

**INTERGOVERNMENTAL AGREEMENT
NO. IGA-SABG-GR-18-070117-02**

Between the

**STATE OF ARIZONA
GOVERNOR'S OFFICE OF YOUTH, FAITH AND FAMILY**

And the

COCHISE COUNTY SCHOOL SUPERINTENDENT'S OFFICE

This Intergovernmental Agreement ("Agreement") is entered into by and between the State of Arizona, the Governor's Office of Youth, Faith and Family, located at 1700 West Washington, Suite 230, Phoenix, Arizona 85007 ("GOYFF" or "State of Arizona") and the Cochise County School Superintendent's Office, located at 100 Clawson Avenue, P.O. Drawer 208, Bisbee, Arizona 85603 (collectively the "parties").

WHEREAS, the United States Department of Health and Human Services provided funding to the Arizona Department of Health Services under the Substance Abuse Block Grant ("SABG"). The SABG is administered through the Substance Abuse and Mental Health Services Administration of the United States Department of Health and Human Services. The C.F.D.A. number is 93.959.

WHEREAS, the Arizona Department of Health Services provided Substance Abuse Block Grant Funding to the Governor's Office of Youth, Faith and Family under Interagency Service Agreement No. HS632006.

WHEREAS, A.R.S. §41-101.01 authorizes the Governor's Office of Youth, Faith and Family to execute and administer agreements and accept and expend any funds received from the federal government or any agency thereof.

WHEREAS, A.R.S. §11-952 authorizes public agencies to enter into agreements to contract for services.

WHEREAS, A.R.S. §15-301 authorizes the Cochise County School Superintendent's Office to enter into agreements with other governmental entities and agencies in order to receive and spend local, state and federal monies to provide programs and services to school districts, charter schools, county free library districts, and municipal libraries within the county.

THEREFORE, in consideration of the mutual promises and covenants contained herein and other good and valuable consideration, the receipt of which the parties hereby acknowledge, the parties enter into this Agreement as follows:

I. PURPOSE OF AGREEMENT

The purpose of this Agreement is to provide a SABG cost-reimbursement grant award to the Cochise County School Superintendent's Office as pass-through funding to support five events at five middle schools selected by the Cochise County School Superintendent's Office for implementation of the Healthy Families-Healthy Youth Pilot Program.

II. TERM OF AGREEMENT, TERMINATION AND AMENDMENTS

The term of the Agreement shall commence July 1, 2017, and shall remain in effect until September 30, 2017, contingent upon GOYFF's receipt of final federal SABG funding, unless terminated, canceled, or extended as otherwise provided herein.

Either party may terminate this Agreement at any earlier time by providing written notice to the other party at least thirty (30) days prior to the termination date. The GOYFF agrees that regardless of its termination date with the Cochise County School Superintendent's Office, the Cochise County School Superintendent's Office may use the funds distributed under this Agreement to pay for any unpaid services pursuant to this Agreement obligated prior to the date of termination. This Agreement is subject to cancellation pursuant to A.R.S. § 38-511, the provisions of which are incorporated herein.

Amendments to this Agreement shall be made in writing and signed by both parties.

III. DESCRIPTION OF SERVICES

The Cochise County School Superintendent's Office shall:

1. Provide oversight on the Healthy Families-Healthy Youth Pilot Program ("Program") in accordance with Attachment A (entitled *Scope of Work*, incorporated into this Agreement in its entirety); Attachment B (entitled Job Description, Youth Facilitator/Leader, incorporated into this Agreement in its entirety); Attachment C (entitled Job Description, Adult Group Facilitator/Coach, incorporated into this Agreement in its entirety); Attachment D (entitled Reimbursable Budget – Middle School, incorporated into this Agreement in its entirety); and Attachment E (entitled *Federal Terms and Conditions*, incorporated into this Agreement in its entirety).
2. Use the SABG grant award as pass-through funds for five events at five middle schools chosen by the Cochise County School Superintendent's Office to support the Program.
3. Accept and manage the grant funds provided by GOYFF to the County School Superintendent's Office to host the event(s) based on size of 7th grade enrollment. Event participation maximum capacity is 150 participants. Below are sample event attendance:
 - i. 50 students and 100 parents/caregivers
 - ii. 60 students and 90 parents/caregivers
 - iii. 75 students and 75 parents/caregivers*

*Every student must be accompanied by a parent/caregiver
4. Select and pay a qualified and interested staff person to serve as the Healthy Families Program Coordinator and Data Collection Coordinator (percentage of FTE to be determined by the school). See attached job descriptions in Attachments B and C.
5. Healthy Families Program Coordinator will remain a family resource at the school who can direct students and/or parents throughout the school year to:
 - www.substanceabuse.az.gov
 - Community Coalitions/Non-profit organization available in their area
6. Identify and select an adequate number of school staff to be trained and serve as Healthy Families Facilitators for the event(s). See attached Job Descriptions.
7. Use the Contracted Services line item in the attached reimbursable budget as guidance to provide for a minimum of two Adult Facilitators and two Youth Facilitators.
8. Also use the Contracted Services budget line item to provide funding for Facilitators to participate in the event and attend one-day training for the program in July and August-September 2017.

9. Reference and use the Contracted Services budget line item to provide funding to support the preparation activities and logistics associated with the event by the School Coordinator and Facilitators.
10. Collaborate with ASU-Southwest Interdisciplinary Research Center (SIRC) to conduct all required evaluation activities.
11. Assist the middle schools and the GOYFF with the submission of programmatic reports and program invoices.

IV. REPORTING REQUIREMENTS

The Cochise County School Superintendent's Office shall submit detailed invoices and programmatic reports detailing all services rendered in accordance with this Agreement on a monthly basis. The reporting deadlines are:

- August 10, 2017
- September 10, 2017
- October 10, 2017

Any due dates that occur on a weekend or holiday shall be due on the following business day.

V. MANNER OF FINANCING

The GOYFF shall:

1. Provide no more than \$ \$98,835 (which represents \$19,767 for each of the five selected schools) to the Cochise County School Superintendent's Office, for costs associated with the activities listed in (i) this Agreement; (ii) Attachment A (entitled *Scope of Work*, incorporated into this Agreement in its entirety); (iii) Attachment B (entitled Job Description Youth Facilitator/Leader, incorporated into this Agreement in its entirety); (iv) Attachment C (entitled Job Description Adult Group Facilitator/Coach, incorporated into this Agreement in its entirety); (v) Attachment D (entitled Reimbursable Budget – Middle School, incorporated into this Agreement in its entirety); and (vi) Attachment E (entitled *Federal Terms and Conditions*, incorporated into this Agreement in its entirety).
2. Provide payment upon receipt and GOYFF's approval of the detailed invoices for services performed or goods received.

The Cochise County School Superintendent's Office shall:

1. Use the SABG funds received from GOYFF exclusively to support the activities outlined in (i) this Agreement; (ii) Attachment A (entitled *Scope of Work*, incorporated into this Agreement in its entirety); (iii) Attachment B (entitled Job Description Youth Facilitator/Leader, incorporated into this Agreement in its entirety); (iv) Attachment C (entitled Job Description Adult Group Facilitator/Coach, incorporated into this Agreement in its entirety); (v) Attachment D (entitled Reimbursable Budget – Middle School, incorporated into this Agreement in its entirety); and (vi) Attachment E (entitled *Federal Terms and Conditions*, incorporated into this Agreement in its entirety).
2. Provide Attachment D to each of the five middle schools. Funding variance requests may be submitted to GOYFF, which shall include the submission of a budget change form. Prior written approval from GOYFF for a funding variance is required.
3. Agree that all reimbursement of in-state travel expenses shall be paid only in accordance with the Domestic Per Diem rates allowed under the State of Arizona Travel Policy, and the prevailing State of Arizona standard mileage rates, located at

<https://gao.az.gov/travel/welcome-gao-travel>. There shall be no reimbursement of out-of-state travel expenses.

4. All questions regarding the appropriate use of the SABG funds shall be resolved by mutual written agreement between the Cochise County School Superintendent's Office and the GOYFF.

VI. DOCUMENTS INCORPORATED BY REFERENCE

The State of Arizona's Uniform Terms and Conditions V9_ (Rev 7-1-2013) are incorporated into this document as if fully set forth herein. Copies of the Uniform Terms and Conditions may be accessed at https://spo.az.gov/sites/default/files/documents/files/Uniform%20Terms%20and%20Conditions%20V9_%28Rev%207-1-2013%29.pdf. The Cochise County School Superintendent's Office warrants that it has read and understands the Uniform Terms and Conditions V9_ (Rev 7-1-2013) and agrees to be bound by them in their entirety. In the event of any divergence between this Agreement and the Uniform Terms and Conditions, this Agreement shall control. The Uniform Terms and Conditions are incorporated into this Agreement in their entirety as Attachment F.

VII. NON-AVAILABILITY OF FUNDS

In accordance with A.R.S. § 35-154, every payment obligation of the GOYFF under the Agreement is conditioned upon the availability of funds appropriated or allocated for payment of such obligation. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the GOYFF at the end of the period for which funds are available. No liability shall accrue to GOYFF/Arizona Office of the Governor in the event this provision is exercised, and the GOYFF/Arizona Office of the Governor shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

VIII. INDEMNIFICATION

To the fullest extent permitted by law, the Cochise County School Superintendent's Office shall defend, indemnify, and hold harmless the State of Arizona, GOYFF, the Governor's Office, and all of their departments, agencies, boards, commissions, universities, officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of the Cochise County School Superintendent's Office or any of its owners, officers, directors, agents, employees, contractors, 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 the Cochise County School Superintendent's Office 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 the Cochise County School Superintendent's Office from and against any and all claims. It is agreed that the Cochise County School Superintendent's Office will be responsible for primary loss investigation, defense, and judgment costs where this indemnification is applicable. In consideration of the award of this Agreement, the Cochise County School Superintendent's Office agrees to waive all rights of subrogation against the State of Arizona, GOYFF, the Governor's Office, and all of their officers, officials, agents, and employees for losses arising from the work performed by the Cochise County School Superintendent's Office for the State of Arizona.

IX. INSURANCE

The Cochise County School Superintendent’s Office is a public entity and shall provide a certificate of self-insurance.

X. OTHER

It is agreed that the parties to this Agreement have participated fully in the negotiation and preparation of the Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in interpreting this Agreement. The parties acknowledge they have been advised by counsel, or have had the opportunity to be advised by counsel, in the negotiation and execution of the Agreement.

The parties agree to follow all applicable laws, rules and regulations in the performance of work in furtherance of the Substance Abuse Block Grant initiative and this Agreement.

XI. NOTICES

The Cochise County School Superintendent’s Office shall address all notices relative to this Agreement to:

Nikki Lazarus Green
Program Administrator
Governor’s Office of Youth, Faith and Family
1700 West Washington, Suite 230
Phoenix, Arizona 85007

The GOYFF shall address all notices relative to this Agreement to:

Jacqui Clay
Cochise County School Superintendent
100 Clawson Avenue
P.O. Drawer 208
Bisbee, Arizona 85603

IN WITNESS WHEREOF, the parties hereto agree to execute this Agreement.


**COCHISE COUNTY SCHOOL
SUPERINTENDENT’S OFFICE**

**GOVERNOR’S OFFICE OF YOUTH,
FAITH AND FAMILY**

Jacqui Clay Date
Cochise County
School Superintendent



Samuel Burba Date
Interim Director 7/28/17



Travis Price Date
Compliance Finance and Procurement Manager 7/28/17
Office of the Governor

Scope of Work:

(Insert School name here) will:

1. Accept and manage the grant funds provided by GOYFF to the County School Superintendent's Office to host the event(s) based on size of 7th grade enrollment. Event participation maximum capacity is 150 participants. Below are sample event attendance:
 - i. 50 students and 100 parents/caregivers
 - ii. 60 students and 90 parents/caregivers
 - iii. 75 students and 75 parents/caregivers*
- *Every student must be accompanied by a parent/caregiver
2. Select and pay a qualified and interested staff person to serve as the Healthy Families – Healthy Youth Program Coordinator and Data Collection Coordinator (percentage of FTE to be determined by the school). See attached job descriptions.
 3. Healthy Families – Healthy Youth Program Coordinator will remain a family resource at the school who can direct students and/or parents throughout the school year to:
 - i. www.substanceabuse.az.gov
 - ii. Community Coalitions/Non-profit organization available in their area
 4. Identify and select an adequate number of school staff to be trained and serve as Healthy Families – Healthy Youth Facilitators for the event(s). See attached Job Descriptions.
 - i. Contract Services should be provided for a minimum (2) each; Adult Facilitators and Youth Facilitators.
 5. Contract Services funding may be provided for Facilitators to participate in the event and attend one-day training for the program in July and August-September 2017.
 6. Contract Services funding may also be provided for preparation activities and logistic associated with the event by School Coordinator and Facilitators.
 7. Collaborate with ASU-Southwest Interdisciplinary Research Center (SIRC) to conduct all required evaluation activities.

JOB DESCRIPTION

Youth Facilitator/Leader

Position Description

This position will be responsible for the delivery and facilitation of Healthy Families-Healthy Youth program for youth participating in the program.

The preferred candidate will be 18-30 years of age and/or the ability to connect with youth. The Facilitator will have a working knowledge of prevention principles; experience working with youth, and demonstrate public speaking and facilitation skills needed to convey messages and enlist participation.

Specific Duties

- Complete 8-hour training demonstrate competency in the delivery of the prevention curriculum.
- Assist the school staff in the planning and program set-up activities as directed.
- Deliver prevention education sessions with youth in accordance with the designated curriculum.
- Assist with the Adult Facilitator with youth/parent-caregiver dialogue and completion of the *Keep Them Safe* prevention plan.
- Participate in evaluation activities as directed.

Necessary Skills

- Ability to effectively engage and work with youth
- Ability to lead and motivate large group
- Strong time management skills
- Strong presentation skills
- Strong facilitation skills
- Working knowledge of prevention principles
- Working knowledge of issues related to substance use
- Ability to communicate clearly and concisely
- Ability to be flexible when working with individuals and groups
- Ability to complete projects independently

JOB DESCRIPTION

Adult Group Facilitator/Coach

Position Description

This position will be responsible for the delivery and facilitation of Healthy Families-Healthy Youth program for parents/caregivers. This position will also be responsible for leading in-depth discussion concerning substance use and family prevention strategies.

The preferred candidate will demonstrate strong public speaking skills needed to facilitate group discussion concerning prevention strategies.

Specific Duties

- Complete 8-hour training and demonstrate competency in the facilitation of the prevention curriculum.
- Assist the school staff in the planning and event set-up activities as directed.
- Deliver parent/caregiver prevention education sessions.
- Facilitate youth/parent-caregiver dialogue and *Keep Them Safe* prevention plan.
- Complete program documentation in a timely manner.
- Participate in all evaluation activities as directed.

Necessary Skills

- Strong time management skills
- Ability to lead and motivate large groups
- Knowledge of risk and protective factors
- Ability to effectively engage and work with diverse populations
- Strong presentation skills
- Strong facilitation skills
- Ability to communicate clearly and concisely
- Ability to be flexible when working with individuals and groups
- Ability to complete projects independently

ATTACHMENT D

REIMBURSABLE BUDGET – Middle School

Category	Description	Amount
Personnel/ Contracted Services	School Coordinator .30% @ \$46,000 (\$46,000 x .30% X 3 months = \$3,450.00) Point of contact for the Middle School and oversight for the pilot program. Liaison to the County Superintendent Coordinator.	\$3,450.00
	Data Analysis Coordinator .30% @ \$46,000 (\$46,000 x .30% X 3 months = \$3,450.00) Point of contact for the Middle School and oversight for the financial/programmatic reporting. Liaison to the County Superintendent Coordinator.	\$3,450.00
Fringe/ERE	Employee related expenses are approximately 30% of the salaries including health benefits	\$2,070.00
Contracted Services	Facilitator fees for (1) day training, (1) event. All preparation activities and logistics associated: Adult Facilitators (2) and Youth Facilitators (2). \$1,250/Facilitator = \$750 for training day + \$500 for event night. (1) Youth Facilitator \$500 for event night.	\$5,500.00
Supplies	Program materials –copies, youth folders, pens, pencils, Outreach materials	\$2,000.00
Facilities	Event Costs- Family Dinner 150 attendees @ \$10.00 each	\$1,500.00
	Sub-Total	\$17,970.00
Indirect	10% of Direct Expenses or Federally Approved Indirect Rate	\$1,797.00
	Total Project Costs	\$19,767.00

**ATTACHMENT E
FEDERAL TERMS AND CONDITIONS**

I. KEY PERSONNEL

It is essential that the Cochise County School Superintendent's Office train and provide adequate, experienced personnel, capable of and devoted to the successful accomplishment of projects that may be performed under this Agreement. The Cochise County School Superintendent's Office must agree to assign experienced individuals to project positions.

- A. The Cochise County School Superintendent's Office agrees that, once assigned to work on a project under this Agreement, key personnel should not be removed or replaced without prior written notice to the GOYFF.
- B. If key personnel are not available for work on a specific project, for a continuous period exceeding thirty (30) calendar days, or are expected to devote substantially less effort to the work than initially anticipated, the Cochise County School Superintendent's Office shall immediately notify the GOYFF Program Administrator and shall, subject to the concurrence of the GOYFF, replace such personnel with personnel of substantially equal ability and qualifications.
- C. The Cochise County School Superintendent's Office shall assign specific individuals to the key programmatic and fiscal positions and other changes to key personnel, specifically the Cochise County School Superintendent's Office's SABG Coordinator must be reported on or before the effective date of such change to the GOYFF.

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

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

III. AGREEMENT RENEWAL

The Agreement shall not bind nor purport to bind the GOYFF for any contractual commitment in excess of the original Agreement period or amount. The GOYFF shall have the right, at its sole and unfettered discretion, whether or not to extend this Agreement. If so, the parties must execute a written amendment or a new contract. Consideration for renewal will also be based on results of program and fiscal monitoring.

IV. FUND MANAGEMENT

The Cochise County School Superintendent's Office must maintain funds received under this Agreement in separate ledger accounts and cannot mix these funds with other sources. The Cochise County School Superintendent's Office must manage funds according to applicable federal regulations for administrative requirements, cost principles and audits.

The Cochise County School Superintendent's Office must maintain adequate business systems to comply with federal requirements. The business systems that must be maintained are:

- Financial Management
- Procurement
- Personnel
- Property
- Travel

A system is adequate if it is: 1) written; 2) consistently followed - it applies in all similar circumstances; and 3) consistently applied – it applies to all sources of funds. The GOYFF reserves the right to review all business systems policies.

V. DUNS/CCR

Each successful recipient who is awarded funding must provide the following prior to an Agreement being executed: (a) Dun and Bradstreet Universal Numbering System (DUNS) number for the fiscal agent; and (b) proof of current registration in the Central Contractor Registration (CCR) database. Additionally, CCR registration must be maintained for the term of the Agreement. The DUNS website is located at <http://fedgov.dnb.com/webform>. The CCR registration information may be found at <https://www.sam.gov/portal/public/SAM/>.

VI. FFATA REPORTING REQUIREMENTS

The Cochise County School Superintendent's Office is required to provide certain information pursuant to the Federal Funding Accountability and Transparency Act of 2006 reporting requirements (Pub. L. No. 109-282, as amended by Section 6205 (a) of Pub. L. No. 110-252) "FFATA"). FFATA requires that certain information on federal awards (federal financial assistance and expenditures) be made available to the public via a single, searchable website, which is www.USASpending.gov.

VII. PUBLIC HEALTH LAW

Comply with all Public Health Law at <http://www.samhsa.gov/grants/block-grants/laws-regulations> and Terms and Conditions of Notice of Grant Award including, but not limited, to:

- A. Confidentiality of Alcohol and Drug Patient Records (42 C.F.R. Part 2);
- B. Charitable Choice Provisions; Final Rule (42 C.F.R. Part 54 and 54a);
- C. Substance Abuse Prevention and Treatment Block Grant; Interim Final Rule (45 C.F.R. 96.45, 96.51, and 96.120-121);
- D. Health Omnibus Programs Extension Act of 1988, Subtitle E General Provisions, November 4, 1988 (P.L. 100-607) [.pdf] (42 U.S.C. 300ee-5);
- E. Children's Health Act of 2000 [P.L. 106310], October 17, 2000;
- F. ADAMHA Reorganization Act of 1992 [P.L. 102-321], July 10, 1992; and
- G. Public Health Service Act [includes Title V and Title XIX].

UNIFORM TERMS AND CONDITIONS

Version 9

1. Definition of Terms

As used in this Solicitation and any resulting Contract, the terms listed below are defined as follows:

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

2. Contract Interpretation

- 2.1. Arizona Law. The Arizona law applies to this Contract including, where applicable, the Uniform Commercial Code as adopted by the State of Arizona and the Arizona Procurement Code, Arizona Revised Statutes (A.R.S.) Title 41, Chapter 23, and its implementing rules, Arizona Administrative Code (A.A.C.) Title 2, Chapter 7.

- 2.2. Implied Contract Terms. Each provision of law and any terms required by law to be in this Contract are a part of this Contract as if fully stated in it.
- 2.3. Contract Order of Precedence. In the event of a conflict in the provisions of the Contract, as accepted by the State and as they may be amended, the following shall prevail in the order set forth below:
 - 2.3.1. Special Terms and Conditions;
 - 2.3.2. Uniform Terms and Conditions;
 - 2.3.3. Statement or Scope of Work;
 - 2.3.4. Specifications;
 - 2.3.5. Attachments;
 - 2.3.6. Exhibits;
 - 2.3.7. Documents referenced or included in the Solicitation.
- 2.4. Relationship of Parties. The Contractor under this Contract is an independent Contractor. Neither party to this Contract shall be deemed to be the employee or agent of the other party to the Contract.
- 2.5. Severability. The provisions of this Contract are severable. Any term or condition deemed illegal or invalid shall not affect any other term or condition of the Contract.
- 2.6. No Parole Evidence. This Contract is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms used in this document and no other understanding either oral or in writing shall be binding.
- 2.7. No Waiver. Either party's failure to insist on strict performance of any term or condition of the Contract shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.

3. Contract Administration and Operation

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

- 3.5. Notices. Notices to the Contractor required by this Contract shall be made by the State to the person indicated on the Offer and Acceptance form submitted by the Contractor unless otherwise stated in the Contract. Notices to the State required by the Contract shall be made by the Contractor to the Solicitation Contact Person indicated on the Solicitation cover sheet, unless otherwise stated in the Contract. An authorized Procurement Officer and an authorized Contractor representative may change their respective person to whom notice shall be given by written notice to the other and an amendment to the Contract shall not be necessary.
- 3.6. Advertising, Publishing and Promotion of Contract. The Contractor shall not use, advertise or promote information for commercial benefit concerning this Contract without the prior written approval of the Procurement Officer.
- 3.7. Property of the State. Any materials, including reports, computer programs and other deliverables, created under this Contract are the sole property of the State. The Contractor is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. The Contractor shall not use or release these materials without the prior written consent of the State.
- 3.8. Ownership of Intellectual Property. Any and all intellectual property, including but not limited to copyright, invention, trademark, trade name, service mark, and/or trade secrets created or conceived pursuant to or as a result of this contract and any related subcontract ("Intellectual Property"), shall be work made for hire and the State shall be considered the creator of such Intellectual Property. The agency, department, division, board or commission of the State of Arizona requesting the issuance of this contract shall own (for and on behalf of the State) the entire right, title and interest to the Intellectual Property throughout the world. Contractor shall notify the State, within thirty (30) days, of the creation of any Intellectual Property by it or its subcontractor(s). Contractor, on behalf of itself and any subcontractor(s), agrees to execute any and all document(s) necessary to assure ownership of the Intellectual Property vests in the State and shall take no affirmative actions that might have the effect of vesting all or part of the Intellectual Property in any entity other than the State. The Intellectual Property shall not be disclosed by contractor or its subcontractor(s) to any entity not the State without the express written authorization of the agency, department, division, board or commission of the State of Arizona requesting the issuance of this contract.
- 3.9. Federal Immigration and Nationality Act. The contractor shall comply with all federal, state and local immigration laws and regulations relating to the immigration status of their employees during the term of the contract. Further, the contractor shall flow down this requirement to all subcontractors utilized during the term of the contract. The State shall retain the right to perform random audits of contractor and subcontractor records or to inspect papers of any employee thereof to ensure compliance. Should the State determine that the contractor and/or any subcontractors be found noncompliant, the State may pursue all remedies allowed by law, including, but not limited to; suspension of work, termination of the contract for default and suspension and/or debarment of the contractor.
- 3.10. E-Verify Requirements. In accordance with A.R.S. § 41-4401, Contractor warrants compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with Section A.R.S. § 23-214, Subsection A.
- 3.11. Offshore Performance of Work Prohibited. Any services that are described in the specifications or scope of work that directly serve the State of Arizona or its clients and involve access to secure or sensitive data or personal client data shall be performed within the defined territories of the United States.

Unless specifically stated otherwise in the specifications, this paragraph does not apply to indirect or 'overhead' services, redundant back-up services or services that are incidental to the performance of the contract. This provision applies to work performed by subcontractors at all tiers.

4. Costs and Payments

- 4.1. Payments. Payments shall comply with the requirements of A.R.S. Titles 35 and 41, Net 30 days. Upon receipt and acceptance of goods or services, the Contractor shall submit a complete and accurate invoice for payment from the State within thirty (30) days.
- 4.2. Delivery. Unless stated otherwise in the Contract, all prices shall be F.O.B. Destination and shall include all freight delivery and unloading at the destination.
- 4.3. Applicable Taxes.
 - 4.3.1. Payment of Taxes. The Contractor shall be responsible for paying all applicable taxes.
 - 4.3.2. State and Local Transaction Privilege Taxes. The State of Arizona is subject to all applicable state and local transaction privilege taxes. Transaction privilege taxes apply to the sale and are the responsibility of the seller to remit. Failure to collect such taxes from the buyer does not relieve the seller from its obligation to remit taxes.
 - 4.3.3. Tax Indemnification. Contractor and all subcontractors shall pay all Federal, state and local taxes applicable to its operation and any persons employed by the Contractor. Contractor shall, and require all subcontractors to hold the State harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under Federal, and/or state and local laws and regulations and any other costs including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.
 - 4.3.4. IRS W9 Form. In order to receive payment the Contractor shall have a current I.R.S. W9 Form on file with the State of Arizona, unless not required by law.
- 4.4. Availability of Funds for the Next State fiscal year. Funds may not presently be available for performance under this Contract beyond the current state fiscal year. No legal liability on the part of the State for any payment may arise under this Contract beyond the current state fiscal year until funds are made available for performance of this Contract.
- 4.5. Availability of Funds for the current State fiscal year. Should the State Legislature enter back into session and reduce the appropriations or for any reason and these goods or services are not funded, the State may take any of the following actions:
 - 4.5.1. Accept a decrease in price offered by the contractor;
 - 4.5.2. Cancel the Contract; or
 - 4.5.3. Cancel the contract and re-solicit the requirements.

5. Contract Changes

- 5.1. Amendments. This Contract is issued under the authority of the Procurement Officer who signed this Contract. The Contract may be modified only through a Contract Amendment within the scope of the Contract. Changes to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by a person who is not specifically authorized by the procurement officer in writing or made unilaterally by the Contractor are violations of the Contract and of applicable law.

Such changes, including unauthorized written Contract Amendments shall be void and without effect, and the Contractor shall not be entitled to any claim under this Contract based on those changes.

- 5.2. Subcontracts. The Contractor shall not enter into any Subcontract under this Contract for the performance of this contract without the advance written approval of the Procurement Officer. The Contractor shall clearly list any proposed subcontractors and the subcontractor's proposed responsibilities. The Subcontract shall incorporate by reference the terms and conditions of this Contract.
- 5.3. Assignment and Delegation. The Contractor shall not assign any right nor delegate any duty under this Contract without the prior written approval of the Procurement Officer. The State shall not unreasonably withhold approval.

6. Risk and Liability

- 6.1. Risk of Loss: The Contractor shall bear all loss of conforming material covered under this Contract until received by authorized personnel at the location designated in the purchase order or Contract. Mere receipt does not constitute final acceptance. The risk of loss for nonconforming materials shall remain with the Contractor regardless of receipt.
- 6.2. Indemnification
 - 6.2.1. Contractor/Vendor Indemnification (Not Public Agency) The parties to this contract agree that the State of Arizona, its departments, agencies, boards and commissions shall be indemnified and held harmless by the contractor for the vicarious liability of the State as a result of entering into this contract. However, the parties further agree that the State of Arizona, its departments, agencies, boards and commissions shall be responsible for its own negligence. Each party to this contract is responsible for its own negligence.
 - 6.2.2. Public Agency Language Only Each party (as 'indemnitor') agrees to indemnify, defend, and hold harmless the other party (as 'indemnitee') from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as 'claims') arising out of bodily injury of any person (including death) or property damage but only to the extent that such claims which result in vicarious/derivative liability to the indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the indemnitor, its officers, officials, agents, employees, or volunteers."
- 6.3. Indemnification - Patent and Copyright. The Contractor shall indemnify and hold harmless the State against any liability, including costs and expenses, for infringement of any patent, trademark or copyright arising out of Contract performance or use by the State of materials furnished or work performed under this Contract. The State shall reasonably notify the Contractor of any claim for which it may be liable under this paragraph. If the contractor is insured pursuant to A.R.S. § 41-621 and § 35-154, this section shall not apply.
- 6.4. Force Majeure.
 - 6.4.1 Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes acts of God; acts of the public enemy; war; riots; strikes; mobilization; labor disputes; civil disorders; fire; flood; lockouts; injunctions-intervention-acts; or failures or refusals to act by government authority; and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence.

- 6.4.2. Force Majeure shall not include the following occurrences:
- 6.4.2.1. Late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, or an oversold condition of the market;
 - 6.4.2.2. Late performance by a subcontractor unless the delay arises out of a force majeure occurrence in accordance with this force majeure term and condition; or
 - 6.4.2.3. Inability of either the Contractor or any subcontractor to acquire or maintain any required insurance, bonds, licenses or permits.
- 6.4.3. If either party is delayed at any time in the progress of the work by force majeure, the delayed party shall notify the other party in writing of such delay, as soon as is practicable and no later than the following working day, of the commencement thereof and shall specify the causes of such delay in such notice. Such notice shall be delivered or mailed certified-return receipt and shall make a specific reference to this article, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by Contract Amendment for a period of time equal to the time that results or effects of such delay prevent the delayed party from performing in accordance with this Contract.
- 6.4.4. Any delay or failure in performance by either party hereto shall not constitute default hereunder or give rise to any claim for damages or loss of anticipated profits if, and to the extent that such delay or failure is caused by force majeure.
- 6.5. Third Party Antitrust Violations. The Contractor assigns to the State any claim for overcharges resulting from antitrust violations to the extent that those violations concern materials or services supplied by third parties to the Contractor, toward fulfillment of this Contract.

7. Warranties

- 7.1. Liens. The Contractor warrants that the materials supplied under this Contract are free of liens and shall remain free of liens.
- 7.2. Quality. Unless otherwise modified elsewhere in these terms and conditions, the Contractor warrants that, for one year after acceptance by the State of the materials, they shall be:
- 7.2.1. Of a quality to pass without objection in the trade under the Contract description;
 - 7.2.2. Fit for the intended purposes for which the materials are used;
 - 7.2.3. Within the variations permitted by the Contract and are of even kind, quantity, and quality within each unit and among all units;
 - 7.2.4. Adequately contained, packaged and marked as the Contract may require; and
 - 7.2.5. Conform to the written promises or affirmations of fact made by the Contractor.
- 7.3. Fitness. The Contractor warrants that any material supplied to the State shall fully conform to all requirements of the Contract and all representations of the Contractor, and shall be fit for all purposes and uses required by the Contract.
- 7.4. Inspection/Testing. The warranties set forth in subparagraphs 7.1 through 7.3 of this

paragraph are not affected by inspection or testing of or payment for the materials by the State.

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

8. State's Contractual Remedies

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

- 9.1. Cancellation for Conflict of Interest. Pursuant to A.R.S. § 38-511, the State may cancel this Contract within three (3) years after Contract execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of the State is or becomes at any time while the Contract or an extension of the Contract is in effect an employee of or a consultant to any other party to this Contract with respect to the subject matter of the Contract. The cancellation shall be effective when the Contractor receives written notice of the cancellation unless the notice specifies a later time. If the Contractor is a political subdivision of the State, it may also cancel this Contract as provided in A.R.S. § 38-511.
- 9.2. Gratuities. The State may, by written notice, terminate this Contract, in whole or in part, if the State determines that employment or a Gratuity was offered or made by the Contractor or a representative of the Contractor to any officer or employee of the State for the purpose of influencing the outcome of the procurement or securing the Contract, an amendment to the Contract, or favorable treatment concerning the Contract, including the making of any determination or decision about contract performance. The State, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three times the value of the Gratuity offered by the Contractor.
- 9.3. Suspension or Debarment. The State may, by written notice to the Contractor, immediately terminate this Contract if the State determines that the Contractor has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body. Submittal of an offer or execution of a contract shall attest that the contractor is not currently suspended or debarred. If the contractor becomes suspended or debarred, the contractor shall immediately notify the State.
- 9.4. Termination for Convenience. The State reserves the right to terminate the Contract, in whole or in part at any time when in the best interest of the State, without penalty or recourse. Upon receipt of the written notice, the Contractor shall stop all work, as directed in the notice, notify all subcontractors of the effective date of the termination and minimize all further costs to the State. In the event of termination under this paragraph, all documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the State upon demand. The Contractor shall be entitled to receive just and equitable compensation for work in progress, work completed and materials accepted before the effective date of the termination. The cost principles and procedures provided in A.A.C. R2-7-701 shall apply.
- 9.5. Termination for Default.
- 9.5.1. In addition to the rights reserved in the contract, the State may terminate the Contract in whole or in part due to the failure of the Contractor to comply with any term or condition of the Contract, to acquire and maintain all required insurance policies, bonds, licenses and permits, or to make satisfactory progress in performing the Contract. The Procurement Officer shall provide written notice of the termination and the reasons for it to the Contractor.
- 9.5.2. Upon termination under this paragraph, all goods, materials, documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the State on demand.
- 9.5.3. The State may, upon termination of this Contract, procure, on terms and in the manner that it deems appropriate, materials or services to replace those under

this Contract. The Contractor shall be liable to the State for any excess costs incurred by the State in procuring materials or services in substitution for those due from the Contractor.

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

10. Contract Claims

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

11. Arbitration

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

12. Comments Welcome

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