process, the Commission prepared and approved a final report explaining the process, procedure, and rationale for its official adoption.

#### **A. Map Drawing and Deliberation Process**

Because of the delay in the release of the 2020 census data, the Commission did not commence actual map drawing until October 2021 when it began developing the first round of draft maps. Accordingly, map-drawing was condensed into a shorter timeframe than future commissions will likely experience. This condensed timeline was somewhat of a challenge. To ensure sufficient time to make the necessary changes to the maps, deliberation meetings occurred much more frequently than the Commission's initial weekly regular meetings, with the workload peaking at the end of the process.

The Commission's timeline was nonetheless effective. In conducting its deliberations, the Commission bifurcated the process such that all five members regularly spent half a day on the congressional map and the other half on the legislative map. This was a more efficient use of time than if the Commission had done the two maps separately. And because the Commission selected and upheld a deadline, it made decisions that otherwise could have been deliberated indefinitely.

Future commissions should consider in advance how much time they feel is necessary to deliberate. Moreover, the Commission recommends having a short break between approving the final draft maps and making administrative changes, as these occur at the end of a long process in which all parties have already made difficult tradeoffs.

While the Commissioners did not always agree, they generally worked well together, debating competing ideas in good faith and engaging in reasonable (but often difficult) trade-offs and compromises where necessary. Where ideas diverged, the

mapping consultants offered several different versions in response to instruction from different Commissioners. The Commission then conducted a formal vote to determine which version would serve as the starting point for the next draft map series. For example, for Congressional District Series 2, the Commissioners considered three different options (Versions 2.0, 2.1., and 2.2) and ultimately adopted Version 2.1 as a starting point for Series 3. By the final vote, the Commission had considered 13 series of congressional maps and 16 series of legislative maps.

## **B. Mapping Tools and Resources**

Throughout each stage, the mapping team effectively responded to Commission requests in generating different draft map permutations. From the data gathered from the listening tours, the mapping consultants offered several effective tools that assisted the Commission in obtaining public input and understanding the demographics of Arizona, including a socioeconomic report and a communities-of-interest report. These reports, along with public comments and citizen map submissions, were made available on the redistricting hub on the Commission’s website.<sup>6</sup> Future commissions should ensure that this redistricting hub is kept up to date and is organized in an effective manner, with a centralized location for posting important information and an easy place for the public to submit feedback.

The Commission’s mapping consultants also provided data layouts identifying the different groups and communities in Arizona, an essential element of map drawing. This helped the Commission identify groups subject to the VRA, important boundaries, communities of interest, competitive districts, and more. The Commission recommends that future commissions discuss with their mapping consultants ahead of the map-drawing process which boundary lines and shapefiles—such as ethnic groups, school districts, mining districts, watersheds, and citizen maps—would be most helpful to their deliberations.

With guidance from their legal counsel, mapping consultants, and experts in polarized voting and the VRA, the Commission also developed a series of datasets evaluating compliance with various constitutional requirements. At the end of the process, the Commission’s VRA experts issued a report summarizing their findings for both congressional and legislative maps, both of which were included in the Commission’s final report.

Finally, because much of the competitiveness data comes from the Census Bureau,

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<sup>6</sup> The detailed history of the Commission’s drafted process included a useful audit log, in which each of the Commission’s requested changes was meticulously tracked and recorded according to the constitutional criteria justifying the change. The Commission’s Redistricting Hub is available at <https://redistricting-irc-az.hub.arcgis.com/>.

the mapping consultants built and maintained an election database to support its ability to create a competitiveness index. This service was negotiated between the Commission and the mapping consultants through a change order issued after the initial contract was awarded, as discussed above.

The Commission recommends that after the next iteration, the Legislature, Secretary of State, or another statewide entity be required to maintain this database on an ongoing basis. The database should list all the voters currently registered to vote and whether that voter cast a vote in the both the primary election and general elections in the preceding cycles. This would include collecting and matching county precinct geographic information system computer shapefiles for all primary and general election results for both House and Senate races. This database should contain precinct-level results that are collected right after each election so that the mapping consultants do not have to belatedly build this data from scratch at the beginning of the next redistricting cycle. Alternatively, this deliverable should appear in the mapping consultants' RFP so that it is kept up to date for future commissions.

#### **V. "Sunsetting" the Commission**

Once the Commission concludes its primary redistricting duties, the Commission or the Legislature may want to consider procedures to "sunset" and transition or delegate the Commission's day-to-day activities to another agency for caretaking purposes. While the auditor general would typically perform a "sunset review" of an agency's activities on a regular basis, the Commission is not subject to this type of statutory review.<sup>7</sup> Of course, it is possible for the Legislature direct the auditor general to conduct an audit on a case-by-case basis, as it has done with the Commission in the past.<sup>8</sup>

Nevertheless, the Commission recommends taking proactive steps to wind-down its official day-to-day duties after all official action related to redistricting is complete, while still meeting its constitutional obligations and providing the next Commission with the tools it needs to quickly get up to speed. For instance, the Commission created this After Action Report. The Commission recommends continuing this practice.

Another important transitional consideration is how the Commission will manage administrative tasks when it is no longer operating on a day-to-day basis. The Commission recommends that the Legislature provide a statutory mechanism and appropriate funding to transfer the management of the Commission's website, any physical documents, and electronic files to the ADOA or another agency. Currently the Commission is exploring an

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<sup>7</sup> See, e.g., A.R.S. § 41-2953.

<sup>8</sup> See, e.g., Ariz. Laws 2012, Chapter 108; Off. of Auditor General, *Ariz. Indep. Redistricting Comm'n Special Audit: Fiscal Years 2011 and 2012* (Sept. 2012), [https://www.azauditor.gov/sites/default/files/IRC\\_2012.pdf](https://www.azauditor.gov/sites/default/files/IRC_2012.pdf).

Inter-State Agreement to provide such support and related long-term funding. Through that transfer, the ADOA would also be tasked with archiving the Commission's website and off-line documentation.

## **VI. Conclusion**

The Commission serves an important constitutional role in working towards balanced representation throughout Arizona. By establishing a framework in which other state agencies, namely the Arizona Department of Administration, are tasked with accomplishing initial steps well in advance of selecting the next commissioners, Arizona will be better placed to meet its mandate.

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**Appendix A: Recommended Redistricting Timeline**

	<b>2021-2030 Commission Actual</b>	<b>2031-2040 Commission Recommended Deadline</b>
<b>ADOA Selects Interim Staff Member</b>	N/A	July 30, 2030
<b>Selection of the First Four Commissioners</b>	December 2020	December 15, 2030
<b>Interview / Selection of Chair</b>	Early January 2021	Before December 31, 2030
<b>Initial Training (Order of Operations, Technology, Procurement, Open Meeting Law, Public Records Law, Timeline, etc.)</b>	February – April 2021	January 2031
<b>Executive Director Recruitment / Selection</b>	March 2021	As Early as Possible in the First Quarter of 2031
<b>Administrative Staff Selection</b>	March – April 2021	First Quarter of 2031
<b>Legal Counsel Selection</b>	March – April 2021	First Quarter of 2031
<b>Mapping Consultant RFP / Selection</b>	March – May 2021	First Quarter of 2031
<b>Pre-Grid Map Training</b>	May – July 2021	Spring and Early Summer 2031
<b>Pre-Grid Map Public Outreach Tour</b>	July – August, 2021	Summer 2031
<b>Census Data Release</b>	August 12, 2021	Before April 1, 2031
<b>Grid Map Adoption</b>	August 2021	Summer 2031
<b>Grid Map Public Outreach Tour</b>	September – October, 2021	N/A
<b>Initial Draft Maps</b>	October 2021	Late Summer / Early Fall 2031
<b>30-Day Draft Map Public Outreach Tour</b>	October – November, 2021	Fall 2031
<b>Final Draft Maps</b>	December 2021	Late Fall / December 2031
<b>Administrative Changes</b>	January 2022	January 2032
<b>Transmission to Secretary of State</b>	January 21, 2022	Consult with Secretary of State’s Office to ensure receipt well before deadline for candidates to file nominating petitions

**Appendix A: Recommended Redistricting Timeline**

	<b>2021-2030 Commission Actual</b>	<b>2031-2040 Commission Recommended Deadline</b>
<b>ADOA Selects Interim Staff Member</b>	N/A	July 30, 2030
<b>Selection of the First Four Commissioners</b>	December 2020	December 15, 2030
<b>Interview / Selection of Chair</b>	Early January 2021	Before December 31, 2030
<b>Initial Training (Order of Operations, Technology, Procurement, Open Meeting Law, Public Records Law, Timeline, etc.)</b>	February – April 2021	January 2031
<b>Executive Director Recruitment / Selection</b>	March 2021	As Early as Possible in the First Quarter of 2031
<b>Administrative Staff Selection</b>	March – April 2021	First Quarter of 2031
<b>Legal Counsel Selection</b>	March – April 2021	First Quarter of 2031
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**Appendix B**  
**POSITION DESCRIPTION: Executive Director**

**Responsibility For the Work of Others**

Select One: This position serves as a manager (includes planning, directing subordinates, and interpreting policy)

**Job Summary**

Facilitate the administration of Arizona Constitution, Article 4 part 2, Section 1; plan, organize and direct the day-to-day activities of the Independent Redistricting Commission to accomplish the tasks of the Commission, including but not limited to: establishing policies and procedures; developing statewide program standards; coordinating the Commission's program activities with other government entities; hiring and supervising staff; overseeing the development and distribution of informational materials; advising the Commission of potential/pending issues; and preparing materials for transition to the next Commission.

**Major Responsibilities/Essential Functions**

<b>Function</b>	<b>% Time Spent</b>
▪ Oversee agency operations. Hire, train, supervise, and evaluate agency staff. Manage the office and technology facilities. <b>(20%)</b>	
▪ Organize public meetings. Prepare agendas for approval by the Chair, prepare all supplemental information relative to agenda items for commission, and ensure all notices, public records, and other requirements with regards to the public meetings are met. Attend meetings and review meeting minutes and/or transcripts. Facilitate public meetings. Oversee the preparation of agendas and supplemental information for Commission meetings. Implement and maintain agency information system and network needed to track, analyze, and report data, mapping, and public comments for the redistricting process. <b>(15%)</b>	
▪ Develop and implement internal policies and operating procedures, and help commissioners be compliant with all state agency requirements including by not limited to procurement, public records requests, reimbursement, and human resources. <b>(10%)</b>	
▪ Draft and manage the budget and information resource plan, including but not limited to implementing information technology resources. <b>(10%)</b>	

- Oversee the public information plan, including responding to inquiries from the public and media and coordinating solicitation of public input. **(10%)**
- Prepare statistical, fiscal, and administrative reports, special reports, and briefing documents for Commission meetings as needed. Review and approve accounting reports, expenditures, and inventory control. **(10%)**
- Assist in hiring and coordinating communications with agency consultants and counsel. Prepare and present status reports to the Commission. Prepare correspondence in response to special situations or problems. **(10%)**
- Monitor decisions of the Commission, prepare reports, oversee the preparation of Commission publications, newsletters, and brochures, and implement action as assigned by the Commission. Implement and maintain agency website. **(10%)**
- Other related duties as assigned **(5%)**

**Total: 100%**

#### **Decision Making Authority**

Select One: Participates in the establishment of guidelines and policies.

## Knowledge, Skills, and Abilities (KSAs)

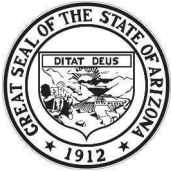
Knowledge	Skill	Ability
-United States Voting Rights Act	-Self-starting leadership	-Lead an organization that provides services to include managing multiple programs, operationally and financially.
-Mapping process for congressional and legislative districts	-General organizational development	-Build effective working relationships with leaders, employees, and the general public.
-Computerized mapping software	-Managing and supervising	-Foster collaborative workspace that develops and highlights team member strengths
-Redistricting experience	-Researching and analyzing	-Work across partisan lines to achieve Commission objectives.
-General statutes and rules governing public entities, such as the open meeting law	-Microsoft Office and Google Suite	-Represent the agency through leadership presence in public and private forums, including legislative hearings, judicial proceedings, media engagements, and public events.
-State Procurement Code and execution of contracts	-Public relations	-Design policies and procedures to comply with laws, rules, and regulations applicable to state entities
-State accounting and rules and procedures	-Written and verbal communication	-Develop and facilitate diverse and inclusive teams reflective of Arizona's diverse communities of interest
-State Personnel Rules	-Budgeting, revenue forecasting and control	-Conduct tasks with confidentiality and discretion, as appropriate
-Strategic planning requirements and processes	-Auditing	-Physical attendance at public meetings, at times requiring travel within the state or work in the evenings or weekends
-State budget process	-Strategic planning	
-State lobbying laws and reporting requirements	-Working with boards and commissions	
-HR management and principles	-Time management	
-Commission and staff roles and respective responsibilities	-Statistical analysis	
-Working with commission-directed agency	-Records management and working with state legislative and rule-making processes	
-State archive/retention rules and procedures.		
-Arizona's diverse communities of interest		

**Licenses/Certifications:**

**Selective Preferences:**

- Minimum five years of experience in state government.
- Bilingual.
- 5 years of experience in a supervisory position.
- No recent involvement in partisan or other political activity.

DRAFT



## Notice of Request for Proposal

Solicitation No: IRC001

Description: Outside Legal Counsel for Arizona Independent Redistricting Commission

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

The Arizona Department of Administration, State Procurement Office division (the State), as authorized under A.R.S. § 41-2501 is seeking to establish one or more statewide contracts to provide Outside Legal Counsel for Arizona Independent Redistricting Commission (IRC). The State may award multiple Contracts for services based on the needs of the IRC as they arise and for services to begin by a target date of March, 2021. Contracts may be open for use by all state departments, agencies, boards and commissions.

- List of all state agencies is available at: <https://azdirect.az.gov/agencies>
- Active Co-Op Members List is available at: <https://spo.az.gov/procurement-services/cooperative-procurement/state-purchasing-cooperative> .

### **OFFERORS ARE ENCOURAGED TO READ THE ENTIRE SOLICITATION CAREFULLY**

#### **Solicitation Contents**

Section 1: Solicitation Requirements

Section 2: Solicitation Instructions and Attachments

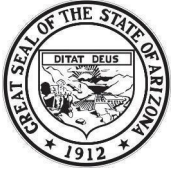
#### **How and When Proposals Are Due**

Proposals will only be accepted **via email to [kerry.wells@azdoa.gov](mailto:kerry.wells@azdoa.gov)** by **March xx, 2031 at 3 PM** Arizona Time. Proposals must be in the State Procurement Office's possession online no later than that deadline.

LATE PROPOSALS WILL NOT BE CONSIDERED. No extension or grace period will be given for delays or incomplete proposals caused by internet connectivity problems, file uploading difficulties, or misunderstanding of the requirements or procedures for online submission.

#### **Inquiries**

Any question related to this Request for Proposal shall be submitted **via email to Jennifer Calimag, Compliance Manager, at [jennifer.calimag@azdoa.gov](mailto:jennifer.calimag@azdoa.gov)** by February xx, 2031 5 PM Arizona Time.



**Table of Contents**  
Solicitation No: IRC001  
Description: Outside Legal Counsel for Arizona Independent Redistricting  
Commission

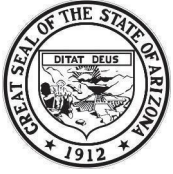
Arizona Department of  
Administration  
**State Procurement  
Office**  
100 N 15th Ave., Suite 402  
Phoenix, AZ 85007

**SECTION 1: Solicitation Requirements**

SCOPE OR WORK	3
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UNIFORM TERMS AND CONDITIONS	22

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## Section 1: Solicitation Requirements

### Scope of Work

Solicitation No: IRC001

Description: Outside Legal Counsel for Arizona Independent Redistricting Commission

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

**1.0 Purpose:** The State of Arizona on behalf of the Independent Redistricting Commission (“IRC”) is issuing a solicitation that seeks proposals from prospective qualified independent counsel. Such counsel can provide its services in a partisan or bi-partisan manner that can be representative and serve both major political parties (Republican and Democratic) as well as other known parties. These political parties are expected to compete in the future elections in the districts drawn by the IRC. Selected counsel will provide legal representation on an hourly basis.

**2.0 Background and Information:** The IRC was created following the passage of Proposition 106, a constitutional amendment approved by the voters in the 2000 general election. Proposition 106 provides that the IRC may hire staff and consultants, including legal representation, to perform its duties. Ariz. Const., Art. IV, Part 2, § 1(19).

This RFP pertains principally to the redistricting process and related matters. IRC will reserve the right to retain separate or additional legal counsel should litigation arise during or after completion of the redistricting process.

### 3.0 Qualifications:

The attorney, law firm, or other entity shall have knowledge and experience with:

**3.1** Arizona law governing open meetings, public records, conflicts of interest, government procurement, government appropriation, administrative law and procedure, and other laws generally applicable to the conduct of state agencies, boards, and commissions;

**3.2** Arizona election law, including statutory deadlines, and the relationship between district boundaries and the conduct of elections by counties;

**3.3** The federal law applicable to the redistricting process, such as:

- The Voting Rights Act of 1965, as amended, including minority voter protections described in Section 2, 42 U.S.C 1973b(f)(2), and pertinent regulations contained in 28 C.F.R. Part 51; and
- The 14th Amendment of the U.S. Constitution, and the associated regulations and case law.

**3.4** The Arizona Constitution, statutes, and case law applicable to federal and state legislative redistricting, including Arizona Const. Art. 4, Part 2, Section 1;

**3.5** Litigation pertaining to constitutional or federal statutory issues, including multi-party cases, document-intensive cases, and cases heavily involving complex e-discovery.

In addition to providing expert legal advice on the above, the attorney, law firm, or other entity shall assist the IRC in the following areas:

**3.6** Attend and assist the IRC at public meetings and hearings on an as-needed basis.

**3.7** Assist in handling and responding to any Open Meetings Act or Public Records Law issues that may arise, including assisting in the development and adoption of procedures for public meetings and preparing for the public meeting process.

**3.8** Evaluate the factors considered necessary to comply with the legal requirements of the Voting Rights Act of 1965.

**3.9** Develop and review redistricting plans to ensure their legal and constitutional compliance.

**3.10** Assist in the preparation of the written evaluations and explanatory statements for district plans adopted by the IRC.

**3.11** Provide pre- and post-map litigation services as needed.

**3.12** Provide legal assistance to the IRC in winding down the redistricting process and preparing for the transition of duties to the next IRC.

**4.0 Specific Requirements:** The IRC has expressed a desire to contract with private counsel in a manner that promotes public confidence in its independence and impartiality. Offerors shall provide the following as part of this Solicitation:

**4.1** Identification of any actual, as well as potential, conflicts of interest under either the Rules of Professional Conduct which govern attorneys or the state conflict-of-interest statutes;

**4.2** Identification, to the extent allowed by the Rules of Professional Conduct, of any current or previous political activity or representation, whether as an elected official, a candidate, a lobbyist, an officer of a political committee, a campaign worker or fundraiser, or an attorney for any of the above or for any political party or governmental or political entity;

**4.3** Identification, to the extent allowed by the Rules of Professional Conduct, other significant matters the Offeror is managing that may affect workload and accessibility.

**4.4** Identification of the lead attorney or other attorneys, if any, who will be assigned to the work and the anticipated percentage of time for each.

**4.5** Whether the lawyer(s) identified in section 4.4 has ever been subject to any disciplinary proceeding or been sanctioned by a court; and,

**4.6** Identification of three (3) representative major cases or other matters in which the lawyer(s) identified in section 4.4 has participated, together with the names, addresses, and telephone number of all co-counsel and opposing counsel involved.

**End of Scope of Work**

	<p style="text-align: center;"><b>Section 1: Solicitation Requirements</b></p> <p style="text-align: center;"><b>Special Terms and Conditions</b></p> <p style="text-align: center;">Solicitation No: IRC001</p> <p style="text-align: center;">Description: Outside Legal Counsel for Arizona Independent Redistricting Commission</p>	<p style="text-align: center;">Arizona Department of Administration</p> <p style="text-align: center;"><b>State Procurement Office</b></p> <p style="text-align: center;">100 N 15th Ave., Suite 402 Phoenix, AZ 85007</p>
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**1.0 Definition of Terms:** As used in the Contract, the terms listed below are defined as follows:

**1.1 Acceptance:** The document titled “Offer and Acceptance Form” bearing the State contract number once Procurement Officer has signed it to signify (1) State’s formal acceptance of the Accepted Offer and (2) the formation of the Contract. For clarity of intent, the foregoing is not to be confused with the term “acceptance” used throughout the Contract in the context of delivery, inspection, etc., with respect to Materials or Services.

**1.2 Accepted Offer:**

1. If State did not request a Revised Offer, then “Accepted Offer” means the Initial Offer.
2. If State requested a Revised Offer but not a Best and Final Offer, then “Accepted Offer” means the latest Revised Offer.
3. If State requested a Best and Final Offer, then “Accepted Offer” means the Best and Final Offer.

**1.3 Arizona Procurement Code A.R.S.; A.A.C.;** “Arizona Procurement Code, “A.R.S.,” and “A.A.C.” are each defined in the Instructions to Offerors.

**1.4 Arizona TPT:** Arizona Transaction Privilege Tax. For information, refer to the Arizona Department of Revenue (DOR) website at: <https://www.azdor.gov/business/transactionprivilegetax.aspx>

**1.5 Attachment:** Any item that:

1. the Solicitation required Offeror to submit as part of the Offer (e.g., Initial Offer, Revised Offer, or Best and Final Offer);
2. was attached to an Offer when submitted; and
3. was included in the Accepted Offer.

**1.6 Pricing Document:** Section 2-B of Part 2 of the Solicitation Documents provided that, if there is no such Section in the Contract, then “Pricing Document” is to be construed as referring to whatever item in the Contract contains the contracted pricing and payment provisions.

**1.7 Contract Amendment:** A document signed by the Procurement Officer that has been issued for the purpose of making changes to the Contract after execution.

**1.8 Contract Terms and Conditions:** The Special Terms and Conditions and the Uniform Terms and Conditions taken collectively.

**1.9 Contractor:** The Person identified on the Accepted Offer who has entered into the Contract with the State.

**1.10 Contractor Indemnitor:** Contractor or any of its owners, officers, directors, agents, employees, or Subcontractors.

**1.11 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

	<p><b>Section 1: Solicitation Requirements</b></p> <p><b>Special Terms and Conditions</b></p> <p>Solicitation No: IRC001</p> <p>Description: Outside Legal Counsel for Arizona Independent Redistricting Commission</p>	<p>Arizona Department of Administration</p> <p><b>State Procurement Office</b></p> <p>100 N 15th Ave., Suite 402 Phoenix, AZ 85007</p>
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nonprofit corporation as designated by the IRS under Section 501(c)(3) through 501(c)(6) of the tax code.

- 1.12 Eligible Agency:** If the Special Terms and Conditions indicate that the Contract is a “single-agency” contract, then “Eligible Agency” means the particular State of Arizona agency, university, commission, or board identified therein. If the Special Terms and Conditions indicate that the Contract is a “statewide” contract, then “Eligible Agency” means any State of Arizona department, agency, university, commission, or board.
- 1.13 Indemnified Basic Claims:** “Indemnified Basic Claims” means any and all claims, actions, liabilities, damages, losses, or expenses, including court costs, attorneys’ fees, 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.
- 1.14 Instructions to Offerors:** “Instructions to Offerors” is Section 3-A of Part 3 of the Solicitation Documents.
- 1.15 Order:** The instrument by which State authorizes a 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 are construed as being an “Order”:
1. “Release” or “Release Purchase Order: in The State’s e-Procurement System;
  2. “task order,” “service order,” or “job order” when a Release Purchase Order for Services has already been created in The State’s e-Procurement System; or
  3. “purchase order” for buying by Co-Op Buyers, if co-op buying applies.
- 1.16 The State’s e-Procurement System:** The 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 eProcurement System*. Technical Bulletin No. 020 is available online at: [https://spo.az.gov/sites/default/files/documents/files/TB\\_020\\_APP\\_20181024.pdf](https://spo.az.gov/sites/default/files/documents/files/TB_020_APP_20181024.pdf)
- 1.17 State:** 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 Eligible Agency or Co-Op Buyer who has issued the Order.
- 1.18 State Indemnitees:** Collectively, the State of Arizona, its departments, agencies, universities, commissions, and boards and, and their respective officers, agents, and employees.
- 1.19 Subcontractor:** A.R.S. § 41-2503(38), which, for convenience of reference only, is “... a person who contracts to perform Work or render service to ... [C]ontractor or to another [S]ubcontractor as a part of a contract with a state governmental unit . . .” The Contract is to be construed as “a contract with a state governmental unit” for purposes of the definition. For clarity of intent, a Person carrying out any element of the Work is a Subcontractor from the moment they first carry out that element of the Work regardless of whether or not a Subcontract exists then or subsequently.
- 1.20 Work:** The totality of the Materials and the Services and all the acts of administration, creation, production, and performance necessary to fulfill and incidental to fulfilling all of Contractor's obligations and duties under the Contract in conformance with the Contract and applicable laws.

**2.0 Contract Interpretations**

**2.1 Usage:** Where the Contract:

	<p><b>Section 1: Solicitation Requirements</b></p> <p><b>Special Terms and Conditions</b></p> <p>Solicitation No: IRC001</p> <p>Description: Outside Legal Counsel for Arizona Independent Redistricting Commission</p>	<p>Arizona Department of Administration</p> <p><b>State Procurement Office</b></p> <p>100 N 15th Ave., Suite 402 Phoenix, AZ 85007</p>
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1. Assigns obligations to Contractor, any reference to “Contractor” is to be construed to be a reference to the 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 Subcontractor’s respective agents, representatives, and employees in every instance unless the context plainly requires that it is a reference only to Contractor as apart from Subcontractors.
2. Uses the permissive “may” with respect to a party’s actions, determinations, etc., the terms is to be interpreted as in A.A.C. R2-7-101(31) [Definitions]. For clarity of intent, any right given to State using “State may” or a like construction denotes discretion and freedom to act so far as any regulatory or operative constraints permit in the relevant circumstances, provided that: (a) where written “may, at its discretion,” the discretion extends to whatever is most advantageous to State; and (b) where written only as “may,” the discretion is constrained by what is fair, reasonable, and as accommodating of the respective best interests of both parties as practicable under the circumstances;
3. Uses the imperative “shall” with respect to a party’s actions, duties, etc., the term is to be interpreted as in A.A.C. R2-7-101(43) [Definitions]. Conversely, the phrase “shall not” is to be interpreted as an imperative prohibition.
4. Uses the term “must” with respect to a requirement, criterion, etc., the term is to be interpreted as conveying compulsion or strict necessity, and is to be read as though written *“must, if [the subject] is to be entitled to have [the object] considered or credited as being compliant with, conforming to, or satisfying [the requirement, criterion, constraint, etc.], otherwise, [the object] will be considered or debited as being non-compliant, non-conforming, or unsatisfactory for its Contract-related purposes”* in every instance;
5. Uses the term “might” with respect to an event, outcome, action, etc., the term is to be interpreted as conveying contingency or non-discretionary conditionality; and
6. Uses the term “will” or the phrases “is to be” or “are to be” with respect to an event, outcome, action, etc., the term or phrase is to be interpreted as conveying such certainty or imperativeness that “shall” is either unnecessary or irrelevant in that instance.

**2.3 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 the employee or agent of the other party, and no action, inaction, event, or circumstance will be grounds for deeming it to be so.

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

**3.0 Contract Administration and Operation**

**3.1 Term of Contract:** The term of the Contract will commence on the date indicated on the Acceptance and continue for twelve (12) months unless cancelled, terminated, or permissibly extended.

**3.2 Contract Extensions:** State may at its discretion extend the initial Contract term in increments of one or more months and do so one or more times, provided that the maximum aggregate term

	<p><b>Section 1: Solicitation Requirements</b></p> <p><b>Special Terms and Conditions</b></p> <p>Solicitation No: IRC001</p> <p>Description: Outside Legal Counsel for Arizona Independent Redistricting Commission</p>	<p>Arizona Department of Administration</p> <p><b>State Procurement Office</b></p> <p>100 N 15th Ave., Suite 402 Phoenix, AZ 85007</p>
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of the Contract including extensions cannot exceed the maximum aggregate term of five (5) years.

**3.3 Notices and Correspondence:**

1. TO CONTRACTOR. State shall: address all Contract correspondence other than formal notices to the email address indicated as “Default for Type” for “General Mailing Address” in Contractor’s corresponding State’s e-Procurement System Vendor Profile; and address any required notices to Contractor to the “Contact Name and Title” at the “Mailing Address” indicated on the Accepted Offer, as that address might have been amended during the term of the Contract.
2. TO STATE. Contractor shall: address all Contract correspondence other than format notices to the email address indicated in “Contact Instructions” in the State’s e-Procurement System Summary for State; and address any required notices to State to the Procurement Officer identified as “Purchaser” 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 402  
Phoenix, AZ 85007

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

**3.4 Signing of Contract Amendments:** Contractor’s counter-signature – or “approval” in 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:

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

In every case other than those listed in (1), (2), and (3) above, both parties’ signature – or “approval” in 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

	<p><b>Section 1: Solicitation Requirements</b></p> <p><b>Special Terms and Conditions</b></p> <p>Solicitation No: IRC001</p> <p>Description: Outside Legal Counsel for Arizona Independent Redistricting Commission</p>	<p>Arizona Department of Administration</p> <p><b>State Procurement Office</b></p> <p>100 N 15th Ave., Suite 402 Phoenix, AZ 85007</p>
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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:**

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 to any cost and pricing data submitted in satisfaction of § 41-2543 for the period specified in the statute.
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. AUDITING. Contractor or Subcontractor shall either make all such books and records under subparagraphs 3.6.1 and 3.6.2 available to State at all reasonable times or produce the records at a designated State office on State’s demand, the choice of which being at State’s discretion. For the purpose of this paragraph, “reasonable times” are during normal business hours and in such a manner so as to not unreasonably interfere with normal business activities.

**3.7 Contractor Licenses:** Contractor shall maintain current 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 Subcontract:**

1. INITIAL LIST. At the time of Contract execution, Contractor’s candidate Subcontractors were identified in Attachment 3-C to the Accepted Offer [Proposed Subcontractors]. Agreeing to them being included in the Accepted Offer signified Procurement Officer’s advance consent for Contractor to enter into a Subcontract with each candidate, which Contractor shall do as promptly as necessary to ensure its ability to carry out the Work in a timely manner.
2. ADDITIONAL NAMES. Contractor shall not enter into a Subcontract without first obtaining Procurement Officer’s written consent with any prospective Subcontractor that (a) was not listed on Attachment 3-C at time of Contract execution or (b) is for any Materials or Services categories other than the ones for which they were previously consented. For either case (a) or (b), Contractor shall submit a written request sufficiently in advance of the need date for those materials or services so that performance under the Contract is not impaired. Procurement Officer may request any additional information he or she determines is necessary to assess the submittal, and may withhold consent pending it.
3. 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.

**3.9 Orders:**

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1. **ORDER SUFFICIENCY.** The Contract was awarded in accordance with the Arizona Procurement Code; the transactions and procedures required by the code for competitive source selection have been met. An Order issued that cites the correct State contract number will suffice to authorize Contractor to provide the Materials and perform the Services covered by that Order.
2. **ORDER TERMS.** All Orders are subject to the Contract Terms and Conditions; an Order cannot modify the Contract Terms and Conditions.
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.
4. **SPECIAL CASE.** In the special case where both the following conditions are true, Procurement Officer's signature on the Acceptance is Contractor's authorization to perform and therefore no Order is required: (a) the Contract is identified as being a "single-agency/single-project" contract and (b) the Contract was created in The State's e-Procurement System as something other than a "Master/ Blanket" type.
5. **NO MINIMUMS OR COMMITMENTS.** (a) Contractor shall not impose any minimum dollar amount, item count, services volume, or services duration on Orders; (b) State makes no commitment of any kind concerning the quantity or monetary value of activity actually initiated or completed during the term of the Contract; (c) Contractor shall only deliver or perform as authorized by Orders; and (d) State is not limited as to the number of Orders it may issue for the Contract. For clarity of intent, the foregoing applies equally whether an Eligible Agency issues the Order or, if applicable, a Co-Op Buyer issues it.
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.

**3.10 Provisions for Statewide Contracts:** 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.

1. **Quarterly Reporting:** 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.
2. **Co-Op Usage:** Contractor shall verify if an ordering entity is a bona fide Co-Op Buyer before selling Materials to or providing Services for them under the Contract. The current list of Co-Op Buyers is available on the State Procurement Office website: <https://spo.az.gov/coop-contracts> 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).



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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>

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. Eligible Agencies – Orders: Contractor shall acknowledge each Order from Eligible Agencies within 1 (one) business day after receipt by either:

- “Approving” the Order electronically in The State’s e-Procurement System, which will indicate Contractor’s unqualified acceptance of the Order as-issued; or,
- “Rejecting” the Order electronically in The State’s e-Procurement System, with a concurrent explanation by email to the 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 3.12.3 (Orders are Obligatory).
- 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.

4. 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>

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**3.11 Multiple-Use Provisions:** Eligible Agencies may issue Orders for Services in several forms, all of which become final and effective by a “Release Purchase Order” in 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:

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

**3.12 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 to impose an unreasonable burden on any one of them.

**3.13 Work on State Premises:**

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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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 in a timely manner, State will be entitled to exercise its remedies under paragraph 8.5 of the Uniform Terms and Conditions[Right of Offset].

**4.0 Costs and Payments:**

**4.1 Payments:**

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: (a) all of the Materials being invoiced have been delivered or installed (as applicable) and accepted and all of the Services being invoiced have been performed and accepted; and (b) Contractor has provided a complete and accurate invoice in the form and manner called for in the Pricing Document, provided that, State will not make or be liable for any payments to Contractor until Contractor has registered properly in The State’s e-Procurement System and provided a current IRS Form W-9 to State unless excused by law from providing one.
2. PAYMENTS ONLY TO CONTRACTOR. Unless compelled otherwise by operation of law or order of a court of competent jurisdiction, State will only make payment to Contractor under the federal tax identifier indicated on the Accepted Offer.

**4.2 Applicable Taxes:**

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

**5.0 Risk and Liability:**

- 5.1 **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

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those duties are within the scope of the Work, until they have been accepted as conforming by State in the particular location and situation specified in the Order, or as specified generally elsewhere in the Contract if the Order does not provide particulars, provided that, risk of loss for nonconforming Materials will remain with Contractor notwithstanding acceptance to the extent the loss stems from the nonconformance.

**5.2 Indemnification:**

1. To the fullest extent permitted by law, Counsel shall defend, indemnify, and hold harmless the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees from and against all claims, damages, losses and expenses, including, but not limited to, attorney fees, court costs, expert witness fees, and the cost of appellate proceedings, relating to, arising out of, or resulting from the negligent, intentional or willful acts, errors, omissions, mistakes or malfeasance caused by Counsel relating to work or services in the performance of this Contract, including any person or entity directly employed by them, their agents or representatives, as well as any person or entity for whose acts, errors, omissions, mistakes or malfeasance Counsel may be legally liable.
2. The amount and type of insurance coverage requirements set forth herein will in no way be construed as limiting the scope of the indemnity in this paragraph.
3. The scope of this indemnification does not extend to the sole negligence of the State of Arizona.

**5.3 Insurance:**

1. All personnel furnished by Counsel shall be considered employees of Counsel and Counsel shall be responsible for payments of all Workmen's Compensation claims, Unemployment Disability claims or claims under similar laws.
2. Counsel shall be responsible for providing appropriate public, professional, automobile, and aircraft liability insurance (aircraft liability only if applicable) for Counsel and its employees in connection with the performance of the Services under this Agreement. The State of Arizona may request Counsel to provide additional insurance. Counsel agrees to provide such additional insurance upon request.
3. Counsel shall provide the State with a valid Certificate of Insurance within ten (10) days of receiving a contract award. Counsel shall provide the State with updated Certificates of Insurance documenting any changes in policy or coverage (e.g. renewal, change in carrier, loss of policy, etc.) within ten (10) days of the change
4. Insurance Requirements: Contractor and subcontractors shall procure and maintain, until all of their obligations have been discharged, including any warranty periods under this Contract, insurance against claims for injury to persons or damage to property arising from, or in connection with, the performance of the work hereunder by the Contractor, 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 arise out of the performance of the work under this Contract by the Contractor, its agents, representatives, employees or subcontractors, and the Contractor is free to purchase additional insurance.

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**5.4 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, and broad form contractual liability coverage.

- General Aggregate \$2,000,000
- Products – Completed Operations Aggregate \$1,000,000
- Personal and Advertising Injury \$1,000,000
- 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 automobiles used in the performance of this Contract.

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

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

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

**3. Workers' Compensation and Employers' Liability**

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

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

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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 or Independent Contractor).

**4. Professional Liability (Errors and Omissions Liability)**

- Each Claim \$2,000,000
- Annual Aggregate \$2,000,000

a. In the event that the Professional 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. The policy shall cover professional misconduct or negligent acts for those positions defined in the Scope of Work of this contract.

**5.5 Additional Insurance Requirements:** The policies shall include, or be endorsed to include, as required by this written agreement, 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.

**5.6 Notice of Cancellation:** Applicable to all insurance policies required within the Insurance Requirements of this Contract, Contractor's insurance shall not be permitted to expire, be suspended, be canceled, or be materially changed for any reason without thirty (30) days prior written notice to the State of Arizona. Within two (2) business days of receipt, Contractor must provide notice to the State of Arizona if they receive notice of a policy that has been or will be suspended, canceled, materially changed for any reason, has expired, or will be expiring. Such notice shall be sent directly to the Department and shall be mailed, emailed, hand delivered or sent by facsimile transmission to (State Representative's Name, Address & Fax Number).

**5.7 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.

**5.8 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.

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1. All such certificates of insurance and policy endorsements must be received by the State before work commences. The State's receipt of any certificates of insurance or policy endorsements that do not comply with this written agreement shall not waive or otherwise affect the requirements of this agreement.
2. 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.
3. All certificates required by this Contract shall be sent directly to the Department. The State of Arizona project/contract number and project description shall be noted on the certificate of insurance. The State of Arizona reserves the right to require complete copies of all insurance policies required by this Contract at any time.

- 5.8 Subcontractors:** Contractor's certificate(s) shall include all subcontractors as insureds under its policies or Contractor shall be responsible for ensuring and/or verifying that all subcontractors have valid and collectable insurance as evidenced by the certificates of insurance and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum Insurance Requirements identified above. The Department reserves the right to require, at any time throughout the life of this contract, proof from the Contractor that its subcontractors have the required coverage.
- 5.9 Approval and Modifications:** The Contracting Agency, in consultation with State Risk, reserves the right to review or make modifications to the insurance limits, required coverages, or endorsements throughout the life of this contract, as deemed necessary. Such action will not require a formal Contract amendment but may be made by administrative action.
- 5.10 Exceptions:** In the event the Contractor or subcontractor(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 subcontractor(s) is/are a State of Arizona agency, board, commission, or university, none of the above shall apply.
- 6.0 Warranties:**
- 6.1 Conformity to Requirements:** Contractor warrants that, unless expressly provided otherwise elsewhere in the Contract, the Materials and Services will for 1 (one) year after acceptance and in each instance: (1) conform to the requirements of the Contract, which by way of reminder include without limitation all descriptions, specifications, and drawings identified in the Scope of Work and any Contractor affirmations included as part of the Contract; (2) be free from defects of material and workmanship; (3) conform to or perform in a manner consistent with current industry standards; and (4) be fit for the intended purpose or use described in the Contract. Mere delivery or performance does not substitute for express acceptance by State. Where inspection, testing, or other acceptance assessment of Materials or Services cannot be done until after installation, the forgoing warranty will not begin until State's acceptance.
- 6.2 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

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Contractor shall provide individual evidence of certification to State’s authorized representatives upon request.

- 6.3 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.
- 6.4 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.
- 6.5 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 [*Assignment and Delegation*] that expressly recognizes the event.
- 6.6 Performance in Public Health Emergency:** Contractor warrants that it will:
1. have in effect, promptly after commencement, a plan for continuing performance in the event of a declared public health emergency that addresses, at a minimum:
    - (a) identification of response personnel by name;
    - (b) key succession and performance responses in the event of sudden and significant decrease in workforce; and
    - (c) alternative avenues to keep sufficient product on hand or in the supply chain; and
  2. provide a copy of its current plan to State within 3 (three) business days after State’s written request. If Contractor claims relief under paragraph 6.5 [*Force Majeure*] for an occurrence of force majeure that is a declared public health emergency, then that relief will be conditioned on Contractor having first implemented its plan and exhausted all reasonable opportunity for that plan implementation to overcome the effects of that occurrence, or mitigate those effects to the extent that overcoming entirely is not practicable. For clarification of intent, being obliged to implement the plan is not of itself an occurrence of force majeure, and Contractor will not be entitled to any additional compensation or extension of time by virtue of having to implement it. Furthermore, failure to have or implement an appropriate plan will be a material breach of contract.
- 6.7 Lobbying:**
1. PROHIBITION. Contractor warrants that it will not engage in lobbying activities, as defined in 40 Code of Federal Regulations (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 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. Contractor shall implement and maintain adequate controls to assure compliance



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

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.

**6.8 Survival of Warranty:** All representations and warranties made by Contractor under the Contract will survive the expiration or earlier termination of the Contract.

**7.0 General Provisions for Services:**

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

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

**7.3 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.

**7.4 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.

**7.6 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

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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.

- 7.8 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.
- 7.9 Requirements at Services:** Contractor personnel shall perform their assigned portions of the Services at the specific Location 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.
- 7.10 Services Acceptance:** State has the right to make acceptance of Services subject to acceptance criteria. State may apply 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 unaccepted 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.
- 7.11 Corrective Action Required:** Notwithstanding any other guarantees, general warranties, or particular warranties Contractor has given under the Contract, if Contractor fails to perform any material portion of the Services, including failing to complete any contractual deliverable, or if its performance fails to meet agreed-upon service levels or service standards set out in or referred to in the Contract, then Contractor shall perform a root-cause analysis to identify the source of the failure and use all commercially reasonable efforts to correct the failure and meet the Contract requirements as promptly as is practicable.
1. Contractor shall provide to State a report detailing the identified cause and setting out its detailed corrective action plan promptly after the date the failure occurred (or the date when the failure first became apparent, if it was not apparent immediately after occurrence).

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2. State may demand to review and approve Contractor’s analysis and plans, and Contractor shall make any corrections State instructs and adopt State’s recommendations so far as is commercially practicable, provided that State may insist on any measures it determines within reason to be necessary for safety or protecting property and the environment.
3. Contractor shall take the necessary action(s) to avoid any like failure in the future if doing so is appropriate and practicable under the circumstances

**8.0 Data and Information Handling:**

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

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

**8.2 Personally Identifiable Information:** Contractor warrants that it will protect any personally identifiable information (“PII”) belonging to State’s employees or other contractors or members of the general public that it receives from State or otherwise acquires in its performance under the Contract. For purposes of this paragraph:

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

**End of Special Terms and Conditions**

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Version: 9 (7/1/2013)

## 1.0 Definition of Terms

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

- |      |                            |  |
|------|----------------------------|--|
| 1.1  | <b>Attachment</b>          | “Attachment” means any item the solicitation requires the Offeror to submit as part of the Offer.  |
| 1.2  | <b>Contract</b>            | “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  | <b>Contract Amendment</b>  | “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  | <b>Contractor</b>          | “Contractor” means any Person who has a Contract with the State.   |
| 1.5  | <b>Days</b>                | “Days” means calendar days unless otherwise specified.   |
| 1.6  | <b>Exhibit</b>             | “Exhibit” means any item labeled as an Exhibit in the Solicitation or placed in the Exhibits section of the Solicitation.  |
| 1.7  | <b>Gratuity</b>            | “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  | <b>Materials</b>           | “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  | <b>Procurement Officer</b> | “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 | <b>Services</b>            | “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 | <b>State</b>               | “State” means the State of Arizona and Department or Agency of the State that executes the Contract.   |
| 1.12 | <b>State Fiscal Year</b>   | “State Fiscal Year” means the period beginning with July 1 and ending June 30.   |
| 1.13 | <b>Subcontract</b>         | “Subcontract” means any Contract, express or implied, between the Contractor and another party or between a subcontractor and another party delegating or assigning, in whole or in part, the making or furnishing of any material or any service required for the performance of the Contract.  |

## 2.0 Contract Interpretation

- |     |                                     |   |
|-----|-------------------------------------|---|
| 2.1 | <b>Arizona Law</b>                  | 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 | <b>Implied Terms</b>                | 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 | <b>Contract Order of Precedence</b> | 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:  |

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- 2.3.1. Special Terms and Conditions;
- 2.3.2. Uniform Terms and Conditions;
- 2.3.3. Statement or Scope of Work;
- 2.3.4. Specifications;
- 2.3.5. Attachments;
- 2.3.6. Exhibits;
- 2.3.7. Documents referenced or included in the Solicitation.

- 2.4 **Relationship of Parties** The Contractor under this Contract is an independent Contractor. Neither party to this Contract shall be deemed to be the employee or agent of the other party to the Contract.
- 2.5 **Severability** The provisions of this Contract are severable. Any term or condition deemed illegal or invalid shall not affect any other term or condition of the Contract.
- 2.6 **No Parole Evidence** This Contract is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms used in this document and no other understanding either oral or in writing shall be binding.
- 2.7 **No Waiver** Either party's failure to insist on strict performance of any term or condition of the Contract shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.

**3.0 Contract Administration and Operation**

- 3.1 **Records** Under A.R.S. § 35-214 and § 35-215, the Contractor shall retain and shall contractually require each subcontractor to retain all data and other "records" relating to the acquisition and performance of the Contract for a period of five years after the completion of the Contract. All records shall be subject to inspection and audit by the State at reasonable times. Upon request, the Contractor shall produce a legible copy of any or all such records.
- 3.2 **Non-Discrimination** The Contractor shall comply with State Executive Order No. 2009-09 and all other applicable Federal and State laws, rules and regulations, including the Americans with Disabilities Act.
- 3.3 **Audit** Pursuant to ARS § 35-214, at any time during the term of this Contract and five (5) years thereafter, the Contractor's or any subcontractor's books and records shall be subject to audit by the State and, where applicable, the Federal Government, to the extent that the books and records relate to the performance of the Contract or Subcontract.
- 3.4 **Facilities Inspection and Materials Testing** The Contractor agrees to permit access to its facilities, subcontractor facilities and the Contractor's processes or services, at reasonable times for inspection of the facilities or materials covered under this Contract. The State shall also have the right to test, at its own cost, the materials to be supplied under this Contract. Neither inspection of the Contractor's facilities nor materials testing shall constitute final acceptance of the materials or services. If the State determines noncompliance of the materials, the Contractor shall be responsible for the payment of all costs incurred by the State for testing and inspection.
- 3.5 **Notices** Notices to the Contractor required by this Contract shall be made by the State to the person indicated on the Offer and Acceptance form submitted by the Contractor unless otherwise stated in the Contract. Notices to the State required by the Contract shall be made by the Contractor to the Solicitation Contact Person indicated on the Solicitation cover sheet, unless otherwise stated in the Contract. An authorized Procurement Officer and an authorized Contractor representative may change their respective person to whom notice shall be given by written notice to the other and an amendment to the Contract shall not be necessary.
- 3.6 **Advertising, Publishing and Promotion of Contract** The Contractor shall not use, advertise or promote information for commercial benefit concerning this Contract without the prior written approval of the Procurement Officer.

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- 3.7 Property of the State** Any materials, including reports, computer programs and other deliverables, created under this Contract are the sole property of the State. The Contractor is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. The Contractor shall not use or release these materials without the prior written consent of the State.
- 3.8 Ownership of Intellectual Property** Any and all intellectual property, including but not limited to copyright, invention, trademark, trade name, service mark, and/or trade secrets created or conceived pursuant to or as a result of this contract and any related subcontract (“Intellectual Property”), shall be work made for hire and the State shall be considered the creator of such Intellectual Property. The agency, department, division, board or commission of the State of Arizona requesting the issuance of this contract shall own (for and on behalf of the State) the entire right, title and interest to the Intellectual Property throughout the world. Contractor shall notify the State, within thirty (30) days, of the creation of any Intellectual Property by it or its subcontractor(s). Contractor, on behalf of itself and any subcontractor(s), agrees to execute any and all document(s) necessary to assure ownership of the Intellectual Property vests in the State and shall take no affirmative actions that might have the effect of vesting all or part of the Intellectual Property in any entity other than the State. The Intellectual Property shall not be disclosed by contractor or its subcontractor(s) to any entity not the State without the express written authorization of the agency, department, division, board or commission of the State of Arizona requesting the issuance of this contract.
- 3.9 Federal Immigration and Nationality Act** The contractor shall comply with all federal, state and local immigration laws and regulations relating to the immigration status of their employees during the term of the contract. Further, the contractor shall flow down this requirement to all subcontractors utilized during the term of the contract. The State shall retain the right to perform random audits of contractor and subcontractor records or to inspect papers of any employee thereof to ensure compliance. Should the State determine that the contractor and/or any subcontractors be found noncompliant, the State may pursue all remedies allowed by law, including, but not limited to; suspension of work, termination of the contract for default and suspension and/or debarment of the contractor.
- 3.10 E-Verify Requirements** In accordance with A.R.S. § 41-4401, Contractor warrants compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with Section A.R.S. § 23-214, Subsection A.
- 3.11 Offshore Performance of Work Prohibited.** Any services that are described in the specifications or scope of work that directly serve the State of Arizona or its clients and involve access to secure or sensitive data or personal client data shall be performed within the defined territories of the United States. Unless specifically stated otherwise in the specifications, this paragraph does not apply to indirect or 'overhead' services, redundant back-up services or services that are incidental to the performance of the contract. This provision applies to work performed by subcontractors at all tiers.

**4.0 Costs and Payments**

- 4.1 Payments** Payments shall comply with the requirements of A.R.S. Titles 35 and 41, Net 30 days. Upon receipt and acceptance of goods or services, the Contractor shall submit a complete and accurate invoice for payment from the State within thirty (30) days.
- 4.2 Delivery** Unless stated otherwise in the Contract, all prices shall be F.O.B. Destination and shall include all freight delivery and unloading at the destination.
- 4.3 Applicable Taxes**

  - 4.3.1. Payment of Taxes. The Contractor shall be responsible for paying all applicable taxes.
  - 4.3.2. State and Local Transaction Privilege Taxes. The State of Arizona is subject to all applicable state and local transaction privilege taxes. Transaction privilege taxes apply to the sale and are the responsibility of the seller to remit. Failure to collect such taxes from the buyer does not relieve the seller from its obligation to remit taxes.
  - 4.3.3. Tax Indemnification. Contractor and all subcontractors shall pay all Federal, state and local taxes applicable to its operation and any persons employed by the Contractor. Contractor shall, and require all subcontractors to hold the State harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under Federal, and/or state and local laws and regulations and any other costs including transaction privilege

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taxes, unemployment compensation insurance, Social Security and Worker's Compensation.

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

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

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

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

4.5.2. Cancel the Contract; or

4.5.3. Cancel the contract and re-solicit the requirements

## 5.0 Contract Changes

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

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

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

## 6.0 Risk and Liability

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

6.2 **Indemnification**

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

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

6.3 **Indemnification – Patent and Copyright** The Contractor shall indemnify and hold harmless the State against any liability, including costs and expenses, for infringement of any patent, trademark or copyright arising out of Contract performance or use by the State of materials furnished or work performed under this Contract. The State shall reasonably notify the Contractor of any claim for which it may be liable under this



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paragraph. If the contractor is insured pursuant to A.R.S. § 41-621 and § 35-154, this section shall not apply.

**6.4 Force Majeure**

6.4.1 Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes acts of God; acts of the public enemy; war; riots; strikes; mobilization; labor disputes; civil disorders; fire; flood; lockouts; injunctions-intervention-acts; or failures or refusals to act by government authority; and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence.

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

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

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

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

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

**6.5 Third Party Antitrust Violations**

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

**7.0 Warranties**

**7.1 Liens**

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

**7.2 Quality**

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

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

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

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

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

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

**7.3 Fitness**

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

**7.4 Inspection/Testing**

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



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- 7.5 **Compliance with Laws** The materials and services supplied under this Contract shall comply with all applicable Federal, state and local laws, and the Contractor shall maintain all applicable license and permit requirements.
- 7.6 **Survival of Rights and Obligations after Contract Expiration or Termination**
- 7.6.1. Contractor's Representations and Warranties. All representations and warranties made by the Contractor under this Contract shall survive the expiration or termination hereof. In addition, the parties hereto acknowledge that pursuant to A.R.S. § 12-510, except as provided in A.R.S. § 12-529, the State is not subject to or barred by any limitations of actions prescribed in A.R.S., Title 12, Chapter 5.
- 7.6.2. Purchase Orders. The Contractor shall, in accordance with all terms and conditions of the Contract, fully perform and shall be obligated to comply with all purchase orders received by the Contractor prior to the expiration or termination hereof, unless otherwise directed in writing by the Procurement Officer, including, without limitation, all purchase orders received prior to but not fully performed and satisfied at the expiration or termination of this Contract.

## 8.0 State's Contractual Remedies

- 8.1 **Right to Assurance** If the State in good faith has reason to believe that the Contractor does not intend to, or is unable to perform or continue performing under this Contract, the Procurement Officer may demand in writing that the Contractor give a written assurance of intent to perform. Failure by the Contractor to provide written assurance within the number of Days specified in the demand may, at the State's option, be the basis for terminating the Contract under the Uniform Terms and Conditions or other rights and remedies available by law or provided by the contract.
- 8.2 **Stop Work Order**
- 8.2.1. The State may, at any time, by written order to the Contractor, require the Contractor to stop all or any part, of the work called for by this Contract for period(s) of days indicated by the State after the order is delivered to the Contractor. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage.
- 8.2.2. If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the Contractor shall resume work. The Procurement Officer shall make an equitable adjustment in the delivery schedule or Contract price, or both, and the Contract shall be amended in writing accordingly.
- 8.3 **Non-exclusive Remedies** The rights and the remedies of the State under this Contract are not exclusive.
- 8.4 **Nonconforming Tender** Materials or services supplied under this Contract shall fully comply with the Contract. The delivery of materials or services or a portion of the materials or services that do not fully comply constitutes a breach of contract. On delivery of nonconforming materials or services, the State may terminate the Contract for default under applicable termination clauses in the Contract, exercise any of its rights and remedies under the Uniform Commercial Code, or pursue any other right or remedy available to it.
- 8.5 **Right of Offset** The State shall be entitled to offset against any sums due the Contractor, any expenses or costs incurred by the State, or damages assessed by the State concerning the Contractor's non-conforming performance or failure to perform the Contract, including expenses, costs and damages described in the Uniform Terms and Conditions.

## 9.0 Contract Termination

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

	<p><b>Section 1: Solicitation Requirements</b></p> <p><b>Uniform Terms and Conditions</b></p> <p>Solicitation No: IRC001</p> <p>Description: Outside Legal Counsel for Arizona Independent Redistricting Commission</p>	<p>Arizona Department of Administration</p> <p><b>State Procurement Office</b></p> <p>100 N 15th Ave., Suite 402 Phoenix, AZ 85007</p>
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- 9.2 Gratuities** The State may, by written notice, terminate this Contract, in whole or in part, if the State determines that employment or a Gratuity was offered or made by the Contractor or a representative of the Contractor to any officer or employee of the State for the purpose of influencing the outcome of the procurement or securing the Contract, an amendment to the Contract, or favorable treatment concerning the Contract, including the making of any determination or decision about contract performance. The State, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three times the value of the Gratuity offered by the Contractor.
- 9.3 Suspension or Debarment** The State may, by written notice to the Contractor, immediately terminate this Contract if the State determines that the Contractor has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body. Submittal of an offer or execution of a contract shall attest that the contractor is not currently suspended or debarred. If the contractor becomes suspended or debarred, the contractor shall immediately notify the State.
- 9.4 Termination for Convenience** The State reserves the right to terminate the Contract, in whole or in part at any time when in the best interest of the State, without penalty or recourse. Upon receipt of the written notice, the Contractor shall stop all work, as directed in the notice, notify all subcontractors of the effective date of the termination and minimize all further costs to the State. In the event of termination under this paragraph, all documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the State upon demand. The Contractor shall be entitled to receive just and equitable compensation for work in progress, work completed and materials accepted before the effective date of the termination. The cost principles and procedures provided in A.A.C. R2-7-701 shall apply.
- 9.5 Termination for Default**
- 9.5.1. In addition to the rights reserved in the contract, the State may terminate the Contract in whole or in part due to the failure of the Contractor to comply with any term or condition of the Contract, to acquire and maintain all required insurance policies, bonds, licenses and permits, or to make satisfactory progress in performing the Contract. The Procurement Officer shall provide written notice of the termination and the reasons for it to the Contractor.
- 9.5.2. Upon termination under this paragraph, all goods, materials, documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the State on demand.
- 9.5.3. The State may, upon termination of this Contract, procure, on terms and in the manner that it deems appropriate, materials or services to replace those under this Contract. The Contractor shall be liable to the State for any excess costs incurred by the State in procuring materials or services in substitution for those due from the Contractor.
- 9.6 Continuation of Performance Through Termination** The Contractor shall continue to perform, in accordance with the requirements of the Contract, up to the date of termination, as directed in the termination notice.

## 10.0 Contract Claims

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

## 11.0 Arbitration

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

## 12.0 Comments Welcome

- 12.1 Comments Welcome** The State Procurement Office periodically reviews the Uniform Terms and Conditions and welcomes any comments you may have. Please submit your comments to: State Procurement Administrator, State Procurement Office, 100 North 15th Avenue, Suite 201, Phoenix, Arizona, 85007.

	<p style="text-align: center;"><b>Section 1: Solicitation Requirements</b> <b>Uniform Terms and Conditions</b> Solicitation No: IRC001 Description: Outside Legal Counsel for Arizona Independent Redistricting Commission</p>	<p style="text-align: center;">Arizona Department of Administration <b>State Procurement Office</b> 100 N 15th Ave., Suite 402 Phoenix, AZ 85007</p>
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End of Uniform Terms and Conditions  
End of Section 1

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# Request for Proposal

Solicitation No. **BPM003298**  
Description:  
IRC Mapping Consultant Services

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

## Appendix D

### Part 1:

#### *Solicitation Summary*

### **1.0 What the State is Soliciting**

The Arizona Department of Administration, State Procurement Office division (the State), as authorized under A.R.S. § 41-2501, is seeking to establish one or more “statewide” contracts to provide professional and technical mapping consultant services to the Arizona Independent Redistricting Commission (“AIRC”). The State anticipates awarding a single Contract to begin providing services by a target date of **April 1, 2031**.

The Special Terms and Conditions provide a more detailed definition of Eligible Agencies.

List of all state agencies is available at: <https://azdirect.az.gov/agencies>

Active Co-Op Members List is available at: <https://spo.az.gov/programs/cooperative>

#### **Persons With Disabilities**

*Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting the Solicitation contact person. Requests shall be made as early as possible to allow time to arrange for the accommodation.*

#### **OFFERORS SHOULD READ THE ENTIRE SOLICITATION CAREFULLY.**

### **2.0 What’s in the Solicitation**

Part 1	Section 1: Solicitation Summary	<i>Part_1_BPM003298_OPEN_FIRST_IRC Mapping Consultant Services.PDF (or as amended)</i>
Part 2	Section 2-A: Scope of Work	<i>Part_2_BPM003298_RFP_IRC Mapping Consultant Services.PDF (or as amended)</i>
	Section 2-B: Pricing Document	
	Section 2-C: Special Terms and Conditions	
	Section 2-D: Uniform Terms and Conditions	
Part 3	Section 3-A: Instructions to Offerors	<i>Part_3_BPM003298Offer_Forms (IRC Mapping Consultant Services.DOC (or as amended)</i>
	Section 3-B: Offer forms	

### **3.0**



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#### **4.0 How and When Proposals are Due**

Proposals will only be accepted online in “The State’s e-Procurement System” at <https://app.az.gov> until the “Bid/Offer Due Date” indicated in “The State’s e-Procurement System” for the Solicitation No. shown at the top of this page. Proposals must be in the State Procurement Office’s possession online no later than that deadline.

Submit technical inquiries about navigating and/or submitting proposals in the State’s e-Procurement System to the State’s e-Procurement System Help Desk:

- By phone at (602) 542-7600, option2; or
- By email to [app@azdoa.gov](mailto:app@azdoa.gov)

LATE PROPOSALS WILL NOT BE CONSIDERED. No extension or grace period will be given for delays or incomplete proposals caused by internet connectivity problems, file uploading difficulties, or misunderstanding of the requirements or procedures for online submission in “The State’s e-Procurement System”.

#### **5.0 Pre-Offer Conference**

The State **will not** conduct a Pre-Offer Conference for this Solicitation.

#### **6.0 Inquiries**

Any question related to this Request for Proposal shall be submitted utilizing the State’s “Discussions with Buyer” Tab in the e-procurement system. The Offeror shall not contact or ask questions of the department for which the requirement is being procured.

**End of Section 1**



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### Appendix D Part 2: Scope, Pricing and Terms and Conditions

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##### SECTION 2-A: Scope of Work

###### 1.0 INTRODUCTION

###### 2.0 PURPOSE AND BACKGROUND

###### 3.0 REQUIREMENTS

##### SECTION 2-B: Pricing Documents

##### SECTION 2-C: Special Terms and Conditions

##### SECTION 2-D: Uniform Terms and Conditions

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## SECTION 2-A: Scope of Work

### 1.0 Introduction

- 1.1 The State is seeking proposals from qualified organizations to obtain consultant services for redistricting of congressional and State legislative districts ("State Redistricting Mapping Services"). These services will be used by the Arizona Independent Redistricting Commission ("AIRC") to develop district lines in conformity with non-partisan constitutional goals designated to create districts that will provide for fair representation for all Arizonans. Proposals must demonstrate the offeror's skills, experience, and qualifications as well as their approach, methods, procedures, and capacity that meet the demands of the responsibilities and deliverables in this RFP.

### 2.0 Purpose and Background

- 2.1 Once every 10 years following the federal census, in a process known as redistricting, the State adjusts the boundary lines of districts for the Arizona congressional districts for the U.S. House of Representatives and the legislative districts for the Arizona Legislature.
- 2.2 The AIRC was created as a result of a constitutional amendment approved by the voters in the 2000 general election, known as Proposition 206, which shifted responsibility for drawing political boundaries from the State Legislature to the AIRC. The amendment provides that the AIRC may hire staff and consultants to perform its duties. Ariz. Const. art. IV, Pt.2 § 1(19).
- 2.3 The AIRC is charged with the redistricting of congressional and State legislative districts.

### 3.0 Requirements

- 3.1 The commencement of the mapping process for the congressional and State legislative districts shall be the creation of districts of equal population in a grid-like pattern across the State.
- 3.2 Adjustments to the grid shall then be made as necessary to accommodate the goals as set forth below:
  - 3.2.1 Districts shall comply with the United States Constitution and the United States Voting Rights Act of 1965, as amended;
  - 3.2.2 Congressional districts shall have equal population to the extent practicable, and State legislative districts shall have equal population to the extent practicable;
  - 3.2.3 Districts shall be geographically compact and contiguous to the extent practicable;
  - 3.2.4 District boundaries shall respect communities of interest to the extent practicable;
  - 3.2.5 To the extent practicable, district lines shall use visible geographic features, city, town and county boundaries, and undivided census tracts; and



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- 3.2.6 To the extent practicable, competitive districts should be favored where to do so would create no significant detriment to the other goals.
- 3.3 Party registration and voting history data shall be excluded from the initial phase of the mapping process but may be used to test maps for compliance with the above goals. The places of residence of incumbents or candidates shall not be identified or considered.
- 3.4 The AIRC shall advertise a draft map of congressional districts and a draft map of State legislative districts to the public for comment for a period of at least thirty (30) days. Either or both bodies of the State legislature may act within that period to make recommendations to the AIRC by memorial or by minority report, which recommendations shall be considered by the AIRC.
- 3.5 The Contractor shall:
- 3.5.1 Assemble a redistricting database utilizing certified population data from the 2030 U.S. Census for the State of Arizona and voter registration information from the Arizona Secretary of State or as directed by the AIRC.
- 3.5.2 Provide all necessary computerized equipment to house and utilize the redistricting database.
- 3.5.3 Use GIS software and the redistricting database to display mapping configurations of census units and proposed election districts in relation to federal and State-mandated requirements.
- 3.5.4 Provide drafts of maps for the congressional and State legislative districts in a timely fashion as directed by the AIRC, including but not limited to an equal population +/- one person grid map and subsequent draft maps. Time is of the essence in the preparation of these maps, and a schedule of delivery shall be included in any response to this Solicitation. The AIRC shall review the grid and draft maps and direct changes as necessary. GIS software shall allow public access to drafts of maps as requested and necessary.
- 3.5.5 Provide enhanced election analytics capabilities that allow data processing of electoral data, scripting, and real time workflows to enable the AIRC to review the analytics of draft map iterations during decision meetings.
- 3.5.6 Assist the AIRC in certifying to the Secretary of State the establishment of congressional and State legislative districts.
- 3.5.7 Provide training to the AIRC and the public in utilizing the database and mapping software throughout the term of any resultant contract.
- 3.5.8 Develop a PowerPoint® presentation to be used by the AIRC's commissioners, staff or designees to provide public information to community groups. The presentation shall include background information on the initiative and an overview of the project scope as well as how to provide input to the AIRC on the redistricting plans.
- 3.5.9 Provide all equipment necessary to draw maps reflecting the stated concerns and interests of the public participants.





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- 3.5.10 Support the AIRC in holding a number of public meetings, as directed by the AIRC, throughout the State to discuss proposed redistricting plans. Contractor shall commit to attending all scheduled public meetings and should expect a minimum of one meeting per week throughout the contract period, with multiple meetings per week during public input (i.e., listening tour), drafting, and decision meetings. The Contractor must be prepared to remotely participate in and to provide all meeting services outlined in this RFP should any or all meetings require remote attendance. The Contractor must be able to actively participate and provide all meeting services remotely, including public input meetings and AIRC meetings. The requirements include the ability to reliably hear and document the AIRC's instructions and public testimony related to any resulting map, and the ability to transmit the line drawing occurring at the Contractor's worksite with sufficient clarity to allow the AIRC and the public to view the effects of changes on their personal viewing devices, in real time.
- 3.5.11 Provide a process to enable the public to provide input to the mapping process. The Contractor shall be responsible for compiling and soliciting public input as well as providing the public with information as directed by the AIRC, including such items as draft maps, systems of public engagement such as an ArcGIS Hub site and StoryMaps, and other relevant information to support the education and information exchange process.
- 3.5.12 Develop coding of maps submitted by the public or developed during public hearings to describe stated concerns and interests of the public participants.
- 3.5.13 Provide coding of public testimony such that it can be indexed, aggregated, and collated to corresponding maps.
- 3.5.14 Provide copies of all data and publications produced under this Contract in Spanish, when requested.
- 3.5.14 Assist the AIRC and the AIRC's legal counsel in complying with all relevant Arizona and Federal laws and legal mandates and requirements regarding redistricting to be met by AIRC, including the Voting Rights Act of 1965, as amended. Contractor must have the skills and experience to conduct a racially polarized voting analysis to ensure proposed redistricting plans do not fragment, submerge, or unnecessarily pack a geographically concentrated minority population in violation of Section 2 of the Voting Rights Act.
- 3.5.15 Develop reports, including a final comprehensive report, illustrating data on various demographics including but not limited to communities of interest, socioeconomic groups, a racially polarized voting analysis, system management, and other relevant material to support AIRC drafting efforts.
- 3.5.16 Perform the following tasks to deliver an election database to support the AIRC's constitutional obligations:
- 3.5.16.1 Obtain all available county electronic precinct maps in ESRI Shapefile or File Geodatabase formats, for the 2022, 2024, 2026, 2028, and 2030 Presidential Primary; Legislative Primary; and General elections. Contractor will create a statewide precinct coverage. If any of those precinct maps do not contain



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consolidated precincts, and if a database of precinct consolidations is available from the county, Contractor shall convert the home precincts to consolidated precincts. Contractor will, to the best degree possible, match precincts to 2030 TIGER Census Blocks.

3.5.16.2 Obtain the state's county by county active voter file and compile them into one statewide file. Voters shall be tagged with their current precinct and 2030 Census Block locations, and voter records shall preserve the turnout history data for each voter provided by the State and Maricopa County. Contractor shall use the Census Bureau's list of Spanish Surnames to identify Spanish Surname and non-Spanish Surname registered voters.

3.5.16.3 Convert the individual county files of precinct-level election results to a statewide file for the 2022, 2024, 2026, 2028, and 2030 presidential Primary; Legislative Primary; and General elections and match the results to the corresponding election precinct maps. Contractor will then disaggregate those results among the voters recorded as voting in that election and re-aggregate that data to the Census Block and current precinct level of geography. Contractor will draft a list of candidates for legislative, federal, and statewide office in the 2022, 2024, 2026, 2028, and 2030 Presidential Primary; Legislative Primary; and General elections and identify, to the extent reasonably possible, the ethnicity of the candidates in those elections. Client and Contractor shall cooperate to review and confirm those candidate identifications.

3.5.16.4 Combine data into the 2030 elections redistricting database.

3.5.17 Ensure an ongoing and collaborative interaction between the Contractor, the AIRC and the AIRC staff. Contractor, Contractor's staff, and subcontractors (if any) must comport themselves at all times in a professional and respectful manner when interacting with the AIRC (individually or collectively), their staff, the public, and the AIRC's legal counsel and other contractors.

3.5.18 Ensure sufficient on-site and back-office staffing to support the AIRC's redistricting effort and to meet the objectives of the RFP. Contractor must provide an enhanced on-site staff during decision meetings that will work in teams to create same day and next day turnaround times on Congressional and Legislative map versions, coupled with real time analysis of the requested district versions.

3.5.19 Provide the map file(s), PDFs of the maps, and the related AIRC instructions and/or public testimony leading to the drawing of the map, for the AIRC to be able to print the map and its corresponding instructions and/or public testimony.

3.5.20 Provide all equipment required to produce, digitally store, project the maps and the line drawing on screen (for in-person viewing), transmit a clear image of the maps and line drawing (for remote audience viewing) in real time, and print all maps desired by the AIRC.



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- 3.5.21 Develop archival level research materials as directed by the AIRC and deliver these to the AIRC at scheduled times to allow for the archive of this process to be timely and orderly. The term "archival" shall refer to both electronic and paper documents and other such medium as may be deemed applicable. It is the intent of the AIRC that all of the public data that is collected shall be available electronically for the benefit of both the current and future Independent Redistricting Commissions as well as the general public.
- 3.6 Expedited work schedule is a priority. The Contractor shall draft a proposed timeline detailing a suggested schedule for the AIRC to follow, and it will be the responsibility of the Contractor to maintain this schedule.
- 3.7 The AIRC's staff and the Contractor will work as directed by the AIRC to expeditiously develop and make accessible and interlinked websites, social media and other such open and accessible internet communications data as may be deemed appropriate to maximize the opportunity for public input and access to the activities and actions of the AIRC. These sites may include audio, video, podcast, Skype, and other such links as to not limit the AIRC's goal for data and input collection. If necessary, Contractor will deploy the redistricting solution to the proper domain (e.g., .gov).
- 3.8 The software employed by the Contractor must automatically display the results of any proposed change in a district by retabulating and presenting on-screen the resulting map and the corresponding changes in total population and population sub-groups associated with the proposed change to a district. In addition to the specific line drawing software, the Contractor must have the capability of taking files as submitted by the public and other consultants, including CSV, SHP, RDP, DRF, JSON, CDF, and other common vector, raster and tabular data files, and developing shape file equivalents to incorporate into the line drawing work. The Contractor must supply all equipment necessary to complete this work.
- 3.9 Contractor shall be required to maintain an ongoing log for each map documenting the basis on which decisions were made and how the AIRC complied with the applicable requirements of the Arizona Constitution and the Voting Rights Act. The log should be sufficiently detailed to allow the AIRC to identify the basis for any map, and to track changes and draw comparisons between iterations of the same location developed by the AIRC during the process of line drawing. The log will be subject to regular review and approval by the AIRC and shall include documentation and indexing of all key decisions.
- 3.10 The AIRC must be provided unfettered access to draft maps, logs, reports and the supporting documentation and data and may, in its sole discretion, obtain independent evaluations of such materials.
- 3.11 Contractor shall be required to develop work plans in collaboration with AIRC with deliverables and timelines as specified by the AIRC. The course of work and deliverables are required to be provided as mutually agreed upon in writing by the Contractor and the AIRC.
- 3.12 Contractor shall provide progress reports on a scheduled or "as needed" basis as determined by the AIRC and/or its Executive Director. This may be in the form of a progress schedule of reports,



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meetings on a regular basis, and/or a Final Summary Report once the project is completed. Any request for a written or verbal report must be addressed within 24 hours.

- 3.13 Contractor shall work in collaboration with and at the direction of the AIRC during all public input hearings. AIRC staff and Contractor will jointly facilitate interaction with the public.
- 3.14 Additional flexibility in requesting ad hoc additional services may be needed during the final stages of the redistricting effort to enable AIRC and Contractor to be nimble in responding to the ever-changing requested requirements during the final stretch of the project.
- 3.15. Contractor must provide information security measures consistent with industry standards and any security measures being taken by the AIRC, that will be maintained throughout the term of the contract in critical areas, including but not limited to secure data transmission, data monitoring and verification, data storage and back-up and confidentiality practices regarding staff and data handling.
- 3.16 All Contractor personnel who will provide services for the resultant contract and the services each will perform must be specified in the Offeror's response. If personnel offered by the selected Contractor leave the Contractor's firm during the contract term or are otherwise unable to participate in providing contract services, they must be replaced with comparably qualified personnel who meet the minimum qualifications as stated in this Solicitation. All replacement personnel are subject to approval by the AIRC.
- 3.17 At the sole discretion of the AIRC, the Contractor may be required to provide consultative assistance in the event any legal action arises relating to redistricting plans developed with Contractor's assistance. Contractor shall provide technical support for any lawsuits relating to services provided under the contract in State and federal court as deemed necessary by the AIRC.
- 3.18 Contractor will be responsible for developing a multi-partisan team of personnel for all project-related mapping and other redistricting processes contemplated in the scope of work. Contractor is expected to operate in a politically neutral manner and to work collaboratively with a diverse group of ideologies.

**End of Section 2-A**



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## SECTION 2-B: Pricing Document

### 1.0 Compensation

#### 1.1 COMPENSATION METHOD

Contractor will be compensated based on the final detailed written quote approved by the Customer. Pricing shall not exceed the labor rates indicated on the Pricing Document. If additional services are necessary due to litigation, the State and the Contractor by mutual consent may amend the Contract to cover additional costs associated with such litigation

### 2.0 Pricing

2.1 **CONTRACTOR'S BEST PRICING.** Supplier warrants that, for the term of the Contract, the prices and discounts set out in Attachment titled ATTACHMENT 4\_PRICING – IRC Mapping Consultant Services to this Pricing Document, including any subsequent agreed amendment to it (the "Contract Pricing"), will be equal to or better than the lowest prices and largest discounts, both separately and in combination, at which Contractor sells equivalent services, items of equipment and materials.

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

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

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

#### 2.2 PRICING-ALL-INCLUSIVE:

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

#### 2.3 PRICE INCREASES:

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



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

- (a) Initial Contract prices will be honored for one year after award of Contract.
- (b) All written requests for price adjustments made by the contractor shall be initiated thirty (30) days in advance of any desired price increase to allow State sufficient time to make a fair and equitable determination to any such requests. This may be waived upon proper documentation demonstrating the urgency of the request.
- (c) All price adjustments will be implemented by a formal contract amendment. State shall determine whether the requested price increase or an alternate option is in the best interest of State.

#### 2.4 PRICE REDUCTIONS:

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

#### 2.5 ADDITIONAL CHARGES:

2.5.1 Any charges or fees not delineated in the Contract may not be added, billed, or invoiced under the Contract.

#### 2.6 TRAVEL.

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

### 3.0 Funding

No particular funding considerations apart from paragraph 4.4 [Availability of Funds for the Next State fiscal year] and 4.5 [Availability of Funds for the current State fiscal year] of the Uniform Terms and Conditions have been identified as of the Solicitation date.

### 4.0 Invoicing

4.1 INVOICES GO TO BUYING ENTITY. Contractor shall submit all billing notices or invoices to the ordering Eligible Entity/Customer (e.g., Eligible Agency or Co-Op Buyer) at the address indicated





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on the applicable Order document or by utilizing the Buying Entity's purchasing tool/process. Contractor shall submit invoices on a monthly basis by the tenth (10th) day of each month.

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

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

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

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

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

4.5 **SUBMITTING INVOICES.** Contractor shall submit an invoice to the ordering Eligible Agency or Co-Op Buyer using the form and/or process provided or required by the ordering Eligible Entity/Customer (Eligible Agency or Co-Op Buyer). Every invoice must be signed by Contractor's



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authorized representative and accompanied by all supporting information and documentation required by the Contract and applicable laws.

- 4.6 DEFECTIVE INVOICES. Without prejudice to its other rights under the Contract or further obligation to Contractor, the ordering Eligible Entity/Customer (Eligible Agency or Co-Op Buyer) may, at its discretion, reject any materially defective invoice.
- 4.6.1 The ordering Authorized Entity/Customer (Eligible Agency or Co-Op Buyer) shall notify Contractor within 5 (five) business days after receipt if it determines an invoice to be materially defective.
- 4.6.2 Invoices will be deemed automatically rejected upon delivery if they:
- (a) Are sent to an incorrect address;
  - (b) Do not reference the correct State contract number; or
  - (c) Are payable to any Person other than the Contractor.
- 4.6.3 The ordering Eligible Entity/Customer (Eligible Agency or Co-Op Buyer) will have no obligation to pay against a defective invoice unless and until Contractor has re-submitted it free of defects.

## 5.0 Payments

- 5.1 PAYMENT. The applicable Eligible Agency or Co-Op Buyer shall pay undisputed amounts due to Contractor within the time period specified in Section 4.0 Costs and Payments of the Uniform Terms and Conditions
- 5.2J JOINT CHECKS OR DIRECT PAY. The applicable Eligible Agency or Co-Op Buyer may, but is under no obligation to, pay by joint check or to pay directly to any Subcontractor or other creditor to whom any portion of Contractor's requested payment is owed.
- 5.3 RECOVERY OF OVER-PAYMENT. If applicable Eligible Agency or Co-Op Buyer determines that an over-payment has been made to Contractor on any prior invoice, it shall inform Contractor of the amount and date of the over-payment and may deduct the over-paid amount from amounts then or thereafter due to Contractor.
- 5.4 PAYMENTS TO SUBCONTRACTORS. Contractor shall make payment of all undisputed amounts due to Subcontractors within thirty (30) days of receipt of funds from applicable Eligible Agency or Co-Op Buyer applicable to their services.
- 5.5 PURCHASING CARD. Applicable Eligible Agency or Co-Op Buyer may pay invoices for some or all Orders using a purchasing card. Any and all fees related to payment using a Purchasing Card are the responsibility of Contractor. Unless otherwise stated in the Contract there will be no additional fees or increase in prices associated with this method of payment.
- 5.6 AUTOMATED CLEARING HOUSE. Applicable Eligible Agency or Co-Op Buyer may pay invoices for some or all Orders through an Automated Clearing House (ACH). In order to receive payments in this manner from Eligible Agencies, Contractor must complete an ACH Vendor Authorization Form





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(form GAO-618) within 30 (thirty) days after the effective date of the Contract. The form is available online at: <https://gao.az.gov/afis/vendor-information>

**End of Section 2-B**

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### SECTION 2-C: Special Terms and Conditions

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

#### 1.0 Definition of Terms

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

- 1.1 Acceptance** “Acceptance” means the document headed “Offer and Acceptance Form” bearing the State contract number once Procurement Officer has signed it to signify (1) State’s formal acceptance of the Accepted Offer and (2) the formation of the Contract. For clarity of intent, the foregoing is not to be confused with the term “acceptance” used throughout the Contract in the context of delivery, inspection, etc., with respect to Materials or Services.
- 1.2 Accepted Offer** If State did not request a Revised Offer, then “Accepted Offer” means the Initial Offer.  
If State did request a Revised Offer but not a Best and Final Offer, then “Accepted Offer” means the latest Revised Offer.  
If State requested a Best and Final Offer, then “Accepted Offer” means the Best and Final Offer.
- 1.3 Arizona Procurement Code; A.R.S.; A.A.C.** “Arizona Procurement Code, “A.R.S.,” and “A.A.C.” are each defined in the Instructions to Offerors.
- 1.4 Arizona TPT** “Arizona TPT” means Arizona Transaction Privilege Tax. For information, refer to the Arizona Department of Revenue (DOR) website at:  
<https://www.azdor.gov/business/transactionprivilegetax.aspx>
- 1.5 Attachment** “Attachment” means any item that:
1. the Solicitation required Offeror to submit as part of the relevant Offer (e.g., Initial Offer, Revised Offer, or BAFO);
  2. was attached to an Offer when submitted; and
  3. was included in the Accepted Offer.
- 1.5 Confidential Information** “Confidential Information” means all information and documentation of a party that: (a) has been marked “confidential” or with words of similar meaning, at the time of disclosure by such party; (b) if disclosed orally or not marked “confidential” or with words of similar meaning, was subsequently summarized in writing by the disclosing party and marked “confidential” or with words of similar meaning; or, (c) should reasonably be recognized as



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confidential information of the disclosing party. For purposes of this Contract, in all cases and for all matters, Commission Data is deemed to be Confidential Information.

- 1.6 Contract Amendment** "Contract Amendment" means a document signed by Procurement Officer that has been issued for the purpose of making changes to the Contract after execution.
- 1.7 Contract Terms and Conditions** "Contract Terms and Conditions" means the Special Terms and Conditions and these Uniform Terms and Conditions taken collectively.
- 1.8 Contractor** "Contractor" means the Person identified on the Accepted Offer who has entered into the Contract with State.
- 1.9 Contractor Indemnitor** "Contractor Indemnitor" means Contractor or any of its owners, officers, directors, agents, employees, or Subcontractors.
- 1.10 Co-Op Buyer** "Co-Op Buyer" means a member of the State Purchasing Cooperative that has entered into a "Cooperative Purchasing Agreement" with the Arizona Department of Administration State Procurement Office under A.R.S. § 41-2632. Unless there is an applicable Cooperative Purchasing Agreement in effect at the time, a State Purchasing Cooperative member cannot be a Co-Op Buyer. For reference, "Co-Op Buyer" is to be construed as encompassing "eligible procurement unit" under A.A.C. R2-7-101(23).
- NOTE: Membership in the State Purchasing Cooperative is open to all Arizona political subdivisions, including cities, counties, school districts, and special districts. Membership is also available to non-profit organizations, other state governments, the federal government and tribal nations. For reference, "non-profit organizations" are defined in A.R.S. § 41-2631(4) as any nonprofit corporation as designated by the IRS under section 501(c)(3) through 501(c)(6) of the tax code.
- 1.11 Eligible Agency** If the Special Terms and Conditions indicates that the Contract is a "single-agency" contract, then "Eligible Agency" means the particular State of Arizona agency, university, commission, or board identified therein. If the Special Terms and Conditions indicates that the Contract is a "statewide" contract, then "Eligible Agency" means any State of Arizona department, agency, university, commission, or board.
- 1.13 Instructions to Offerors** "Instructions to Offerors" is Section 3-a of Part 3 of the Solicitation Documents.
- 1.14 Order** "Order" means the instrument by which State authorizes Contractor to perform some or all of the Work. Whether the Contract will have one Order or many Orders depends the scope of the Contract and how State will use it. The Special Terms and Conditions provide that information. Any of the following is to be construed as being an "Order":
1. "Release" or "Release Purchase Order" in The State's e-Procurement System;



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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
3. "purchase order" for buying by Co-Op Buyers, if co-op buying applies.

- 1.15 Pricing Document** "Pricing Document" means Section 2-B of Part 2 of the Solicitation Documents, provided that, if there is no such Section in the Contract, then "Pricing Document" is to be construed as referring to whatever item in the Contract contains the contracted pricing and payment provisions.
- 1.16 The State's e-Procurement System** "The State's e-Procurement System" means State's official electronic procurement system, established pursuant to A.A.C. R2-7-201 as set forth in the Arizona Department of Administration State Procurement Office policy document Technical Bulletin No. 020, The State's e-Procurement System – The Official State eProcurement System.
- NOTE (1): Technical Bulletin No. 020 is available online at:  
<https://spo.az.gov/administration-policy/state-procurement-resource/procurement-regulations>
- 1.17 State** With respect to the Contract generally, "State" means the State of Arizona and its department, agency, university, commission, or board that has executed the Contract. With respect to administration or rights, remedies, obligations and duties under the Contract for a given Order, "State" means each of Eligible Agency or Co-Op Buyer who has issued the Order.
- 1.18 State Indemnitees** "State Indemnitees" means, collectively, the State of Arizona, its departments, agencies, universities, commissions, and boards and, and their respective officers, agents, and employees.
- 1.19 Subcontractor** "Subcontractor" has the meaning given in A.R.S. § 41-2503(38), which, for convenience of reference only, is "... a person who contracts to perform work or render service to ... [C]ontractor or to another [S]ubcontractor as a part of a contract with a state governmental unit . . ." The Contract is to be construed as "a contract with a state governmental unit" for purposes of the definition. For clarity of intent, a Person carrying out any element of the Work is a Subcontractor from the moment they first carry out that element of the Work regardless of whether or not a Subcontract exists then or subsequently.
- 1.20 Work** "Work" means the totality of the Materials and the Services and all the acts of administration, creation, production, and performance necessary to fulfill and incidental to fulfilling all of Contractor's obligations and duties under the Contract in conformance with the Contract and applicable laws.



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### 2.0 Contract Interpretation

#### 2.1 Usage

Where the Contract:

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

#### 2.2 Contract Order of Precedence

COMPLEMENTARY DOCUMENTS. All of the documents forming the Contract are complementary. If certain work, requirements, obligations, or duties are set out only in one but not in another, Contractor shall carry out the Work as though the relevant work,



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requirements, obligations, or duties had been fully described in all, consistent with the other documents forming the Contract and as is reasonably inferable from them as being necessary to produce complete results.

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

- (a) Contract Amendments;
- (b) the final Solicitation Documents, in the order:
  - (1) Special Terms and Conditions;
  - (2) Exhibits to the Special Terms and Conditions;
  - (3) Uniform Terms and Conditions;
  - (4) Scope of Work;
  - (5) Exhibits to the Scope of Work;
  - (6) Pricing Document;
  - (7) Exhibits to the Pricing Document;
  - (8) Specifications; and
  - (9) Any other documents referenced or included in the Solicitation;
- (c) Orders, in reverse chronological order; and
- (d) Accepted Offer.

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

- 2.3 Independent Contractor** Contractor, and the agents and employees of 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 the employee or agent of the other party, and no action, inaction, event, or circumstance will be grounds for deeming it to be so. No partnership or joint venture relationship is created by virtue of this Contract. Contractor, and not the State, is responsible for the payment of wages, benefits and taxes of Contractor's employees and any subcontractors. Prior performance does not modify Contractor's status as an independent contractor.



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

## 3.0 Contract Administration and Operation

- 3.1 Term of Contract** The term of the Contract will commence on the date indicated on the Acceptance and continue for twelve (12) months unless cancelled, terminated, or permissibly extended.
- 3.2 Contract Extensions** State may at its discretion extend the initial Contract term in increments of one or more months and do so one or more times, provided that, the maximum aggregate term of the Contract including extensions cannot exceed the maximum aggregate term of five (5) years.
- 3.3 Notices and Correspondence**
- 3.3.1 All notices and other communications required or permitted under this Contract must be in writing and will be considered given and received: (a) when verified by written receipt if sent by courier; (b) when actually received if sent by mail without verification of receipt; or (c) when verified by automated receipt or electronic logs if sent by facsimile or email.
- 3.3.2 TO STATE. Contractor shall:
- (a) address all Contract correspondence other than format notices to the email address indicated in "Contact Instructions" in the State's e-Procurement System Summary for State; and
  - (b) address any required notices to State to Procurement Officer identified as "Purchaser" in the State's e-Procurement System Summary at the following mailing address:  
[insert IRTC contact]  
or  
[Arizona Department of Administration  
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- 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

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:

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

In every case other than those listed in (1), (2), and (3) above, both parties' signature – or "approval" in 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





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manner so as to not unreasonably interfere with normal business activities. Contractor must cooperate and provide reasonable assistance during any State audit of books and records. If any financial errors are revealed, the amount in error must be reflected as a credit or debit on subsequent invoices until the amount is paid or refunded. Any remaining balance at the end of the Contract must be paid or refunded within 45 calendar days. This Section applies to Contractor, any parent, affiliate, or subsidiary organization of Contractor, and any subcontractor that performs Contract Activities in connection with this Contract.

- 3.7 Contractor Licenses** Contractor shall maintain current all federal, state and local licenses and permits required for the operation of its business in general, for its operations under the Contract, and for the Work itself.
- 3.8 Inspection and Testing** By A.R.S. § 41-2547, State may at reasonable times inspect the part of Contractor's or Subcontractors' plant or places of business related to performance under the Contract. Accordingly, Contractor agrees to permit (for itself) and ensure (for Subcontractors) access for inspection at any reasonable time to its facilities, processes, and services. State may inspect or test, at its own cost, any finished goods, work-in-progress, components, or unfinished materials that are to be supplied under the Contract or that will be incorporated into something to be supplied under the Contract. If the inspection or testing shows non-conformance or defects, then Contractor will owe State reimbursement or payment of all costs it incurred in carrying out or contracting for the inspection and testing, as well as for any re-inspection or re-testing that might be necessary. Neither inspection of facilities nor testing of goods, work, components, or unfinished materials will of itself constitute acceptance by State of those things.
- 3.9 Ownership of Intellectual Property**
- 3.9.1 RIGHTS IN WORK PRODUCT.** All intellectual property originated or prepared by Contractor pursuant to the Contract, including but not limited to, inventions, discoveries, intellectual copyrights, trademarks, trade names, trade secrets, technical communications, records reports, computer programs and other documentation or improvements thereto, including Contractor's administrative communications and records relating to the Contract, are considered work product and Contractor's property, provided that, State has Government Purpose Rights to that work product as and when it was delivered to State.
- (a) "Government Purpose Rights" are:
- i. the unlimited, perpetual, irrevocable, royalty free, non-exclusive, worldwide right to use, modify, reproduce, release, perform, display, sublicense, disclose and create derivatives from that work product without restriction for any activity in which State is a party;
  - ii. the right to release or disclose that work product to third parties for any State government purpose; and



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

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

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

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

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

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

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

3.9.4 DEVELOPMENTS OUTSIDE OF CONTRACT. Unless expressly stated otherwise in the Contract nothing precludes Contractor from developing competing materials outside the Contract, irrespective of any similarity to materials delivered or to be delivered to State hereunder.

### 3.10 Subcontracts

3.10.1 INITIAL LIST. At the time of Contract execution, Contractor's candidate Subcontractors were identified in Attachment 3-C to the Accepted Offer [Proposed Subcontractors]. Agreeing to them being included in the Accepted Offer signified Procurement Officer's advance consent for Contractor to enter into a Subcontract with each candidate, which Contractor shall do as promptly as necessary to ensure its ability to carry out the Work in a timely manner.

3.10.2 ADDITIONAL NAMES. Contractor shall not enter into a Subcontract or otherwise delegate any of its obligations under the Contract without first obtaining Procurement Officer's written consent with any prospective Subcontractor that



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(a) was not listed on Attachment 3-C at time of Contract execution or (b) is for any Materials or Services categories other than the ones for which they were previously consented. For either case (a) or (b), Contractor shall submit a written request sufficiently in advance of the need date for those materials or services so that performance under the Contract is not impaired and provide the State any information it requests to determine whether the delegation is in its best interest. Procurement Officer may request any additional information he or she determines is necessary to assess the submittal and may withhold consent pending it. If approved, Contractor must be the sole point of contact regarding all contractual matters, including payment and charges for all contract activities. The State, in its sole discretion, may require the replacement of any subcontractor.

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. Contractor remains responsible for the completion of the Contract, compliance with the terms of this Contract, and the acts and omissions of the subcontractor. 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 Conflicts and Ethics

Contractor warrants that it will uphold high ethical standards and is prohibited from: (a) holding or acquiring an interest that would conflict with this Contract; (b) doing anything that creates an appearance of impropriety with respect to the award or performance of the Contract; (c) attempting to influence or appearing to influence the State, any individual Commissioner, or Commission employee by the direct or indirect offer of anything of value; or (d) paying or agreeing to pay any person, other than employees and consultants working for Contractor, any consideration contingent upon the award of the Contract. Contractor must comply with all applicable federal or State laws regulating ethical conduct of public officers and employees. Contractor must immediately notify the State of any violation or potential violation of these standards. This Section applies to Contractor, any parent, affiliate, or subsidiary organization of Contractor, and any subcontractor that performs activities in connection with this Contract.

#### 3.12 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-



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up services, or services that are incidental to performance under the Contract. This provision applies to work performed by Subcontractors at all tiers.

#### 3.13 Orders

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

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

3.13.3 **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.

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

3.13.5 **NO MINIMUMS OR COMMITMENTS.** (a) Contractor shall not impose any minimum dollar amount, item count, services volume, or services duration on Orders; (b) State makes no commitment of any kind concerning the quantity or monetary value of activity actually initiated or completed during the term of the Contract; (c) Contractor shall only deliver or perform as authorized by Orders; and (d) State is not limited as to the number of Orders it may issue for the Contract. For clarity of intent, the foregoing applies equally whether an Eligible Agency issues the Order or, if applicable, a Co-Op Buyer issues it.

3.13.6 **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.

#### 3.14 Provisions for Statewide Contracts:

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



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- **Co-Op Usage**
- **Eligible Agencies**
- **Quarterly Reporting**

elect to participate. Even if only one Eligible Agency needs or elects to purchase against the Contract, it is to be construed as being a “statewide” contract hereunder.

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

#### **Co-Op Usage**

1. Contractor shall verify if an ordering entity is a bona fide Co-Op Buyer before selling Materials to or providing Services for them under the Contract. The current list of Co-Op Buyers is available on the State Procurement Office website:  
<https://spo.az.gov/programs/cooperative>
2. Contractor shall sell to Co-Op Buyers at the same price and on the same lead times and other terms and conditions under which it sells to Eligible Agencies, with the sole exception of any legitimately additional costs for extraordinary shipping or delivery requirements if the Co-Op Buyer is having Materials delivered or installed or Services performed at locations not contemplated in the contracted pricing (e.g., delivery to a location outside Arizona).
3. Contractor shall pay State an administrative fee against all Contract sales to Co-Op Buyers, as provided for under A.R.S. § 41-2633. The fee rate is one (1%) percent. Failure to remit the administrative fees is a material breach of contract and will entitle State to its remedies under Article 8 and its right to terminate for default under Article 9. Method of calculation, payment procedures, and other details are provided on the State Procurement Office website:  
<https://spo.az.gov/contractor-resources/statewide-contracts-administrative-fee>
4. Contractor shall 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.

#### **Eligible Agencies – Orders**

Contractor shall acknowledge each Order from Eligible Agencies within 1 (one) business day after receipt by either:

- (a) “Approving” the Order electronically in the State’s e-Procurement System, which will indicate Contractor’s unqualified acceptance of the Order as-issued; or,
- (b) “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



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or refuse an Order are those set out in subparagraph 3.14.3 (Orders are Obligatory).

Unless and until Contractor has approved the Order in 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.

#### 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>

#### **3.15 Multiple-Use Provisions**

Eligible Agencies may issue Orders for Services in several forms, all of which become final and effective by a "Release Purchase Order" in 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:

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





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4. As described in (3) above but introducing ad-hoc commercial competition by making the selection and ordering conditional on obtaining more favorable prices than the contractually established ones.

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

#### 3.16 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.

#### 3.17 Work on State Premises

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

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



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### 3.18 Contract Implementation Meetings

Upon award, the contractor may be required to participate in meetings for the successful implementation of the contract. Meetings (if any) will be at the discretion of the State. The contractor will be notified in advance of any meeting's time, frequency for future meetings (if any), and locations to ensure all appropriate State's and Contractor's staff and representatives attend. The State reserves the right to decline conference call attendance or participation.

### 3.19 Media Releases

News releases (including promotional literature and commercial advertisements) pertaining to the Contract or project to which it relates must not be made without prior written State approval, and then only in accordance with the explicit written instructions of the State.

## 4.0 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: (a) all of the Materials being invoiced have been delivered or installed (as applicable) and accepted and all of the Services being invoiced have been performed and accepted; and (b) Contractor has provided a complete and accurate invoice in the form and manner called for in the Pricing Document, provided that, State will not make or be liable for any payments to Contractor until Contractor has registered properly in 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 on the Accepted Offer.

### 4.2 Applicable Taxes

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





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

## 5.0 Contract Changes

- 5.1 Contract Amendments** The Contract is issued for State under the authority of Procurement Officer. Only a written Contract Amendment can modify the Contract, and then only if it does not change the Contract's general scope. Purported changes to the Contract by a person not expressly authorized by Procurement Officer or made unilaterally by Contractor will be void and without effect; Contractor will not be entitled to any claim made under the Contract based on any such purported changes.
- 5.2 Assignment and Delegation**
- 5.2.1 IN WHOLE. Contractor shall not assign in whole its rights or delegate in whole its duties under the Contract without Procurement Officer's prior written consent, which consent Procurement Officer may withhold at his or her discretion. If Contractor's proposed assignment or delegation stems from a split, sale, acquisition, or other non-merger change in control, then no such consent will be given in any event without the assignee or delegate giving State satisfactory and equivalent evidence or assurance of its financial soundness, competency, capacity, and qualification to perform as that which Contractor possessed when State first awarded it the Contract. If the State determines that a novation of the Contract to a third party is necessary, Contractor will agree to the novation and provide all necessary documentation and signatures.
- 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.
- 5.3 Change of Control**
- 5.3.1 Contractor will notify within 30 days of any public announcement or otherwise once legally permitted to do so, the State of a change in Contractor's organizational structure or ownership. For purposes of this Contract, a change in control means any of the following: (a) a sale of more than 50% of Contractor's stock; (b) a sale of substantially all of Contractor's assets; (c) a change in a majority of Contractor's board members; (d) consummation of a merger or consolidation of Contractor with any other entity; (e) a change in



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ownership through a transaction or series of transactions; (f) or the board (or the stockholders) approves a plan of complete liquidation. A change of control does not include any consolidation or merger effected exclusively to change the domicile of Contractor, or any transaction or series of transactions principally for bona fide equity financing purposes.

5.3.2 In the event of a change of control, Contractor must require the successor to assume this Contract and all of its obligations under this Contract.

## 6.0 Risk and Liability

### 6.1 Risk of Loss

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

### 6.2 Contractor Insurance

Contractor and subcontractors shall, at their sole expense, 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. All required insurance must protect the State from claims that may arise out of, are alleged to arise out of, or result from Contractor's or a subcontractor's performance.

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	\$2,000,000
Products – Completed Operations Aggregate	\$1,000,000
Personal and Advertising Injury	\$1,000,000



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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.

Combined Single Limit (CSL)	\$1,000,000
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- 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 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 Employer's 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.



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- 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).

### 4. Professional Liability (Errors and Omissions Liability)

Each Claim	\$2,000,000
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Annual Aggregate	\$2,000,000
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- a. If SAM coverage is being provided under this policy, then Contractor must provide the following statement on their Certificate(s) of Insurance: "Sexual Abuse and Molestation coverage is included" or "Sexual Abuse and Molestation coverage is not excluded." This coverage may be sub-limited to no less than \$500,000.

*SAM coverage is required only if Contractor's services involve working with, or caring for, children and/or vulnerable adults ("Vulnerable Adults" means physically and developmentally disabled adults or inmates that are in the care, custody, and control of the State of Arizona).*

- b. In the event that the Professional Liability insurance required by this Contract is written on a claims-made basis, the Contractor warrants that any retroactive date under the Policy shall precede the effective date of this Contract; and, 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.
- c. The Policy shall cover professional misconduct or lack of ordinary skill for those positions defined in the Scope of Work of this Contract.

### 5. Network Security (Cyber) and Privacy Liability – *Required as applicable to the services provided.*

Each Claim	\$2,000,000
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Annual Aggregate	\$2,000,000
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- 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



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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.

- c. 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 vicarious liability of the insured arising out of the activities performed by or on behalf of the Contractor.
- d. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its department, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.
- e. Network Security (Cyber) and Privacy Liability coverage shall only be required from each Contractor or subcontractor who is providing one of the following Training Delivery Formats:
  1. Computer Based training (CBT) and/or
  2. E-Learning (E).

**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 waive, limit, or restrict the Contractor's liability assumed under the indemnification provisions of this Contract.

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



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"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 agreement.

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 Office. 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 have valid and collectable insurance as evidenced by the certificates of insurance and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum Insurance Requirements identified above. The Department reserves the right to require, at any time throughout the life of this contract, proof from the Contractor that its subcontractors have the required coverage.

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

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

## 6.2 Indemnification

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





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“Indemnitee”) from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys’ fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as “Claims”) for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Contractor or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of, or recovered under, the Workers’ Compensation Law or arising out of the failure of such Contractor to conform to any federal, state, or local law, statute, ordinance, rule, regulation, or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Contractor from and against any and all claims. It is agreed that Contractor will be responsible for primary loss investigation, defense, and 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.

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.

The State will notify Contractor in writing if indemnification is sought; however, failure to do so will not relieve Contractor, except to the extent that Contractor is materially prejudiced. Contractor must, to the satisfaction of the State, demonstrate its financial ability to carry out these obligations.

The State is entitled to: (i) regular updates on proceeding status; (ii) participate in the defense of the proceeding; (iii) employ its own counsel; and to (iv) retain control of the defense if the Commission deems necessary. Contractor will not, without the State’s written consent (not to be unreasonably withheld), settle, compromise, or consent to the entry of any judgment in or otherwise seek to terminate any claim, action, or proceeding. To the extent that any State employee, official, or law may be involved or challenged, the State may, at its own expense, control the defense of that portion of the claim.

Any litigation activity on behalf of the State, or any of its subdivisions under this Section, must be coordinated with the Legal Counsel of the State. An attorney designated to represent the State may not do so until approved by the State.

### 6.3 Patent and Copyright Indemnification

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



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secret by the Materials and the Services. With respect to the defense and payment of claims under this subparagraph:

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

If Contractor is a public agency, this paragraph 6.3 does not apply.

#### 6.4 Force Majeure

6.4.1 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.

6.4.2 RELIEF FROM PERFORMANCE. Except for payment of sums due, the parties are not liable to each other if an occurrence of force majeure prevents its performance under the Contract. If either party is delayed at any time in the progress of their respective performance under the Contract by an occurrence of force majeure, the delayed party shall notify the other no later than the following working day after the occurrence, or as soon as it could reasonably have been expected to recognize that the occurrence had effect in cases where the effects were not readily apparent. In any event, the notice must make specific reference to this paragraph specifying the causes of the delay in the notice and, if the effects of the occurrence are on-going, provide an initial notification and thereafter the delayed party shall provide regular updates until such time as the effects are fully known. Each party will use commercially reasonable efforts to resume performance. To the extent it is able, the delayed





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party shall cause the delay to cease promptly and notify the other party when it has done so. The parties shall extend the time of completion by Contract Amendment for a period equal to the time that the results or effects of the delay prevented the delayed party from performing.

6.4.3 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.

6.4.4 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.

### 6.5 Third Party Antitrust Violations

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

## 7.0 Warranties

### 7.1 Conformity to Requirements

Contractor warrants that, unless expressly provided otherwise elsewhere in the Contract, the Materials and Services will for 1 (one) year after acceptance and in each instance: (1) conform to the requirements of the Contract, which by way of reminder include without limitation all descriptions, specifications, and drawings identified in the Scope of Work and any Contractor affirmations included as part of the Contract; (2) are merchantable and free from defects of material and workmanship; (3) conform to or perform in a manner consistent with current industry standards; (4) be fit for the intended purpose or use described in the Contract; and (5) are delivered free from any security interest, lien, or encumbrance and will continue in that respect. Mere delivery or performance does not substitute for express acceptance by State. Where inspection, testing, or other acceptance assessment of Materials or Services cannot be done until after installation, the forgoing warranty will not begin until State's acceptance.

### 7.2 Contractor Authority and Representations

Contractor warrants that the Contract signatory has the authority to enter into this Contract, that all information furnished by Contractor in connection with the Contract fairly and accurately represents Contractor's business, properties, finances, and operations as of the dates covered by the information, and Contractor will inform the State of any material adverse changes, that all information furnished and representations made in connection with the award of this Contract is true, accurate, and complete, and contains no false statements or omits any fact that would make the information misleading. The State has relied upon the professional training and ability of Contractor to perform the services in this Contract as a material inducement to enter into this Contract.



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- 7.3 Contractor Personnel** Contractor warrants that it will provide properly skilled professional and technical personnel who 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. All work by Contractor under this Contract shall be in accordance with applicable legal requirements and shall meet the standard of quality ordinarily to be expected of competent professionals in Contractor's field of expertise.
- 7.4 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.
- 7.5 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.
- 7.6 Compliance with Laws** Contractor warrants that it will comply with all federal, state, and local laws, rules, and regulations.
- 7.7 Operational Continuity** Contractor warrants that it will perform without relief notwithstanding being sold or acquired; no such event will operate to mitigate or alter any of Contractor's duties hereunder absent a consented delegation under paragraph 5.3 [*Assignment and Delegation*] that expressly recognizes the event.
- 7.8 Performance in Public Health Emergency** Contractor warrants that it will:
1. have in effect promptly after commencement a plan for continuing performance in the event of a declared public health emergency that addresses, at a minimum: (a) identification of response personnel by name; (b) key succession and performance responses in the event of sudden and significant decrease in workforce; and (c) alternative avenues to keep sufficient product on hand or in the supply chain; and
  2. provide a copy of its current plan to State within 3 (three) business days after State's written request. If Contractor claims relief under paragraph 6.5 [*Force Majeure*] for an occurrence of force majeure that is a declared public health emergency, then that relief will be conditioned on Contractor having first implemented its plan and exhausted all reasonable opportunity for that plan implementation to overcome the effects of that occurrence, or mitigate those effects to the extent that overcoming entirely is not practicable.

For clarification of intent, being obliged to implement the plan is not of itself an occurrence of force majeure, and Contractor will not be entitled to any additional compensation or



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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.

### 7.9 Lobbying

#### 7.9.1 PROHIBITION.

(a) Contractor warrants that:

- i. it will not engage in lobbying activities, as defined in 40 CFR part 34 and A.R.S. § 41-1231, et seq., using monies awarded under the Contract, provided that, the foregoing does not intend to constrain Contractor's use of its own monies or property, including without limitation any net proceeds duly realized under the Contract or any value thereafter derived from those proceeds; and
- ii. upon award of the Contract, it will disclose all lobbying activities to State to the extent they are an actual or potential conflict of interest or where such activities could create an appearance of impropriety.

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

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

7.9.2 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.

### 7.10 Survival of Warranties

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

## 8.0 State's Contractual Remedies

### 8.0 State's Contractual Remedies

No modifications to uniform terms and conditions section

## 9.0 Contract Termination

### 9.0 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 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. Additionally, the State may terminate this Contract in whole or in part if Contractor, as determined by the State, (a) endangers the value, integrity, or security of any location, data, or personnel; (b) becomes insolvent, petitions for bankruptcy court proceedings, or has an involuntary bankruptcy proceeding filed against it by any creditor; (c) engages in any conduct that may expose the State to liability; (d) breaches any of its material duties



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or obligations; or (e) fails to cure a breach within the time stated in a notice of breach. Any reference to specific breaches being material breaches within this Contract will not be construed to mean that other breaches are not material. The Procurement Officer shall provide written notice of the termination and the reasons for it to the Contractor.

### 10.0 Contract Claims

- 10.1 Claim Resolution** Notwithstanding any law to the contrary, all contract claims or controversies under the Contract are to be resolved according to A.R.S. 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.
- 10.3 Disputes** Contractor shall continue with the responsibilities under this Agreement during any dispute.

### 11.0 General Provisions for Materials (Reserved)

### 12.0 General Provisions for Services

- 12.1 Applicability** Article 12 applies to the extent the Work is or includes Services.
- 12.2 Comprehensive Services Offering** Contractor shall provide the comprehensive range of services for which a price is established in the Pricing Document for ordering by Eligible Agencies, and Co-Op Buyers if co-op buying applies.
- 12.3 Additional Services** State at its discretion may modify the scope of the Contract by Contract Amendment to include additional services or service categories that are within the general scope of the ones originally covered by the Contract if it determines that doing so is in its best interest. Contractor shall not perform, nor be compensated for additional services without written authorization from the State's Legal Counsel that has been formally approved by the State. 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.



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- 12.4 Off-Contract Services** Contractor shall ensure that the design and/or procedures for the Services ordering method prevents Orders for off-contract or excluded services. Notwithstanding that State might have its own internal administrative rules regarding off contract or excluded service ordering, and endeavors to prevent such orders from occurring, Contractor is responsible for not accepting any such Orders. State may, at its discretion, cancel any such Order without obligation. As used above, "off-contract service" refers to any service not included in the scope of the Contract and for which no price or compensation has been established contractually, and "excluded service" refers to any service expressly excluded from the scope of the Contract.
- 12.5 Removal of Personnel** Notwithstanding that Contractor is in every circumstance responsible for hiring, assigning, directing, managing, training, disciplining, and rewarding its personnel, State may at its discretion and without the obligation to demonstrate cause instruct Contractor to remove any of its personnel from State's facilities or from further assignment under the Contract. In such cases, Contractor shall promptly replace them with other personnel having equivalent qualifications, experience, and capabilities.
- 12.6 Transitions** During commencement, Contractor shall attend transition meetings with any outgoing vendors to coordinate and ease the transition so that the effect on State's operations is kept to a minimum. State may elect to have outgoing vendors complete some or all of their work or orders in progress to ease the transition as is safest and most efficient in each instance, even if that scope is covered under the Contract. Conversely, State anticipates having a continued need for the same materials and services upon expiration or earlier termination of the Contract. Accordingly, upon termination or expiration of this Contract for any reason, Contractor shall, for a period of time specified by the State, provide all reasonable transition assistance requested by the State, including working closely with any new (incoming) vendor and State, to allow for the expired or terminated portion of the Contract to continue without interruption or adverse effect and to ensure as smooth and complete a transfer as is practicable. Such transition assistance may include, but is not limited to: (a) continuing to perform under the Contract at the established Contract rates; (b) taking all reasonable and necessary measures to transition performance of the work, including all applicable Contract activities, training, equipment, software, leases, records, reports and other documentation, to the State or the State's designee; (c) taking all necessary and appropriate steps, or such other action as the State may direct, to preserve, maintain, protect, or return to the State all materials, data, property, and confidential information provided directly or indirectly to Contractor by any entity, agent, vendor, or employee of the State; (d) transferring title in and delivering to the State, at the State discretion, all completed or partially completed deliverables prepared under this Contract as of the Contract termination date; and (e) preparing an accurate accounting from which the Commission and Contractor may reconcile all outstanding accounts. This Contract will automatically be extended through the end of the transition period. State's representative shall coordinate all transition activities and facilitate joint development of a comprehensive transition plan by both Contractor and



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the incoming vendor. As with the incoming transition. State may permit Contractor (outgoing) to complete work or orders in progress to ease the transition as is safest and most efficient in each instance.

- 12.7 Accuracy of Work** Contractor is responsible for the accuracy of the Services and shall promptly make all necessary revisions or corrections resulting from errors and omissions on its part without additional compensation. Acceptance by State will not relieve Contractor of responsibility for correction of any errors discovered subsequently or necessary clarification of any ambiguities.
- 12.8 Requirements at Services Location** Contractor personnel shall perform their assigned portions of the Services at the specific location indicated in the Order (if applicable). Contractor acknowledges that the location might be inside an industrial building, institutional building, or one of various office types and classes. Additionally, if performing the Services requires Contractor personnel to work inside a secured perimeter at certain institutional facilities such as prisons where prior clearances are required, Contractor shall contact the facility directly to confirm its most-current security clearance procedures, allowable hours for work, visitor dress code, and other applicable rules. State will neither allow extra charges for wait time, comebacks, or the like nor excuse late performance if Contractor has failed to make the confirmation or comply with the applicable conditions.
- 12.9 Services Acceptance** State has the right to make acceptance of Services subject to acceptance criteria. State may apply as acceptance criteria conformity to the Contract, accuracy, completeness, or other indicators of quality or other matter for which the Contract or law states a requirement, whether stated directly or by reference to another document, standard, reference specification, etc. State will not owe Contractor any payment for un-accepted Services; and State may, at its discretion, withhold or make partial payment for any rejected Services if Contractor is still in the process of re-performing or otherwise curing the grounds for State's rejection.
- 12.10 Corrective Action Required** Notwithstanding any other guarantees, general warranties, or particular warranties Contractor has given under the Contract, if Contractor fails to perform any material portion of the Services, including failing to complete any contractual deliverable, or if its performance fails to meet agreed-upon service levels or service standards set out in or referred to in the Contract, then Contractor shall perform a root-cause analysis to identify the source of the failure and use all commercially reasonable efforts to correct the failure and meet the Contract requirements as promptly as is practicable.
1. Contractor shall provide to State a report detailing the identified cause and setting out its detailed corrective action plan promptly after the date the failure occurred (or the date when the failure first became apparent, if it was not apparent immediately after occurrence).
  2. State may demand to review and approve Contractor's analysis and plans, and Contractor shall make any corrections State instructs and adopt State's





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recommendations so far as is commercially practicable, provided that State may insist on any measures it determines within reason to be necessary for safety or protecting property and the environment.

3. Contractor shall take the necessary action to avoid any like failure in the future, if doing so is appropriate and practicable under the circumstances.

## 13.0 Data and Information Handling

### 13.1 Applicability

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

### 13.2 Data Protection and Confidentiality of Information

Contractor warrants that it will establish and maintain procedures and controls acceptable to State for ensuring that State's proprietary and sensitive data is protected from unauthorized access and information obtained from State or others in performance of its contractual duties is not mishandled, misused, or inappropriately released or disclosed. The parties agree to hold all Confidential Information in strict confidence and not to copy, reproduce, sell, transfer, or otherwise dispose of, give, or disclose such Confidential Information to third parties other than employees, agents, or subcontractors of a party who have a need to know in connection with this Contract or to use such Confidential Information for any purposes whatsoever other than the performance of this Contract. The parties agree to advise and require their respective employees, agents, and subcontractors of their obligations to keep all Confidential Information confidential. For purposes of this paragraph, all data created by Contractor in any way related to the Contract, provided to Contractor by State, or prepared by others for State are proprietary to State, and all information by those same avenues is State's Confidential Information. To comply with the foregoing warrant:

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

Each party acknowledges that breach of its obligation of confidentiality may give rise to irreparable injury to the other party, which damage may be inadequately compensable in



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the form of monetary damages. Accordingly, a party may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies which may be available, to include, in the case of the State, at the sole election of the State, the immediate termination, without liability to the State, of this Contract or any Scope of Work corresponding to the breach or threatened breach.

Upon termination of this Contract or a Scope of Work, in whole or in part, each party must, within five (5) calendar days from the date of termination, return to the other party any and all Confidential Information received from the other party, or created or received by a party on behalf of the other party, which are in such party's possession, custody, or control; provided, however, that Contractor must return State Data to the State following the timeframe and procedure described further in this Contract. Should Contractor or the State determine that the return of any Confidential Information is not feasible, such party must destroy the Confidential Information and must certify the same in writing within five (5) calendar days from the date of termination to the other party. However, the State's legal ability to destroy Contractor data may be restricted by its retention and disposal schedule, in which case Contractor's Confidential Information will be destroyed after the retention period expires.

#### 13.3 Personally Identifiable Information

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

For purposes of this paragraph:

1. PII has the meaning given in the [federal] Office of Management and Budget (OMB) Memorandum M-17-12 Preparing for and Responding to a Breach of Personally Identifiable Information", January 3, 2017; and
2. "protect" means taking measures to safeguard personally identifiable information and prevent its breach that are functionally equivalent to those called for in that OMB memorandum and elaborated on in the [federal] General Services Administration (GSA) Directive CIO P 2180.1 GSA Rules of Behavior for Handling Personally Identifiable Information.

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

<https://dpcl.d.defense.gov/Privacy/Authorities-and-Guidance/>

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

<https://www.gsa.gov/directives-library/gsa-rules-of-behavior-for-handling-personally-identifiable-information-pii-21802-cio>

#### 13.4 Protected Health Information

Contractor warrants that, to the extent performance under the Contract involves individually identifiable health information (referred to hereinafter as protected health





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information (“PHI”) and electronic PHI (“ePHI”) as defined in the Privacy Rule referred to below), it:

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

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

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

## 14.0 Information Technology Work

- 14.1 Applicability** Article 14 applies to any Invitation for Bids, Request for Proposals, or Request for Quotations for "Information Technology," as defined In A.R.S. § 41-3501(6): “. . . computerized and auxiliary automated information processing, telecommunications and related technology, including hardware, software, vendor support and related services, equipment and projects” if and to the extent that the Work is or includes Information Technology.
- 14.2 Background Checks** Each of Contractor’s personnel who is an applicant for an information technology position must undergo the security clearance and background check procedure, which includes fingerprinting, as required by A.R.S § 41-710. Contractor shall obtain and pay for the security clearance and background check. Contractor personnel who will have administrator privileges on a State network must additionally provide identify and address verification and undergo State-specified training for unescorted access, confidentiality, privacy, and data security.
- 14.3 Information Access**
- 14.3.1 **SYSTEM MEASURES.** Contractor shall employ appropriate system management and maintenance, fraud prevention and detection, and encryption application and tools to any systems or networks containing or transmitting State’s proprietary data or confidential information.



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- 14.3.2 **INDIVIDUAL MEASURES.** Contractor personnel shall comply with applicable State policies and procedures regarding data access, privacy, and security, including prohibitions on remote access and obtaining and maintaining access IDs and passwords. Contractor is responsible to State for ensuring that any State access IDs and passwords are used only by the person to whom they were issued. Contractor shall ensure that personnel are only provided the minimum only such level of access necessary to perform his or duties. Contractor shall on request provide a current register of the access IDs and passwords and corresponding access levels currently assigned to its personnel.
- 14.3.3 **ACCESS CONTROL.** Contractor is responsible to State for ensuring that hardware, software, data, information, and that has been provided by State or belongs to or is in the custody of State and is accessed or accessible by Contractor personnel is only used in connection with carrying out the Work, and is never commercially exploited in any manner whatsoever not expressly permitted under the Contract. State may restrict access by Contractor personnel, or instruct Contractor to restrict access their access, if in its determination the requirements of this subparagraph are not being met.
- 14.4 Pass-Through Indemnity**
- 14.4.1 **INDEMNITY FROM THIRD PARTY.** For computer hardware or software included in the Work as discrete units that were manufactured or developed solely by a third party, Contractor may satisfy its indemnification obligations under the Contract by, to the extent permissible by law, passing through to State such indemnity as it receives from the third-party source (each a "Pass-Through Indemnity") and cooperating with State in enforcing that indemnity. If the third party fails to honor its Pass-Through Indemnity, or if a Pass-Through Indemnity is insufficient to indemnify State Indemnitees to the extent and degree Contractor is required to do by the Uniform Terms and Conditions, then Contractor shall indemnify, defend and hold harmless State Indemnitees to the extent the Pass-Through Indemnity does not.
- 14.4.2 **NOTIFY OF CLAIMS.** State shall notify Contractor promptly of any claim to which a Pass-Through Indemnity might apply. Contractor, with reasonable consultation from State, shall control of the defense of any action on any claim to which a Pass-Through Indemnity applies, including negotiations for settlement or compromise, provided that:
- (a) State reserves the right to elect to participate in the action at its own expense;
  - (b) State reserves the right to approve or reject any settlement or compromise on reasonable grounds and if done so timely; and
  - (c) State shall in any case cooperate in the defense and any related settlement negotiations.
- 14.5 Systems and Controls** In consideration for State having agreed to permit Pass-Through Indemnities in lieu of direct indemnity, Contractor agrees to establish and keep in place systems and controls



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appropriate to ensure that State funds under this Contract are not knowingly used for the acquisition, operation, or maintenance of Materials or Services in violation of intellectual property laws or a third party's intellectual property rights.

#### 14.6 Redress of Infringement

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

- (a) replace any infringing items with non-infringing ones;
- (b) obtain for State the right to continue using the infringing items; or
- (c) modify the infringing item so that they become non-infringing, so long as they continue to function as specified following the modification.

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

- (a) for any software created for State under the Contract, the amount State paid to Contractor for creating it;
- (b) for all other Materials, the net book value of the product provided according to generally accepted accounting principles; and
- (c) for Services, the amount paid by State or an amount equal to 12 (twelve) months of charges, whichever is less.

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

- (a) modification or use of Materials other than as contemplated by the Contract or expressly authorized or proposed by a Contractor Indemnitor;
- (b) operation of Materials with any operating software other than that supplied by Contractor or authorized or proposed by a Contractor Indemnitor; or
- (c) combination or use with other products in a manner not contemplated by the Contract or expressly authorized or proposed by a Contractor Indemnitor.

#### 14.7 First Party Liability Limitation

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

14.7.2 PROVISOS. This paragraph 14.7 limits liability for first party direct, indirect, incidental, special, punitive, and consequential damages relating to the Work



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regardless of the legal theory under which the liability is asserted. This paragraph 14.7 does not limit liability arising from any:

- (a) Indemnified Claim against which Contractor has indemnified State Indemnitees under paragraph 6.3;
- (b) claim against which Contractor has indemnified State Indemnitees under paragraph 6.4; or
- (c) provision of the Contract calling for liquidated damages or specifying amounts or percentages as being at-risk or subject to deduction for performance deficiencies.

14.7.3 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.

### 14.8 Information Technology Warranty

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

- (a) modified or altered by anyone not authorized by Contractor to do so;
- (b) maintained in a way inconsistent to any applicable manufacturer recommendations; or
- (c) operated in a manner not within its intended use or environment.

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

- (a) to the extent possible, it will test the software before delivery using commercially available virus detection software conforming to current industry standards;
- (b) the COTS software will, to the best of its knowledge, at the time of delivery be free of viruses, backdoors, worms, spyware, malware, and other malicious code that could hamper performance, collect unlawfully any personally identifiable



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information, or prevent products from performing as required by the Contract;  
and

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

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

#### 14.9 Specific Remedies

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

#### 14.10 Section 508 Compliance

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

#### 14.11 Cloud Applications

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

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

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



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End of Section 2-C

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## Appendix D SECTION 2-D:

### Uniform Terms and Conditions

*Version: 9 (7/1/2013)*

#### 1.0 Definition of Terms

- 1.0 Definition of Terms** As used in the Contract, the terms listed below are defined as follows:
- 1.1 Attachment** "Attachment" means any item the solicitation requires the Offeror to submit as part of the Offer.
- 1.2 Contract** "Contract" " means the combination of the Solicitation, including the Uniform and Special Instructions to Offerors, the Uniform and Special Terms and Conditions, and the Specifications and Statement or Scope of Work; the Offer and any Best and Final Offers; and any Solicitation Amendments or Contract Amendments.
- 1.3 Contract Amendment** "Contract Amendment" means a written document signed by the Procurement Officer that is issued for the purpose of making changes in the Contract.
- 1.4 Contractor** "Contractor" means any Person who has a Contract with the State.
- 1.5 Days** "Days" means calendar days unless otherwise specified.
- 1.6 Exhibit** "Exhibit" means any item labeled as an Exhibit in the Solicitation or placed in the Exhibits section of the Solicitation.
- 1.7 Gratuity** "Gratuity" means a payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.
- 1.8 Materials** "Materials" means all property, including equipment, supplies, printing, insurance and leases of property but does not include land, a permanent interest in land or real property or leasing space.
- 1.9 Procurement Officer** "Procurement Officer" means the person, or his or her designee, duly authorized by the State to enter into and administer Contracts and make written determinations with respect to the Contract.
- 1.10 Services** "Services" has the meaning given in A.R.S. § 41-2503(35), which, for convenience of reference only, is "... the furnishing of labor, time, or effort by [the] [C]ontractor or [S]ubcontractor which does not involve the delivery of a specific end product other than required reports and performance [but] does not include employment agreements or





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collective bargaining agreements.” Services includes Building Work and the service aspects of software described in paragraph 1.8.

- 1.11 State** “State” means the State of Arizona and Department or Agency of the State that executes the Contract.
- 1.12 State Fiscal Year** “State Fiscal Year” means the period beginning with July 1 and ending June 30.
- 1.13 Subcontract** “Subcontract” means any Contract, express or implied, between the Contractor and another party or between a subcontractor and another party delegating or assigning, in whole or in part, the making or furnishing of any material or any service required for the performance of the Contract.

## 2.0 Contract Interpretation

- 2.1 Arizona Law** The Arizona law applies to this Contract including, where applicable, the Uniform Commercial Code as adopted by the State of Arizona and the Arizona Procurement Code, Arizona Revised Statutes (A.R.S.) Title 41, Chapter 23, and its implementing rules, Arizona Administrative Code (A.A.C.) Title 2, Chapter 7.
- 2.2 Implied Terms** Each provision of law and any terms required by law to be in this Contract are a part of this Contract as if fully stated in it.
- 2.3 Contract Order of Precedence** In the event of a conflict in the provisions of the Contract, as accepted by the State and as they may be amended, the following shall prevail in the order set forth below:
- 2.3.1. Special Terms and Conditions;
  - 2.3.2. Uniform Terms and Conditions;
  - 2.3.3. Statement or Scope of Work;
  - 2.3.4. Specifications;
  - 2.3.5. Attachments;
  - 2.3.6. Exhibits;
  - 2.3.7. Documents referenced or included in the Solicitation.
- 2.4 Relationship of Parties** The Contractor under this Contract is an independent Contractor. Neither party to this Contract shall be deemed to be the employee or agent of the other party to the Contract.
- 2.5 Severability** The provisions of this Contract are severable. Any term or condition deemed illegal or invalid shall not affect any other term or condition of the Contract.
- 2.6 No Parole Evidence** This Contract is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade





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shall supplement or explain any terms used in this document and no other understanding either oral or in writing shall be binding.

#### 2.7 No Waiver

Either party's failure to insist on strict performance of any term or condition of the Contract shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.

### 3.0 Contract Administration and Operation

#### 3.1 Records

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

#### 3.2 Non-Discrimination

The Contractor shall comply with State Executive Order No. 2009-09 and all other applicable Federal and State laws, rules and regulations, including the Americans with Disabilities Act. During the performance of this Agreement, Contractor and its subcontractors shall not deny the contract's benefits to any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, age, or military and veteran status. Contractor shall insure that the evaluation and treatment of employees and applicants for employment are free of such discrimination. Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

#### 3.3 Audit

Pursuant to ARS § 35-214, at any time during the term of this Contract and five (5) years thereafter ("Audit Period"), 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. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. If an audit, litigation, or other action involving the records is initiated before the end of the Audit Period, Contractor must retain the records until all issues are resolved.



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- 3.4 Facilities Inspection and Materials Testing** The Contractor agrees to permit access to its facilities, subcontractor facilities and the Contractor's processes or services, at reasonable times for inspection of the facilities or materials covered under this Contract. The State shall also have the right to test, at its own cost, the materials to be supplied under this Contract. Neither inspection of the Contractor's facilities nor materials testing shall constitute final acceptance of the materials or services. If the State determines noncompliance of the materials, the Contractor shall be responsible for the payment of all costs incurred by the State for testing and inspection.
- 3.5 Notices** Notices to the Contractor required by this Contract shall be made by the State to the person indicated on the Offer and Acceptance form submitted by the Contractor unless otherwise stated in the Contract. Notices to the State required by the Contract shall be made by the Contractor to the Solicitation Contact Person indicated on the Solicitation cover sheet, unless otherwise stated in the Contract. An authorized Procurement Officer and an authorized Contractor representative may change their respective person to whom notice shall be given by written notice to the other and an amendment to the Contract shall not be necessary.
- 3.6 Advertising, Publishing and Promotion of Contract** The Contractor shall not use, advertise or promote information for commercial benefit concerning this Contract without the prior written approval of the Procurement Officer.
- 3.7 Property of the State** Any materials, including reports, computer programs and other deliverables, created under this Contract are the sole property of the State. The Contractor is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. The Contractor shall not use or release these materials without the prior written consent of the State.
- 3.8 Ownership of Intellectual Property** Any and all intellectual property, including but not limited to copyright, invention, trademark, trade name, service mark, and/or trade secrets created or conceived pursuant to or as a result of this contract and any related subcontract ("Intellectual Property"), shall be work made for hire and the State shall be considered the creator of such Intellectual Property. The agency, department, division, board or commission of the State of Arizona requesting the issuance of this contract shall own (for and on behalf of the State) the entire right, title and interest to the Intellectual Property throughout the world. Contractor shall notify the State, within thirty (30) days, of the creation of any Intellectual Property by it or its subcontractor(s). Contractor, on behalf of itself and any subcontractor(s), agrees to execute any and all document(s) necessary to assure ownership of the Intellectual Property vests in the State and shall take no affirmative actions that might have the effect of vesting all or part of the Intellectual Property in any entity other than the State. The Intellectual Property shall not be disclosed by contractor or its subcontractor(s) to any entity not the State without the express written authorization of the agency, department,



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division, board or commission of the State of Arizona requesting the issuance of this contract.

- 3.9 Federal Immigration and Nationality Act** The contractor shall comply with all federal, state and local immigration laws and regulations relating to the immigration status of their employees during the term of the contract. Further, the contractor shall flow down this requirement to all subcontractors utilized during the term of the contract. The State shall retain the right to perform random audits of contractor and subcontractor records or to inspect papers of any employee thereof to ensure compliance. Should the State determine that the contractor and/or any subcontractors be found noncompliant, the State may pursue all remedies allowed by law, including, but not limited to; suspension of work, termination of the contract for default and suspension and/or debarment of the contractor.
- 3.10 E-Verify Requirements** In accordance with A.R.S. § 41-4401, Contractor warrants compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with Section A.R.S. § 23-214, Subsection A.
- 3.11 Offshore Performance of Work Prohibited** Any services that are described in the specifications or scope of work that directly serve the State of Arizona or its clients and involve access to secure or sensitive data or personal client data shall be performed within the defined territories of the United States. Unless specifically stated otherwise in the specifications, this paragraph does not apply to indirect or 'overhead' services, redundant back-up services or services that are incidental to the performance of the contract. This provision applies to work performed by subcontractors at all tiers.

## 4.0 Costs and Payments

- 4.1 Payments** Payments shall comply with the requirements of A.R.S. Titles 35 and 41, Net 30 days. Upon receipt and acceptance of goods or services, the Contractor shall submit a complete and accurate invoice for payment from the State within thirty (30) days.
- 4.2 Delivery** Unless stated otherwise in the Contract, all prices shall be F.O.B. Destination and shall include all freight delivery and unloading at the destination.
- 4.3 Applicable Taxes**
- 4.3.1. Payment of Taxes. The Contractor shall be responsible for paying all applicable federal, State, and local 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



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

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

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

**4.5 Availability of Funds for the current State fiscal year** The continuation of this Contract is contingent upon sufficient appropriations and authorizations for expenditures being made by the legislature to permit those payments. Should the State Legislature enter back into session and reduce the appropriations or for any reason and these goods or services are not funded, the State may take any of the following actions:

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

4.5.2. Cancel the Contract; or

4.5.3. Cancel the contract and re-solicit the requirements

## 5.0 Contract Changes

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

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



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

## 6.0 Risk and Liability

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

**6.2 Indemnification**

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

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

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

**6.4 Force Majeure**

6.4.1 Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes acts of God; acts of the public enemy; war; riots; strikes; mobilization; labor disputes; civil disorders; fire; flood; lockouts; injunctions-intervention-acts; or failures or refusals to act by government authority; and other similar occurrences beyond the control of the party



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

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

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

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

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

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

### 6.5 Third Party Antitrust Violations

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

## 7.0 Warranties

### 7.1 Liens

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

### 7.2 Quality

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

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

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





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

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

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

#### 7.3 Fitness

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

#### 7.4 Inspection/Testing

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

#### 7.5 Compliance with Laws

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

#### 7.6 Survival of Rights and Obligations after Contract Expiration or Termination

7.6.1. Contractor's Representations and Warranties. All representations and warranties made by the Contractor under this Contract shall survive the expiration or termination hereof. In addition, the parties hereto acknowledge that pursuant to A.R.S. § 12-510, except as provided in A.R.S. § 12-529, the State is not subject to or barred by any limitations of actions prescribed in A.R.S., Title 12, Chapter 5.

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

### 8.0 State's Contractual Remedies

#### 8.1 Right to Assurance

If the State in good faith has reason to believe that the Contractor does not intend to, or is unable to perform or continue performing under this Contract, the Procurement Officer may demand in writing that the Contractor give a written assurance of intent to perform. Failure by the Contractor to provide written assurance within the number of Days specified in the demand may, at the State's option, be the basis for terminating the Contract under the Uniform Terms and Conditions or other rights and remedies available by law or provided by the contract.

#### 8.2 Stop Work Order

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



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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. The State will not pay for Contract activities, Contractor's lost profits, or any additional compensation during a stop work period.

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

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

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

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

## 9.0 Contract Termination

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

**9.2 Gratuities** The State may, by written notice, terminate this Contract, in whole or in part, if the State determines that employment or a Gratuity was offered or made by the Contractor or a representative of the Contractor to any officer or employee of the State for the purpose of influencing the outcome of the procurement or securing the Contract, an amendment





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to the Contract, or favorable treatment concerning the Contract, including the making of any determination or decision about contract performance. The State, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three times the value of the Gratuity offered by the Contractor.

**9.3 Suspension or  
Debarment**

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

**9.4 Termination for  
Convenience**

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

**9.5 Termination for Default**

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

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

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

**9.6 Continuation of  
Performance Through  
Termination**

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



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#### 10.0 Contract Claims

- 10.1 Contract Claims** All contract claims or controversies under this Contract shall be resolved according to A.R.S. Title 41, Chapter 23, Article 9, and rules adopted thereunder.
- 10.2 Disputes** Contractor shall continue with the responsibilities under this Agreement during any dispute.

#### 11.0 Arbitration

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

#### 12.0 Comments Welcome

- 12.1 Comments Welcome** The State Procurement Office periodically reviews the Uniform Terms and Conditions and welcomes any comments you may have. Please submit your comments to: State Procurement Administrator, State Procurement Office, 100 North 15th Avenue, Suite 201, Phoenix, Arizona, 85007.

**End of Section 2-D**

**End of Part 2**