

## COOPERATIVE PURCHASE CONTRACT

Contract No. 2022-98

This Cooperative Purchase Contract is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by and between the City of Flagstaff, Arizona, a political subdivision of the State of Arizona ("City") and Appraisal Technology, LLC an Arizona Limited Liability Company ("Contractor").

### RECITALS:

- A. Contractor is a fully authorized provider of Real Estate Appraisal Valuation Services;
- B. The State of Arizona, Procurement Department, Public Sector conducted a competitive and open procurement process through Request for Proposal Solicitation No. ADSPO18-00007749 that resulted in Contract No. ADSP018-193523 with Contractor ("Agency Contract"); and
- C. Contractor is an real estate appraisal firm as described in the Agency Contract; and
- D. The City has authority to enter into a cooperative purchase contract with Contractor utilizing the Agency Contract.

### AGREEMENT:

NOW THEREFORE, in consideration for the mutual promises contained herein, the parties agree as follows:

1. Materials and or Services Purchased: Contractor shall provide to City the services, as specified in the Scope of Work or Exhibit A submitted to the City in accordance with the Agency Contract. General description of services being purchased:

**Real Estate Appraisal Services for the  
Milton Road and University Avenue Right of Way Project**

2. Specific Requirements of City: Contractor shall comply with all specific purchase and delivery requirements and/or options of City, as specified in the Scope of Work submitted to the City or Exhibit A attached hereto and incorporated by reference.
3. Payment: Payment to the Contractor for the materials and or services provided for sixty-one thousand five hundred dollars **(\$61,500.00) in addition to other fees and taxes;** made in accordance with the price list and terms set forth in the Agency Contract.
4. Terms and Conditions of Agency Contract Apply: All provisions of the Agency Contract documents, including any amendments, are incorporated in and shall apply to this Contract as though fully set forth herein. The Agency Contract documents are set forth in Exhibit B attached hereto and incorporated by reference. Contractor is responsible for promptly notifying City in writing of any changes to the Agency Contract, including, specifically changes in price for the materials.
5. Certificates of Insurance: All insurance provisions of the Agency Contract shall apply, including any requirement to name the City as an additional insured. Prior to commencing performance

under this Contract, Contractor shall furnish City with a copy of the current Certificate of Insurance required by the Agency Contract.

6. Term: This Cooperative Purchase Contract shall commence upon execution by the parties and shall continue until expiration or termination of the underlying Agency Contract, unless sooner terminated by City in writing.
7. Renewal: This Cooperative Purchase Contract shall be automatically renewed if the underlying Agency Contract is renewed, for the same renewal period, unless City provides advance written notice to Contractor of its intention to non-renew.

Appraisal Technology, LLC, an Arizona Limited Liability Corporation:

By: \_\_\_\_\_

Title: \_\_\_\_\_

CITY OF FLAGSTAFF

By: \_\_\_\_\_

Title: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney's Office

## EXHIBIT A

### Specific Requirements of the City

#### **APPRAISAL SERVICES FOR MILTON ROAD AND UNIVERSITY AVENUE PROJECT**

##### **GENERAL INFORMATION:**

City is requesting a summary appraisal report for each of the affected parcels.

The purpose of the appraisal report is to estimate the fair market value of the property interests and just compensation to be paid for their acquisition.

The report is intended for City use to acquire property interests for the Milton Road and University Avenue Project ("the Project"). Project is funded in part by Arizona Department of Transportation ("ADOT").

No owner relocations will be necessary and/or the Project is not subject to the federal Uniform Relocation Assistance and Real Property Acquisition Act of 1970 ("Relocation Act").

The client and intended user of the appraisals is the City of Flagstaff, an Arizona municipal corporation. Arizona Department of Transportation is a project partner.

The appraisal services will be provided in a single phase.

The City's point of contact (POC) is:

Bryce Doty, Real Estate Manager  
City Hall  
211 W. Aspen Avenue  
City of Flagstaff, Arizona 86001  
928-213-2072  
Bryce.doty@flagstaffaz.gov

##### **PROPERTY INTERESTS TO BE APPRAISED:**

The properties are located in unincorporated Coconino County, Arizona. A map of the Project area is attached as Exhibit 1.

The property interests to be appraised are listed on Exhibit 2.

Property information, legal descriptions, title reports, and environmental assessments for the property interests to be appraised [are hosted on a file sharing site accompanying this statement of work](#).

City shall promptly provide Appraiser with any other additional information required to complete the appraisal services, including but not limited to:

- Engineering designs;
- Assistance in identifying if taking will result in reduction of parking spaces, landscaping or other improvements (Appraiser may request City to provide aerial photographs of showing boundaries of property rights to be acquired superimposed on the parcel);
- Assistance in identifying if taking will result in any nonconforming use (e.g. loss of required setbacks or required parking);
- Assistance in identifying if landscaping is required to be restored per the Project or local zoning, or whether previously landscaped areas razed during construction may be converted to parking.

**EXTRAORDINARY ASSUMPTIONS:**

There are no extraordinary assumptions for this assignment. If the appraiser identifies an issue that may require an extraordinary assumption, the POC shall be notified immediately for specific written approval.

**HYPOTHETICAL CONDITION:**

No hypothetical conditions are allowed without specific written approval from the POC.

**APPRAISAL REPORT REQUIREMENTS:**

Any assignments completed for the City shall be performed in accordance with current federal laws, Arizona Statutes, and Uniform Standards for Professional Appraisal Practice (USPAP)(as defined nationally by the Appraisal Foundation and the Appraisal Standards Board (ASB) and as subsequently adopted in Arizona), as these apply to appraisals in Arizona and/or to federal related projects.

Appraiser shall prepare each appraisal in a narrative format as either an "Appraisal Report" or "Restricted Report" (for client use only) as defined by USPAP.

**EFFECTIVE DATE AND DATE OF REPORT:**

Both the effective valuation date of the appraisal and the date of the report shall be included in the introductory section of the report. The term effective date shall be used to identify the date of value. Date of the report identifies the date the report is written.

**MARKET VALUE:**

The state of Arizona definition of Market Value will apply.

"Fair market value" means the most likely price estimated in terms of money which the land would bring if exposed for sale in the open market, with reasonable time allowed in which to

find a purchaser, buying with knowledge of all uses and purposes to which it is adapted and for which it is capable." (Arizona Revised Statutes § 12-1136 (1))

**EXPOSURE TIME:**

The appraiser shall not link an estimate of value to a specific exposure time. Fair market value presumes that the subject property was on the market for a reasonable length of time prior to the effective date.

**OWNER CONTACT AND PROPERTY VISITATION:**

The appraiser shall contact the owners of each property at least one (1) week prior to the appraisal or their designated representative to obtain permission to inspect the property and offer them the opportunity to accompany the appraiser during the site visit. The appraiser shall make a personal visit to each property. The appraisal report shall state the owner's or designated representative's name, address, telephone number, and the date(s) of contact. The appraiser shall briefly describe the owner's/designee's participation in the site visit and summarize any comments made by the owner/designee regarding the proposed acquisition.

**TEN-YEAR HISTORY OF THE SUBJECT PROPERTY:**

Appraiser shall include the 10-year record of all sales and, if available, any offers to buy or see the subject property. If no sale of the property has occurred in the past 10-years, report the last sale of the property, irrespective of date.

**RENTAL HISTORY:**

When the parcel appraisal problem requires valuation of building improvements, the appraiser shall report the lease history of the property for at least the past three (3) years if possible. All current leases shall be reported including the date, name of tenant, rental amount, term of the lease, and other pertinent lease provisions.

**LEGAL DESCRIPTION:**

The appraiser shall be furnished a legal description of the subject properties. The appraiser should verify the legal description on the ground as the site visit is made and with the owner, if possible. If a significant error is found, the appraiser shall report it to the POC immediately.

**PROPERTY IMPROVEMENTS:**

When the parcel appraisal problem requires valuation of building improvements, the appraiser shall include measurements and photographs of all property improvements including any tenant improvements. Any personal property items shall be identified in the report but not valued. Salvage value of improvements does not need to be valued, as Relocation Act is not applicable.

**APPRAISAL FORMAT:**

The appraisal report shall include an appraiser's signed statement certifying that:

- The statements of fact contained in this report are true and correct; the analyses, opinions, and conclusions are limited only by the reported assumptions, limiting

conditions, and legal instructions, and are the personal, unbiased professional analyses, opinions, and conclusions of the appraiser;

- The appraiser has no present or prospective interest in the property appraised and no personal interest or bias with respect to the parties involved;
- The compensation received by the appraiser for the appraisal is not contingent on the analyses, opinions, or conclusions reached or reported;
- The appraisal was made and the appraisal report prepared in conformity with USPAP.
- The appraiser has made a personal visit to the property appraised and the property owner, or his/her designated representative, was given the opportunity to accompany the appraiser during the site visitation;
- No one provided significant professional assistance to the appraiser. (If professional assistance was provided the appraiser, the name of the individual(s) providing such assistance must be stated and their professional qualifications should be included in the addenda of the appraisal report. This requirement includes both professional appraisal assistance and providers of subsidiary assistance, e.g., planning and permitting consultants, engineers, cost estimators, marketing consultant.)

The appraiser may also add to their certification certain items that may be required by law, USPAP, and the appraiser's professional organization. Non-pertinent items shall not be included.

### **APPRAISER'S CERTIFICATION:**

The appraisal report shall include an appraiser's signed statement certifying that:

- The statements of fact contained in this report are true and correct; the analyses, opinions, and conclusions are limited only by the reported assumptions, limiting conditions, and legal instructions, and are the personal, unbiased professional analyses, opinions, and conclusions of the appraiser;
- The appraiser has no present or prospective interest in the property appraised and no personal interest or bias with respect to the parties involved;
- The compensation received by the appraiser for the appraisal is not contingent on the analyses, opinions, or conclusions reached or reported;
- The appraisal was made and the appraisal report prepared in USPAP;
- The appraiser has made a personal visit to the property appraised and the property owner, or his/her designated representative, was given the opportunity to accompany the appraiser during the site visitation;
- No one provided significant professional assistance to the appraiser. (If professional assistance was provided the appraiser, the name of the individual(s) providing such assistance must be stated and their professional qualifications should be included in the addenda of the appraisal report. This requirement includes both professional appraisal assistance and providers of subsidiary assistance, e.g., planning and permitting consultants, engineers, cost estimators, marketing consultant.)

The appraiser may also add to their certification certain items that may be required by law, USPAP, and the appraiser's professional organization. Non-pertinent items shall not be included.

### **PHOTOGRAPHS AND MAPS:**

The appraiser shall include photos of all major improvements, any unusual or unique features on the subject properties. Each photo should be numbered and show the identification of the property, the date taken, the name of the person taking the photo, and the direction of the camera lens.

The appraiser should be aware that if the City of Flagstaff is unable to voluntarily acquire the property interests, the land may be substantially altered and improvements demolished prior to a final decision in a condemnation trial. Photos are important in documentation of the condition of the subject property as of the effective date of the appraisal.

Photos of each comparable sale are also required and each photo shall include the date taken and the name of the person taking the photo.

Maps should be legible and show directional orientation. The locations of the comparable sales and the subject property should be shown on the same maps so that the reader of the report can understand the relative proximity.

### **COMPARABLE SALES:**

Documentation of each comparable sale shall include the name of the buyer and seller, date of the sale, type of sale instrument, document recording information, sale price, terms of the sale, location, zoning, present use, high and best use, and a brief physical description of the property. A plot plan or sketch shall also be included. Inclusion of transfer document (deed or contract) is not required or desirable unless it is unusual. The contracted appraiser shall personally visit each comparable used in the analysis.

### **ENVIRONMENTAL ISSUES:**

The subject properties are to be appraised "as is" as of the effective date of the appraisal. Inclusion of the assumption that the property is free of contamination from hazardous substances when there is evidence by past use of the property or by the appraiser's site visit that the property may, in fact, be contaminated is not acceptable.

### **APPRAISER QUALIFICATIONS AND STATE CERTIFICATION:**

The appraiser selected must be licensed in the State of Arizona as a General Certified Real Estate Appraiser. The appraiser must also have the knowledge and experience to complete the assignment competently as required by the USPAP Competency Rule.

### **COPIES OF APPRAISAL REPORT:**

The appraiser shall submit a signed electronic file version for the property appraised.

### **DUE DATE AND ACCEPTANCE OF REPORTS:**

Draft appraisals shall be due 75 to 90 days after the Notice to Proceed is issued by the City. The appraisal reports will be reviewed by the City for compliance with the terms of this Statement of Work. Findings of inadequacy, if any will require clarification and/or correction.

Final appraisals shall be due within 30 days after City submittal of written comments on the draft appraisals to appraiser.

**CONFIDENTIALITY:**

The appraiser's valuations and appraisal reports are considered confidential information and the appraiser should not divulge his findings and opinions to anyone except to the client.

**PRICING:**

See attached Letter from Appraisal Technologies, Exhibit 3.

**ATTACHMENTS:**

Exhibit 1      Map of Project Area

Exhibit 2      Easement Forms

Exhibit 3      Letter from Appraisal Technologies



Exhibit 2

Beulah and University Property Rights

ID	APN	Type of Easement	SqFt	Owner
BU-01	103-32-008A	ROW		BRE/LQ PROPERTIES LLC
BU-02	103-32-008A	FILL SLOPE		BRE/LQ PROPERTIES LLC
BU-03	103-32-008A	TCE		BRE/LQ PROPERTIES LLC
BU-04	103-32-002B	ROW OR SIDEWALK		HSUAN PARTNERSHIP
BU-05	103-32-002B	TCE		HSUAN PARTNERSHIP
BU-06	103-32-001	ROW OR SIDEWALK		FLAGSTAFF HOTEL GROUPE LLC
BU-07	103-32-001	TCE		FLAGSTAFF HOTEL GROUPE LLC
BU-08	103-32-001	PUE		FLAGSTAFF HOTEL GROUPE LLC
BU-09	112-24-016	DRAINAGE EASEMENT	558	WOODLAND VILLAGE APARTMENTS
BU-10	112-24-016	ROW	11,178	WOODLAND VILLAGE APARTMENTS
BU-11	112-24-019	TCE		HAVEN FLAGSTAFF REAL ESTATE LLC
BU-12	103-21-026	FILL SLOPE		VP CINEMA LLC
BU-13	103-21-026 NORTH	FILL SLOPE		VP CINEMA LLC
BU-14	103-21-026	DRAINAGE EASEMENT	492	VP CINEMA LLC
BU-15	103-21-026	TCE		VP CINEMA LLC
BU-16	103-21-026	ROW/BUS EASEMENT		VP CINEMA LLC
BU-17	103-21-26	Sidewalk Easement		VP CINEMA LLC
BU-18	103-21-024	TCE		VP CINEMA LLC
BU-19	103-21-024	FILL SLOPE		VP CINEMA LLC
BU-20	103-21-024	ROW/BUS EASEMENT		VP CINEMA LLC
BU-21	103-21-024	SIDEWALK EASEMENT		VP CINEMA LLC
BU-22	103-20-059D	ROW		UNIVERSITY SQUARE APARTMENTS
BU-23	103-20-059D	TCE		UNIVERSITY SQUARE APARTMENTS
BU-24	103-20-059D	FILL SLOPE		UNIVERSITY SQUARE APARTMENTS
BU-25	103-21-025	PUE	2,293	VP CINEMA LLC
BU-26	103-21-025	TCE		VP CINEMA LLC
BU-27	103-21-025	SIDEWALK		VP CINEMA LLC
BU-28	103-21-25	ROW TO BE COMBINED WITH 103-21-025	16,341	COF
BU-29	103-21-027	TCE		VP CINEMA LLC
BU-30	103-21-027	SIDEWALK EASEMENT		VP CINEMA LLC
BU-31	103-21-021C	TCE		WESTSIDE PROPERTY LLC
BU-32	103-21-003	FILL SLOPE		ELDEN PROPERTIES LLC
BU-33	103-21-003	TCE		ELDEN PROPERTIES LLC
BU-34	103-21-004	FILL SLOPE		ELDEN PROPERTIES LLC
BU-35	103-21-005	FILL SLOPE		ELDEN PROPERTIES LLC
BU-36	103-22-004D	ROW OR SIDEWALK		1372 PINE STREET ASSOCIATES LTD
BU-37	103-22-004D	TCE		1372 PINE STREET ASSOCIATES LTD
BU-38	103-22-005A	ROW	11,905	CONSOLIDATED INVESTMENT CO INC
BU-39	103-22-005A	ROW (ped underpass)	3,417	CONSOLIDATED INVESTMENT CO INC
BU-40	103-22-005A	PUE	6,885	CONSOLIDATED INVESTMENT CO INC
BU-41	103-22-005A	SIDEWALK Milton		CONSOLIDATED INVESTMENT CO INC
BU-42	103-22-005A	Bus stop Milton		CONSOLIDATED INVESTMENT CO INC
BU-43	103-22-005A	SIDEWALK UNIVERSITY		CONSOLIDATED INVESTMENT CO INC
BU-44	103-22-005A	TCE		CONSOLIDATED INVESTMENT CO INC
BU-45	103-21-021B	SIDEWALK	1,342	BURGER KING CORPORATION 1765
BU-46	103-21-021B	TCE		BURGER KING CORPORATION 1765
BU-47	103-21-021B	PUE	84	BURGER KING CORPORATION 1765
BU-48		ROW FROM COF TO ADOT MILTON WEST	2,927	COF
BU-49	103-22-003A	ROW NAU TO ADOT	1,547	UNIVERSITY
BU-50		ROW FROM COF TO ADOT		COF



# APPRAISAL TECHNOLOGY, LLC.

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February 2, 2022

Mr. Bryce Doty  
Real Estate Manager  
City of Flagstaff  
211 West Aspen Avenue  
Flagstaff, Arizona 86001

Re: Appraisal proposal – Milton Road and University Avenue Right of Way project, Flagstaff, AZ

Dear Mr. Doty:

As you have requested, I have made the following proposal for the appraisal of the properties shown on the proceeding page. The appraisals will include the Market Value of the partial acquisition and its impact on the remainder associated with each of the aforementioned properties. We will deliver an electronic PDF of the completed report and three (3) hard copies if desired.

We anticipate delivery to be 75-90 days from receipt of legal descriptions. The delivery date is based upon authorization within 3 weeks of the date of this letter. If approval requires additional time, the delivery date and/or fee may have to be adjusted for changes in the appraiser's schedule. This fee quote is valid for 30 days.

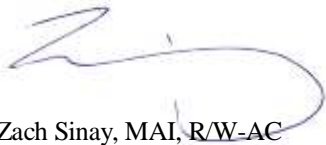
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<b>Appraisal Report Format:</b>	Appraisal Report for a real property appraisal (Standards Rule 2-2(a))
<b>Intended Use of the Report:</b>	Eminent Domain/Partial Acquisition
<b>Delivery Date:</b>	75-90 Days
<b>Fee:</b>	\$61,500 (This fee is good for 30 days from date of quote)
<b>Property Description:</b>	Varying properties
<b>Property Location:</b>	Generally located at Milton Road and University Avenue; Parcel numbers of each property and associated fee is as follows:

<b>Beulah and University Property Owner Tracking</b>			
<b>ID</b>	<b>APN</b>	<b>Owner</b>	<b>Fee</b>
BU-01	103-32-008A	BRE/LQ PROPERTIES LLC	\$3,000
BU-02	103-32-008A		
BU-03	103-32-008A		
BU-04	103-32-002B	HSUAN PARTNERSHIP	\$3,000
BU-05	103-32-002B		
BU-06	103-32-001	FLAGSTAFF HOTEL GROUUP LLC	\$3,000
BU-07	103-32-001		
BU-08	103-32-001		
BU-09	112-24-016	WOODLAND VILLAGE APARTMENTS	\$3,750
BU-10	112-24-016		
BU-11	112-24-019	HAVEN FLAGSTAFF REAL ESTATE LLC	\$3,250
BU-12	103-21-026	VP CINEMA LLC	\$3,500
BU-13	103-21-026 NORTH		
BU-14	103-21-026		
BU-15	103-21-026		
BU-16	103-21-026		
BU-17	103-21-26	VP CINEMA LLC	\$3,500
BU-18	103-21-024		
BU-19	103-21-024		
BU-20	103-21-024		
BU-21	103-21-024	UNIVERSITY SQUARE APARTMENTS	\$3,000
BU-22	103-20-059D		
BU-23	103-20-059D		
BU-24	103-20-059D	VP CINEMA LLC	\$3,500
BU-25	103-21-025		
BU-26	103-21-025		
BU-27	103-21-025		
BU-28	103-21-25	Not A Part	
BU-29	103-21-027	VP CINEMA LLC	\$3,750
BU-30	103-21-027		
BU-31	103-21-021C	WESTSIDE PROPERTY LLC	\$3,500
BU-32	103-21-003	ELDEN PROPERTIES LLC	\$3,000
BU-33	103-21-003		
BU-34	103-21-004	ELDEN PROPERTIES LLC	\$3,000
BU-35	103-21-005	ELDEN PROPERTIES LLC	\$3,000
BU-36	103-22-004D	1372 PINE STREET ASSOCIATES LTD	\$3,500
BU-37	103-22-004D		
BU-38	103-22-005A	CONSOLIDATED INVESTMENT CO INC	\$8,750
BU-39	103-22-005A		
BU-40	103-22-005A		
BU-41	103-22-005A		
BU-42	103-22-005A		
BU-43	103-22-005A		
BU-44	103-22-005A		
BU-45	103-21-021B	BURGER KING CORPORATION 1765	\$3,500
BU-46	103-21-021B		
BU-47	103-21-021B		
BU-48		Not A Part	
BU-49	103-22-003A	Not A Part	
BU-50		Not A Part	
	TOTAL		\$61,500

If these terms are acceptable, please sign and return a copy of this letter as authorization to proceed. I look forward to being of service to you in connection with this assignment. If you have any questions or desire any additional information, please contact Zach Sinay at [zsinay@atiaz.com](mailto:zsinay@atiaz.com) or (480) 285-3868.

Respectfully submitted,



Zach Sinay, MAI, R/W-AC  
Certified General Real Estate Appraiser No. 31199

Accepted and Approved this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

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NAME - OWNER / AGENT / CORPORATE OFFICER

**EXHIBIT B**  
**AGENCY CONTRACT**

1. January 8, 2018 Agency Contract Award Request for Proposal Solicitation No. ADSPO18-00007749
2. Contract Extension to January 28, 2022
3. Contract Extension to January 28, 2023

Exhibit 1

Attachment 1  
Offer and Acceptance Form

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

Initial Offer:	1.	11/30/2017							
		date	initial						
Revised Offers:	2.			3.			4.		
		date #1	initial	date #1	initial	date #1	initial	date #1	initial
	5.			6.			7.		
		date #4	initial	date #5	initial	date #6	initial	date #6	initial
Best and Final Offer:	8.								
		date	initial						

**Appraisal Technology, LLC**

Offeror company name  
220 South River Drive  
Address  
Tempe, AZ 85281  
City | State | ZIP  
81-4908542  
Federal tax identifier (EIN or SSN)


  
Signature of person authorized to sign Offer Initials  
Jeff W. Windle, Managing Member  
Printed name and title  
Jeff W. Windle, MAI  
Contact name and title  
jwindle@atiaz.com 480-285-3864  
Contact Email Address Contact phone number

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

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

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

State's Contract No. is: ADSP018-193523      The effective date of the Contract is: 1-29-18      Contract awarded 1-8-18

  
Procurement Officer signature

Rocky Advani  
Procurement Officer printed name

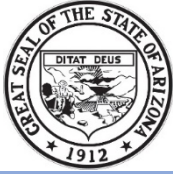
PART 3 of the Solicitation Documents

SECTION 3-B: Offer Forms  
Date: Error! Reference source not found.

Template version 2.0 (dd-mmm-2017)

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Available online at: [Procure.AZ.gov](http://Procure.AZ.gov)



Request for Proposals  
 Solicitation No.  
 ADSPO18-00007749  
 Description:  
 Real Estate Appraisal Valuation Services

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

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

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**Request for Proposals**  
Solicitation No.  
**ADSP018-00007749**  
Description:  
**Real Estate Appraisal Valuation Services**

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

## SECTION 2-A: Scope of Work

### 1. STATEMENT OF NEED

The State of Arizona (hereinafter referred to as the State), is seeking to establish a comprehensive statewide term contract for Appraisal Services for Commercial and Residential real property; Appraisal Review Services for Residential and Commercial real property, and Consulting Services for Residential and Commercial Real Property. Any contract resulting from this Request for Proposal shall become a statewide contract for use by all State agencies, counties, municipalities, school districts, and other political subdivisions, herein after referred to as Using Entity.

To ensure statewide coverage, it is the State's intent to award multiple contracts to establish a pool of appraisers, appraisal reviewers and real estate consultants (hereafter referred to as Vendors). The selection of Vendors from the pool to provide these services for an assignment will be determined by the Using Entity.

The Using Entity makes no guarantee as to the amount of work that will be available to any given Vendor during the term of this contract.

### 2. DEFINITIONS

Arizona Certified General Appraiser/Review Appraiser: this classification applies to the appraisal or appraisal review of all types of real property both commercial and residential.

Real Estate Consultant: any responsible and/or certified person (with proven experience and/or schooling) that provides consultation services, feasibility studies, marketability studies, and other real estate related studies.

### 3. SCOPE OF WORK

Vendors shall provide services in any or all of the following three categories: 1) General Real Property (commercial) Appraisal Services; 2) Appraisal Review Services; and, 3) Real Estate Consulting Services. Vendors shall have the competency, training, education, qualifications and the required certification and licensing (if applicable) in the services they will provide. Vendors shall not be approved to provide both appraisal and appraisal review services on the same project.

**Category 1:** General Real Property (Commercial) Appraisal Services - includes the valuation of commercial real property in conformance with the Uniform Standards of Professional Appraisal Practice



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(USPAP) and conformance with the Using Entity Appraisal guidelines. Commercial real property is identified as commercial land and/or improvements as well as residential land and/or improvements. Vendors in this category are also permitted to appraise residential property. Valuation may include the valuation of easements, rights-of-way, undivided or future interests, or similar rights in a tract of land.

May include fractional ownership interests including minerals, timber, growing crops, fixtures, or similar interests severable from the land.

May includes before and after valuations, if the appraisal assignment involves a partial acquisition. Partial acquisition will require analysis of severance damages, cost-to-cure, and/or special benefits.

**Category 2:** Appraisal Review Services - includes the review of commercial appraisals for the appropriateness and reasonableness of the conclusions; conformance with the Uniform Standards of Professional Appraisal Practice (USPAP), and conformance with the Using Entity Appraisal Guidelines.

The reviewer will provide a written review (written to USPAP and Using Entity Guidelines) outlining the appropriateness of the appraisal report in meeting appraisal standards, any areas of disagreement that the reviewer could not resolve with the appraiser but that do not ultimately affect the final value conclusion and/or the reviewer's revised opinion of value if the reviewer is unable to concur with the appraised value. Notably, any opinion of value rendered by a reviewer must conform to USPAP and Using Entity Appraisal Guidelines.

**Category 3:** Real Estate Consulting Services - includes consulting services in conjunction with one or more of the following task areas: Real Estate Marketability Studies; Real Estate Highest and Best Use Studies; Real Estate Feasibility Studies; Market Rent Studies; Planning and Zoning Studies, and Research specific to the needs of the Using Entity.

**All Categories:** General Real Property (Commercial) Appraisal Services, Appraisal Review Services, and Real Estate Consulting Services:

- a. The type, extent and duration of services provided by the Vendor, and project cost(s) shall be established between the Using Entity and the Vendor prior to the provision of services.
- b. The Vendor will be contacted when the Using Entity determines a need for the services. When services are requested, the Vendor shall prepare a bid indicating the proposed services and fee as directed by the Using Entity. The Using Entity may authorize the Vendor to proceed with the task by issuance of a purchase order. The Vendor may not proceed with any task, until written authorization is provided by the Using Entity.
- c. Task Assignment changes defining and limiting the work and compensation must be authorized in writing by the Using Entity in advance.



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d. The Vendor shall not bid on appraisal, review or consulting assignments when the Vendor is the owner of the subject of the appraisal, review or consultation. Further, the Vendor shall not later agree to represent a property owner located within any particular project where the Vendor has provided appraisal services unless given express authorization and permission from the Using Entity.

e. The Vendor covenants that no public or private interest exists and none shall be acquired directly or indirectly which would conflict in any manner with the performance of the Vendor's contract.

#### **4. MINIMUM QUALIFICATIONS**

All Vendors providing services in any of the three categories shall have the proper competency, training, education, qualifications, relevant experience, knowledge, and applicable certifications, which qualify the individual(s) to successfully provide the required services described herein, in accordance with the USPAP and Using Entity's Guidelines.

Vendors in Category 1 must possess a current Arizona Certified General Real Estate Appraiser Certificate and at least 5-years of commercial appraisal experience with verifiable experience appraising vacant residential and commercial land and improvements. Experience in the valuation of rights-of-way and easements, as well as experience in condemnation appraising are also positives but not requirements.

Vendors in Category 2 must possess a current Arizona Certified General Real Estate Appraiser certificate along with experience in reviewing commercial appraisals.

Vendors in Category 3 must have verifiable experience in one or more of the following task areas: Real Estate Marketability, Real Estate Feasibility studies, Real Estate Rental Studies; Planning and Zoning Studies; and, Research specific to the needs of the Using Entity.

#### **5. VENDOR RESPONSIBILITIES**

IF AWARDED, THE VENDOR SHALL COMMUNICATE VIA PHONE, EMAIL, OR LETTER WITH THE USING ENTITY TO OBTAIN SPECIFIC ASSIGNMENT REQUIREMENTS, GUIDELINES, POLICIES AND PROCEDURES.

Any assignments completed for the Using Entity shall be performed in accordance with current Federal laws, Arizona Statutes, and USPAP (as defined nationally by the Appraisal Foundation and the Appraisal Standards Board (ASB) and as subsequently adopted in Arizona), as these apply to appraisals in Arizona and/or to Federal related projects.

The Vendor shall prepare each appraisal in a narrative format as either an "Appraisal Report" or "Restricted Report" as defined by USPAP as requested by the Using Entity. Typically, the Using Entity will determine the appraisal type. Appraisal Reviews will also be completed per USPAP in a narrative format. Typically, the Using Entity will provide a proper review format for the Vendor's use. Vendors providing consulting services will determine the proper report format with the Using Entity at the time of the assignment. The content of each appraisal report must be consistent with the intended use. Changes to the review report format or content shall require approval by the Using Entity. The Using



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Entity shall establish the report format and number of reports required, for appraisals, appraisal review and consulting, and shall have final approval for the report content and submission deadline for draft and final reports.

Electronic files (in PDF format) for drafts and final reports will be required. Hard copy reports are no longer required unless specifically requested by the Using Entity.

Deliver the report to the Using Entity on the date and time mutually agreed upon. Failure to deliver the report on the agreed upon due date shall result in the assessment of liquidated damages as reimbursement for the administrative costs of the delay in the amount of \$300.00 per report for each business day beyond the due date, excluding state holidays. If a Vendor cannot deliver the report to the Using Entity in the agreed upon time, the Vendor must submit in writing (email is adequate) a request for extension to the Using Entity Representative and must receive a confirmation that the extension has been granted.

Correct any errors and/or furnish any omitted required documentation as determined by the Using Entity or its authorized representative at no additional cost to the Using Entity within five (5) business days of notification. Failure to deliver corrected documentation within the time frame shall result in the assessment of liquidated damages as reimbursement for the Using Entity's administrative costs of the delay in the amount of \$300.00 per report for each business day beyond the due date, excluding state holidays.

**6. USING ENTITY RESPONSIBILITIES**

THE USING ENTITY SHALL PROVIDE THE VENDOR WITH SPECIFIC ASSIGNMENTS, REQUIREMENTS AND APPLICABLE POLICIES AND PROCEDURES.

In accordance with the Using Entity's Guidelines, Policies and Procedures, the Using Entity of this contract shall provide or make available the following, if applicable and if available:

Parcel maps, right-of-way plans, engineering reports, ALTA Surveys, Title Reports, Environmental Site Assessments, Soils Reports, Jurisdictional Wash Determinations, Zoning Documents, Site Plans, Architectural Plans, and all pertinent documents and information contained in the Using Entity's files.

Specific directives for the Vendor work as required, as well as legal guidance and/or interpretation pertaining to right-of-way assignments.

Written description of the services required, due date for submission of the draft appraisal and written authorization to proceed with specified work.



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## 7. VENDOR SELECTION AND ASSIGNMENTS

The Using Entity makes no guarantee as to the amount of work to be assigned to any Vendor and may exercise its option not to utilize the services requested herein.

The Using Entity is under no financial obligation to any selected Vendor unless the Using Entity issues a Purchase Order for a specific assignment.

To the extent possible, a pool of Vendors will be contacted on a rotation basis. However, it may be in the Using Entity's best interest to contact only one pool Vendor or to contact specific pool Vendors without regard to a rotation.

Each Vendor contacted will have the opportunity to indicate their availability and prepare a proposed inclusive fixed fee for the work assignment. This will commonly be completed via email. If subcontract work or specialized service is required for the assignment, the Vendor must identify such cost separately. If additional subcontracting work or specialized service is required after the award of the assignment, the Vendor must obtain prior approval from the Using Entity prior to subcontracting.

A Vendor shall not submit a bid for any assignment within any particular project where the Vendor had any implied or expressed personal and/or business relationship with a property owner, buyer, or seller. Further, the Vendor shall not later agree to represent a property owner located within any particular project where the Vendor has provided appraisal services to the Using Entity without written permission from the Using Entity.

The Using Entity will select the Vendor who best addresses the Using Entity's requirements. If the Using Entity cannot reach an agreement with the selected Vendor, the Using Entity may select another Vendor from the pool. The Using Entity reserves the right to rebid the work assignment as needed. Selection of a Vendor to perform an assignment shall not be made solely on the basis of price, though price will be a major consideration. Other considerations include, but are not limited to: geographic competency; property type; Vendor specializations; turnaround time; Vendor's turn in the rotation; etc.

## EXHIBITS TO THE SCOPE DOCUMENT

**No Exhibits apply to the Scope of Work.**

End of Section 2-A



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## SECTION 2-B: Pricing Document

### 1.0 Compensation

- 1.1 **FIXED-PRICE.** Through the bidding process, a fixed price is determined. This fixed price encompasses all of the contractor's costs for the scope of work and represents the total compensation to the contractor
- 1.2 **CONTRACTED LABOR RATES.**

### 2.0 Reserved

- 2.1 **COST-REIMBURSEMENT.**  
Reserved

### 3.0 Pricing

- 3.1 **FIXED-PRICE.** Through the bidding process, a fixed price is determined. This fixed price encompasses all the contractor's costs for the scope of work and represents the total compensation to the contractor
- 3.2 **UPCHARGES.** When required this will be handled on a case by case basis

### 4.0 Funding

No particular funding considerations apart from paragraph 4.3 of the Uniform Terms and Conditions [Availability of Funds] have been identified as of the Solicitation date.

### 5.0 Invoicing

- 5.1 **INVOICES GO TO BUYING ENTITY.** Contractor shall submit all billing notices or invoices to the ordering Eligible Agency or Co-Op Buyer at the address indicated on the applicable Order document.
- 5.2 **MINIMUM INVOICE REQUIREMENTS.** Every invoice must include the following information:

Item	Required
Bill-to name and address	●
Contractor name and contact information	●
Remit-to address	●
State contract number	●
Order number (typically the ProcureAZ PO #)	●
Invoice number and date	●
Date the items shipped or services performed	●
Applicable payment terms	●
Contract line item number	●



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Contract line item description	●
Quantity delivered or performed	●
Line item unit of measure	●
Item price	●
Extended pricing	●
Total invoice amount due	●

- 5.3 NO INVOICE WITHOUT AUTHORIZATION. Contractor shall not seek payment for any:
1. Services that have not been authorized.

## 6.0 Payments

- 6.1 PAYMENT. The applicable Eligible Agency or Co-Op Buyer shall pay undisputed amounts due to Contractor within the time period specified in Article 4 of the Uniform Terms and Conditions
- 6.2 JOINT CHECKS OR DIRECT PAY. 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.
- 6.3 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.
- 6.4 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.
- 6.5 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 (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>

## 7.0 Exhibits to the Pricing Document

None

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.

### MODIFIED or ADDED Provision

APPEND the following to the referenced paragraph:

**3.14 Orders**

**3.14-S1** USE OF THE CONTRACT. The Contract is to be used as follows (indicated by the “●” mark):

- The Contract is a “statewide” contract for multiple purchases, projects, or assignments, and can be purchased against by some or all Eligible Agencies and any Co-Op Buyers that elect to participate. Even if only one Eligible Agency needs or elects to purchase against the Contract, it is to be construed as being a “statewide” contract hereunder.  
  
The Contract is an indefinite delivery, indefinite quantity (ID/IQ) type of contract; it is to be construed as a “delivery order” sub-type of ID/IQ contract to the extent the Work is Materials, and a “task order” sub-type to the extent the Work is Services ([Subpart 16.5 of the Federal Acquisition Regulation](#) provides reference explanations).

### MODIFIED or ADDED Provision

APPEND the following to the referenced paragraph:

**3.14 Orders, continued**

**3.14-S2** ORDERING METHODS. Unless a particular ordering method is specified in the Commercial Document, Contractor shall receive Orders by the methods indicated by an “●” mark below.

3.14-S2(a) The choice of method in each instance will be at the discretion of each Eligible Agency or Co-Op Buyer if more than one method applies to the Contract.

3.14-S2(b) Contractor shall bear the responsibility for and costs of set-up, maintenance, and support for the indicated methods; The Eligible Agency or Co-Op Buyer will not be liable for any separate set-up, service or system maintenance charges on top of the contractual item prices unless expressly stated otherwise in the Commercial Document.

- Online through ProcureAZ by “releasing” established Contract “Items.”



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**MODIFIED or ADDED Provision**

APPEND the following to the referenced paragraph:

**3.14 Orders, continued**

**3.14-S3 EXCLUSIVITY.** Exclusivity of scope or location applies as indicated by the “●” mark below:

●	The Contract has been awarded with the understanding and agreement that it is for the sole convenience of State, and State reserves the right to obtain like materials or services from another source when necessary without penalty or obligation.
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**MODIFIED or ADDED Provision**

APPEND the following to the referenced paragraph:

**3.15 Statewide Contract Provisions**

**3.15-S1** The administrative fee under subparagraph 3.15(3) is **one (1%) percent** against all sales to Co-Op Buyers under the Contract.

**MODIFIED or ADDED Provision**

APPEND the following to the referenced paragraph:

**6.2 Insurance**

**6.2-S1** Contractor shall provide the insurance specified in Exhibit 1 to these Special Terms and Conditions for each “Insurance Package” (Tables A-E) and “Add-On” (Table F) indicated by a “●” mark in the table below.

**6.2-S2** Subcontractors shall provide insurance equivalent to what is required from Contractor at **100% (one hundred percent)** of Contractor’s required minimums for all coverages other than Damage to Rented Premises, which is unchanged if that coverage applies to the Contract.

**EXHIBITS to the Special Terms and Conditions**

Exhibits 1, 2, and 3 apply as described above. The other Exhibits (if any are listed) apply to those portions of the Work the Exhibit covers. For example, an Exhibit providing supplemental provisions for federal work applies to any portions of the Work that are federally-funded, and an Exhibit providing supplemental provisions for privacy protection applies to any portions of the Work that involve handling of protected or private information.

■ **Exhibit 1..... Contractor Insurance Requirements**



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**NOTE:** The completed [Attachment 3-D \[Performance Guarantee\]](#) from Accepted Offer will become Exhibit 2 to the Special Terms and Conditions – accordingly, there is no “Exhibit 2” document included as part of the Solicitation.

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- **Exhibit 2**..... Not used – number reserved
- **Exhibit 3**..... Not used – number reserved
- **Exhibit 4**..... Not used – number reserved
- **Exhibit 5**..... Not used – number reserved
- **Exhibit 6**..... Not used – number reserved

End of Section 2-B



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

*Version: 11.3 (7/21/2016)*

**1.0 Definition of Terms**

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

- 1.1 Acceptance**                                 "Acceptance" means the document headed "Offer and Acceptance Form" bearing the State contract number once Procurement Officer has signed it to signify (1) State's formal acceptance of the Accepted Offer and (2) the formation of the Contract. For clarity of intent, the foregoing is not to be confused with the term "acceptance" used throughout the Contract in the context of delivery, inspection, etc., with respect to Materials or Services.
  
- 1.2 Accepted Offer**                           If State did not request a Revised Offer, then "Accepted Offer" means the Initial Offer.  
 If State did request a Revised Offer but not a Best and Final Offer, then "Accepted Offer" means the latest Revised Offer.  
 If State requested a Best and Final Offer, then "Accepted Offer" means the Best and Final Offer.
  
- 1.3 Arizona Procurement Code; A.R.S.; A.A.C.**         "Arizona Procurement Code, "A.R.S.," and "A.A.C." are each defined in the Instructions to Offerors.
  
- 1.4 Arizona TPT**                               "Arizona TPT" means Arizona Transaction Privilege Tax. For information, refer to the Arizona Department of Revenue (DOR) website at:  
<https://www.azdor.gov/business/transactionprivilegetax.aspx>.
  
- 1.5 Attachment**                               "Attachment" means any item that:
  - 1. the Solicitation required Offeror to submit as part of the relevant Offer (e.g., Initial Offer, Revised Offer, or BAFO);
  - 2. was attached to an Offer when submitted; and
  - 3. was included in the Accepted Offer.
  
- 1.6 Building Work**                           "Building Work" means everything covered by the definitions in A.R.S. § 41-2503 [*Definitions*] of the terms "construction" (para. 4), "maintenance services" (para. 26), and "operations services" (para. 28).
  
- 1.7 Commercial Document**               "Commercial Document" means Section 2-B of Part 2 of the Solicitation Documents, provided that, if there is no such Section in the Contract, then "Commercial Document" is to be construed as referring to whatever item in the Contract contains the contracted pricing and payment provisions.
  
- 1.8 Contract**                                   "Contract" means, collectively, the Acceptance, the Solicitation Documents, the Accepted Offer, all acknowledged Orders, and any Contract Amendments. See paragraph 1.22. The Contract is identified as a "Purchase Order" in ProcureAZ, since that is the terminology used in the software; use of that term in ProcureAZ is not to be confused with the contractual term "Order" defined in paragraph 1.21.
  
- 1.9 Contract Amendment**                 "Contract Amendment" means a document signed by Procurement Officer that has been issued for the purpose of making changes to the Contract after execution. The term "Change Order" in ProcureAZ is to be construed as being synonymous with "Contract Amendment".



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- 1.10 Contract Terms and Conditions** “Contract Terms and Conditions” means the Special Terms and Conditions and these Uniform Terms and Conditions taken collectively.
- 1.11 Contractor** “Contractor” means the Person identified on the Accepted Offer who has entered into the Contract with State.
- 1.12 Contractor Indemnitor** “Contractor Indemnitor” means Contractor or any of its owners, officers, directors, agents, employees, or Subcontractors.
- 1.13 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.
- 1.14 Day** “Day” means a calendar day unless otherwise specified in a particular context.
- 1.15 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.
- 1.16 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.
- 1.17 Indemnified Basic Claims** “Indemnified Basic Claims” means any and all claims, actions, liabilities, damages, losses, or expenses, including court costs, attorneys’ fees, and costs of claim processing, investigation and litigation, for bodily injury or personal injury, including death, or loss or damage to any real or tangible or intangible personal property, collectively. See paragraph 6.3.
- 1.18 Instructions to Offerors** “Instructions to Offerors” is Section 1-B of Part 1 of the Solicitation Documents.
- 1.19 Materials** “Materials” has the meaning given in A.R.S. § 41-2503(7) to the extent those things are included in the Work, which, for convenience of reference only, is “... 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.” Materials includes software, except that if software is sold or provided as a service, then to the extent it consists of encoded information or computer instructions it is included in “Materials” and to the extent it is a service it is in “Services”.
- 1.20 Offer; Initial Offer; Revised Offer; Best and Final Offer (BAFO)** “Offer,” “Initial Offer,” “Revised Offer,” and “Best and Final Offer” (“BAFO”) are each defined in the Instructions to Offerors.
- 1.21 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”:



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

- 1.22 Part, Section; Exhibit** "Part," "Section," and "Exhibit" are each defined in the Instructions to Offerors.
- 1.23 Person** "Person" means any corporation, business, individual, union, committee, club, or other organization or group of individuals.
- 1.24 Procurement Officer** "Procurement Officer" means the person, or his or her designee, who has been duly authorized by State to enter into and administer the Contract and to make written determinations with respect to the Contract. Procurement Officer is as identified on the Acceptance unless subsequently changed by Contract Amendment.
- 1.25 ProcureAZ** "ProcureAZ" means State's official electronic procurement system, established pursuant to A.A.C. R2-7-201 as set forth in the Arizona Department of Administration State Procurement Office policy document *Technical Bulletin No. 020, ProcureAZ – The Official State eProcurement System*.

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

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

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

<https://procure.az.gov/>

- 1.26 Scope of Work** "Scope of Work" means Section 2-A of Part 2 of the Solicitation Documents.
- 1.27 Services** "Services" has the meaning given in A.R.S. § 41-2503(35), which, for convenience of reference only, is "... the furnishing of labor, time, or effort by [the] [C]ontractor or [S]ubcontractor which does not involve the delivery of a specific end product other than required reports and performance [but] does not include employment agreements or collective bargaining agreements." Services includes Building Work and the service aspects of software described in paragraph 1.19.
- 1.28 Solicitation; Solicitation Documents** "Solicitation" and "Solicitation Documents" are defined in the Instructions to Offerors.
- 1.29 Special Terms and Conditions** "Special Terms and Conditions" are Section 3-A of Part 3 of the Solicitation Documents.
- 1.30 Specification** "Specification" has the meaning given in A.R.S. § 41-2561, which, for convenience of reference only, is "... any description of the physical or functional characteristics, or of the nature of a material, service or construction item. Specification may include a description of any requirement for inspecting, testing or preparing a material, service or construction item for delivery." Specifications (if any are included in the Contract), are indexed in the Scope of Work and could be bound separately from the other documents forming the Contract.
- 1.31 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.
- 1.32 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.
- 1.33 State Fiscal Year** "State Fiscal Year" means the period beginning each July 1 and ending each June 30.

PART 2 of the Solicitation Documents:

SECTION 2-D: Uniform Terms and Conditions

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1.34 Subcontract

"Subcontract" means any contract, express or implied, between 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 Materials, the performing of any Services, or the carrying out of any other aspect of the Work.

1.35 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.

1.36 Uniform Terms and Conditions

The "Uniform Terms and Conditions" are made up of this document and whichever of the Appendices are indicated in the Special Terms and Conditions as being applicable.

1.37 Work

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

2.0 Contract Interpretation

2.1 Arizona Law

The Contract is governed by and is to be interpreted in accordance with the laws of the State of Arizona, including the Arizona Procurement Code, without consideration of conflict of laws principles.

2.2 Implied Terms

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

2.3 Usage

Where the Contract:

- 4. 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;
5. 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;
6. 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.
7. 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



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*debited as being non-compliant, non-conforming, or unsatisfactory for its Contract-related purposes” in every instance;*

8. 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
9. 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.

**2.4 Contract Order of Precedence**

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

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

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

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

**2.5 Independent Contractor**

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

**2.6 Severability**

Any term or condition deemed or adjudged illegal or invalid is thereby stricken from the Contract and will not affect any other term or condition of the Contract.



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**2.7 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.

**2.8 No Waiver of Rights**

Either party's failure to insist on strict performance of any term or condition of the Contract is not and is not to be construed as being, nor will it be deemed to be, a waiver of that term or condition or a bar to, or diminishment of the right of, subsequent enforcement of any term or condition.

**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 the period specified in the Special Terms and Conditions unless canceled, terminated, or permissibly extended. If the Special Terms and Conditions do not specify a period, then the initial term is 1 (one) year. State has no obligation to extend or renew the Contract past the initial term.

**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 period specified in the Special Terms and Conditions. If the Special Terms and Conditions do not specify a period, then the maximum aggregate term is 5 (five) years.

**3.3 Notices and Correspondence**

3.3.1 TO CONTRACTOR. Unless stated otherwise in the Special Terms and Conditions, State shall:

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

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

3.3.2 TO STATE. Unless stated otherwise in the Special Terms and Conditions, Contractor shall :

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

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

Arizona Department of Administration  
State Procurement Office  
100 N 15th Ave., Suite 201  
Phoenix, AZ 85007

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

**3.4 Signing of Contract Amendments**

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

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

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



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**3.5 Click-Through Terms and Conditions**

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

**3.6 Books and Records**

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

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

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

**3.7 Contractor Licenses**

Contractor shall maintain current all federal, state and local licenses and permits required for the operation of its business in general, for its operations under the Contract, and, unless expressly stated otherwise in the Special Terms and Conditions, for the Work itself.

**3.8 Inspection and Testing**

By A.R.S. § 41-2547, State may at reasonable times inspect the part of Contractor's or Subcontractors' plant or places of business related to performance under the Contract. Accordingly, Contractor agrees to permit (for itself) and ensure (for Subcontractors) access for inspection at any reasonable time to its facilities, processes, and services. State may inspect or test, at its own cost, any finished goods, work-in-progress, components, or unfinished materials that are be supplied under the Contract or that will be incorporated into something to be supplied under the Contract. If the inspection or testing shows non-conformance or defects, then Contractor will owe State reimbursement or payment of all costs it incurred in carrying out or contracting for the inspection and testing, as well as for any re-inspection or re-testing that might be necessary. Neither inspection of facilities nor testing of goods, work, components, or unfinished materials will of itself constitute acceptance by State of those things.

**3.9 Ownership of Intellectual Property**

3.9.1 RIGHTS IN WORK PRODUCT. Unless otherwise provided for in the Special Terms and Conditions, 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,



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sublicense, disclose and create derivatives from that work product without restriction for any activity in which State is a party;

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

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

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

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

- (c) any derivative works of such pre-existing material or elements thereof that are created pursuant to the Contract are part of that work product;
- (d) 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
- (e) 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 Special Terms and Conditions, the Contract does not preclude Contractor from developing competing materials outside the Contract, irrespective of any similarity to materials delivered or to be delivered to State hereunder.

### **3.10 Subcontracts**

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

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

3.10.3 FLOW-DOWN. Contractor shall incorporate the provisions, terms, and conditions of the Contract into every Subcontract by inclusion or by reference, as appropriate. When making any post-execution consent requests, Contractor shall include its warrant that it will do the same for the pending Subcontracts covered by the request. Entering into



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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 Non-Discrimination**

Contractor shall comply with [Arizona] State Executive Order No. 2009-09 and all other applicable federal and state laws, rules, and regulations regarding non-discrimination and equal opportunity, including the Americans with Disabilities Act.

**3.12 E-Verify Requirements**

As required by A.R.S. § 41-4401, Contractor and each Subcontractor warrants compliance with A.R.S. § 23-214(A) and all federal immigration laws and any regulations relating to the immigration status of their employees. Contractor and each Subcontractor acknowledge that under A.R.S. § 41-4401, State retains the legal right to inspect the papers of any Contractor or Subcontractor employee who works under the Contract to ensure that Contractor or Subcontractor is in compliance with the foregoing warranty and understands that a breach of the foregoing warranty under shall be deemed a material breach of the Contract that is subject to penalties up to and including termination of the Contract.

**3.13 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 Specifications or the Scope of Work, this paragraph does not apply to indirect or overhead services, redundant back-up services, or services that are incidental to performance under the Contract. This provision applies to work performed by Subcontractors at all tiers.

**3.14 Orders**

**3.14.1 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 as set forth in the Special Terms and Conditions that cites the correct State contract number will suffice to authorize Contractor to provide the Materials and perform the Services covered by that Order.

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

**3.14.3 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.

**3.14.4 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 in the Special Terms and Conditions and (b) the Contract was created in ProcureAZ as something other than a "Master/ Blanket" type.

**3.14.5 NO MINIMUMS OR COMMITMENTS.** Unless expressly stated otherwise in the Special Terms and Conditions: (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.

**3.14.6 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.



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#### 3.15 Statewide Contract Provisions

If the Special Terms and Conditions indicate that the Contract is for statewide use, then the following provisions apply:

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

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

14. 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).

15. 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 specified in the Special Terms and Conditions. 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>

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

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

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

18. 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



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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.

**3.16 Multiple-Use Provisions**

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

- 19. By choosing some or all of the Materials or Services items covered by the Contract for which a price is established in the Commercial Document, then preparing an Order using those prices (e.g., filling out an order form), and sending it to Contractor.
- 20. 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.
- 21. 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.
- 22. 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.

**3.17 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.

**3.18 Work on State Premises**

3.20.1 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



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anyone for whom Contractor is responsible is a material breach of contract and grounds for termination for default.

3.20.3 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].

**3.19 Advertising, Publishing and Promotion of Contract**

Contractor shall not advertise, promote, or otherwise use information concerning the Contract for commercial benefit without the prior written approval of Procurement Officer, which approval Procurement Officer may withhold at his or her discretion.

**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 Commercial 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 Commercial Document, provided that, State will not make or be liable for any payments to Contractor until Contractor has registered properly in ProcureAZ and provided a current IRS Form W-9 to State unless excused by law from providing one.

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

**4.2 Applicable Taxes**

4.3.1 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 Commercial Document, all prices therein include Arizona TPT as well as every other manner of transaction privilege or sales/use tax that is due to a municipality or another state or its political subdivisions. Contractor shall pay all federal, state, and local taxes applicable to its operations and personnel.

4.3.2 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.

**4.3 Availability of Funds**

By A.R.S. § 35-154, every State payment obligation under the Contract is conditioned on the availability of funds appropriated for payment of that obligation. If funds are not appropriated and available for continuance of the Contract, State may terminate the Contract at the end of the period for which funds are available, or, at State's discretion, allow appropriate amendment to the Contract. No liability will accrue to State if it exercises the foregoing right or discretion, and State will have no obligation or liability for any future payments or for any damages as a result of having exercised it.



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5.0 Contract Changes

5.1 Contract Amendments

The Contract is issued for State under the authority of Procurement Officer. Only a Contract Amendment can modify the Contract, and then only if it does not change the Contract's general scope. Purported changes to the Contract by a person not expressly authorized by Procurement Officer or made unilaterally by Contractor will be void and without effect; Contractor will not be entitled to any claim made under the Contract based on any such purported changes.

5.2 Assignment and Delegation

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

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

6.0 Risk and Liability

6.1 Risk of Loss

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

6.2 Contractor Insurance

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

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

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

1. Commercial General Liability (CGL) – Occurrence Form

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

Table with 2 columns: Coverage Type and Amount. General Aggregate: \$2,000,000; Products – Completed Operations Aggregate: \$1,000,000



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Personal and Advertising Injury	\$1,000,000
Blanket Contractual Liability – Written and Oral	\$1,000,000
Damage to Rented Premises (Fire Legal Liability)	\$50,000
Each Occurrence	\$1,000,000

- a. The policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor.
- b. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

**2. Business Automobile Liability**

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

Combined Single Limit (CSL)	\$1,000,000
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- a. Policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by, or on behalf of, the Contractor involving automobiles owned, hired and/or non-owned by the Contractor.
- b. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

**3. Worker’s Compensation and Employers’ Liability**

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

- a. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.
- b. This requirement shall not apply to: Separately, EACH contractor or subcontractor that is exempt under A.R.S. 23-901, AND when such contractor or subcontractor executes the appropriate waiver form (Sole Proprietor or Independent Contractor).

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

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



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

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

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

**NOTICE OF CANCELLATION:** Applicable to all insurance policies required within the Insurance Requirements of this Contract, Contractor's insurance shall not be permitted to expire, be suspended, be canceled, or be materially changed for any reason without thirty (30) days prior written notice to the State of Arizona. Within two (2) business days of receipt, Contractor must provide notice to the State of Arizona if they receive notice of a policy that has been or will be suspended, canceled, materially changed for any reason, has expired, or will be expiring. Such notice shall be sent directly to the Department and shall be electronically submitted via email to [AZStateContractCOI@azdoa.gov](mailto:AZStateContractCOI@azdoa.gov) and [rocky.advani@azdoa.gov](mailto:rocky.advani@azdoa.gov) (State of Arizona, State Procurement Office, 100 N 15th Ave, Suite 402, Phoenix AZ 85007).

**ACCEPTABILITY OF INSURERS:** Contractor's insurance shall be placed with companies licensed in the State of Arizona or hold approved non-admitted status on the Arizona Department of Insurance List of Qualified Unauthorized Insurers. Insurers shall have an "A.M. Best" rating of not less than A- VII. The State of Arizona in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

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

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 **(Deepika Bajpayee 100 N 15th Ave, Suite 402, Phoenix AZ 85007)**. The State of Arizona project/contract number and project description shall be noted on the certificate of insurance. The State of Arizona reserves the right to require complete copies of all insurance policies required by this Contract at any time. **DO NOT SEND CERTIFICATES OF INSURANCE TO THE STATE OF ARIZONA'S RISK MANAGEMENT DIVISION.**

**SUBCONTRACTORS:** Contractors' certificate(s) shall include all subcontractors as insureds under its policies or Contractor shall be responsible for ensuring and/or verifying that all



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

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

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

**6.3 Basic Indemnification**

6.3.1 CONTRACTOR/VENDOR (NOT PUBLIC AGENCY). To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless State Indemnitees from Indemnified Basic Claims that: (a) are caused or alleged to be caused in whole or in part by the negligent or willful acts or omissions of a Contractor Indemnitor; (b) arise out of or are recovered under worker compensation laws; and/or (c) arise out of a Contractor Indemnitor's failure to conform to any federal, state, or local law, statute, ordinance, rule, regulation, or court decree. The parties specifically intend that the Contractor Indemnitors shall indemnify the relevant State Indemnitees from and against Indemnified Basic Claims in all instances except where the Indemnified Basic Claim arises solely from those State Indemnitees' own negligent or willful acts or omissions. Wherever the indemnification under this subparagraph applies, Contractor is responsible for primary loss investigation, defense, and judgment costs for an on behalf of the other Contractor Indemnitors with respect to State Indemnitees, and accordingly Contractor is also responsible for any cooperation, contribution, or subordination between or amongst the Contractor Indemnitors. In consideration of the award of the Contract by a State Indemnitee, Contractor hereby waives all rights of subrogation against State Indemnities for losses arising from the Work.

If Contractor is a public agency, this paragraph does not apply and subparagraph 6.3.2 below applies instead.

6.3.2 PUBLIC AGENCY. 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.

If Contractor is not a public agency, this paragraph does not apply and subparagraph 6.3.1 above applies instead.

**6.4 Patent and Copyright Indemnification**

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

- 23. State shall provide reasonable and timely notification to Contractor of any claim for which Contractor may be liable under this paragraph;
- 24. 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;



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- 25. State may elect to participate in such action at its own expense; and
  - 26. State may approve or disapprove any settlement or compromise, provided that,
    - (i) State shall not unreasonably withhold or delay such approval or disapproval and
    - (ii) State shall cooperate in the defense and in any related settlement negotiations.
- If Contractor is a public agency, this paragraph 6.4 does not apply.

**6.5 Force Majeure**

6.5.1 DEFINITION. For this paragraph, “force majeure” means an occurrence that is (a) beyond the control of the affected party, (b) occurred without the party’s fault or negligence, and (c) something the party was unable to prevent by exercising reasonable diligence. Without limiting the generality of the foregoing, force majeure expressly includes acts of God, acts of the public enemy, war, riots, strikes, mobilization, labor disputes, civil disorders, fire, flood, lockouts, injunctions-intervention-acts, failures or refusals to act by government authorities, and, subject to paragraph 7.8 [*Performance in Public Health Emergency*], declared public health emergencies. Force majeure expressly does not include late delivery caused by congestion at a manufacturer’s plant or elsewhere, an oversold condition of the market, late performance by a Subcontractor unless the delay arises out of an occurrence of force majeure, or inability of either Contractor or any Subcontractor to acquire or maintain any required insurance, bonds, licenses, or permits.

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

6.5.3 EXCUSABLE DELAY IS NOT DEFAULT. Failure in performance by either party will not constitute default hereunder or give rise to any claim for damages or loss of anticipated profits if and to the extent that such failure was or is being caused by an occurrence of force majeure.

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

**6.6 Third Party Antitrust Violations**

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

**7.0 Warranties**

**7.1 Liens**

Contractor warrants that the Materials and Services when accepted will be and will remain free of liens or other encumbrances.

**7.2 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



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Contractor affirmations included as part of the Contract; (2) be free from defects of material and workmanship; (3) conform to or perform in a manner consistent with current industry standards; and (4) be fit for the intended purpose or use described in the Contract. Mere delivery or performance does not substitute for express acceptance by State. Where inspection, testing, or other acceptance assessment of Materials or Services cannot be done until after installation, the forgoing warranty will not begin until State's acceptance.

7.3 Contractor Personnel

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

7.4 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 Compliance with Laws

Contractor warrants that the Materials and Services do and will continue to comply with all applicable federal, state, and local 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 non-compliance.

7.6 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.

7.7 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 5.2 [Assignment and Delegation] that expressly recognizes the event.

7.8 Performance in Public Health Emergency

- Contractor warrants that it will:
- 27. 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
  - 28. provide a copy of its current plan to State within 3 (three) business days after State's written request. If Contractor claims relief under paragraph 6.5 [Force Majeure] for an occurrence of force majeure that is a declared public health emergency, then that relief will be conditioned on Contractor having first implemented its plan and exhausted all reasonable opportunity for that plan implementation to overcome the effects of that occurrence, or mitigate those effects to the extent that overcoming entirely is not practicable.

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

7.9 Lobbying

7.11.1 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,



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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.

7.11.2 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 warrants made by Contractor under the Contract will survive the expiration or earlier termination of the Contract.

**8.0 State's Contractual Remedies**

**8.1 Right to Assurance**

If State in good faith has reason to believe that Contractor does not intend to, or is unable to, perform or continue performing under the Contract, Procurement Officer may demand that Contractor promptly provide written assurance of intent to perform. Failure by Contractor to provide the assurance within the time specified may be the basis for terminating the Contract or for State to exercise any other remedy available to it under the Contract or laws.

**8.2 Stop Work Order**

The State may at any time require Contractor to stop all or any part of the Work by written order. Upon receipt of a stop order, Contractor shall immediately comply with its terms and take all reasonable steps to minimize incurring of further costs during the period of stoppage that might be chargeable to State associated with the portions of the Work covered by the order. If Contractor incurs losses, it may make a claim under Article 10.

**8.3 Non-exclusive Remedies**

State's rights and remedies under the Contract are not exclusive.

**8.4 Nonconforming Tender**

The Materials provided and Services performed must comply fully with the Contract, and providing Materials or performing Services or any portion thereof that do not comply fully constitutes a breach of contract, in which event State will be entitled to exercise any remedy available to it under the Contract or laws.

**8.5 Right of Offset**

State is entitled to offset against any sums due Contractor any expenses or costs State incurs or damages it has assessed against it concerning Contractor's non-conforming performance or failure to carry out the Work, including any expenses, costs, and damages to which it is entitled by the Contract or laws.

**9.0 Contract Termination**

**9.1 Termination for Conflict of Interest**

By A.R.S. § 38-511, State may terminate the Contract within 3 (three) years after the effective date without penalty or further obligation if any Person significantly involved in initiating, negotiating, securing, drafting, or creating the Contract on behalf of State is or becomes an employee or agent of any other party to the Contract in any capacity or a consultant to any other party to the Contract with respect to the subject matter of the Contract. Any such termination will be effective when Contractor receives State's written notice of the termination unless the notice specifies a later date.



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#### **9.2 Gratuities**

State may, by written notice, terminate the Contract, in whole or in part, if State determines that employment or a Gratuity was offered or made by Contractor or a representative of Contractor to any officer or employee of State for the purpose of influencing the outcome of the procurement or the administration of the Contract or any favorable treatment concerning the Contract or performance of the Contract. State, in addition to any other rights or remedies available to it, will be entitled to recover exemplary damages in the amount of 3 (three) times the value of the Gratuity offered by Contractor.

#### **9.3 Suspension or Debarment**

State may, by written notice to Contractor, terminate the Contract immediately if State discovers that 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. State has taken Contractor's submittal of the Accepted Offer and will take its performance under the Contract as Contractor's attestation that it is not currently suspended or debarred. If Contractor subsequently becomes suspended or debarred, it shall notify Procurement Officer immediately.

#### **9.4 Termination for Convenience**

State may terminate the Contract when in the best interest of State, in whole or in part, at any time, and without penalty or recourse on Contractor's part other than as expressly stated in the Contract. Upon receipt of State's written termination notice, Contractor shall stop work as directed in the notice, notify all Subcontractors of the termination and its effective date, and minimize any further costs that might be chargeable to State. In the event of termination under this paragraph, all documents, data, and reports prepared by Contractor under the Contract will become State's property and Contractor shall deliver it all promptly on demand. Contractor will be entitled to receive just and equitable compensation for necessary and attributable unfinished materials on hand, work in progress, work completed, and work accepted before the effective date of the termination, provided that, the cost principles and procedures in A.A.C. R2-7-701 are to be applied.

#### **9.5 Termination for Default**

In addition to the rights reserved to it under the Contract, State may terminate the Contract in whole or in part due to Contractor's failure to: (a) comply with any term or condition of the Contract; (b) obtain and maintain all required insurance policies, bonds, licenses, and permits; or (c) make satisfactory progress in carrying out the Work. Procurement Officer shall give written notice of the termination and the reasons for it. Upon termination under this paragraph, all documents, data and reports prepared by Contractor under the Contract and all necessary and attributable unfinished materials on hand, work in progress, work completed, and work accepted will become State's property, and Contractor shall deliver all of it immediately on demand. State may, following termination of the Contract under this paragraph, procure on terms and in the manner it determines to be appropriate materials or services to replace those that were to have been provided or performed by Contractor, and Contractor will be liable to State for any excess cost State incurs in procuring such substitutes.

#### **9.6 Continued Performance Required**

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

### **10.0 Contract Claims**

#### **10.1 Claim Resolution**

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

#### **10.2 Mandatory Arbitration**

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

### **11.0 General Provisions for Materials**

#### **11.1 Applicability**

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



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**11.2 Off-Contract Materials**

Contractor shall ensure that the design and/or procedures for the Materials ordering method prevents Orders for off-contract items or excluded items. Notwithstanding that State might have its own internal administrative rules regarding off-contract or excluded item ordering, and endeavors to prevent such orders from occurring, Contractor is responsible for not accepting any such Orders; State may, at its discretion, return any such items under subparagraph 11.17 or cancel any such Order under subparagraph 11.18, in either case being without obligation and at Contractor’s expense. As used above, “off-contract item” refers to any product not included in the scope of the Contract and for which no price or compensation has been established contractually, and “excluded item” refers to any product expressly stated in the Contract as being excluded from the Contract.

**11.3 Compensation for Late Deliveries**

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

**11.4 Indicate Shipping Costs on Order**

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

**11.5 Current Products**

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

**11.6 Maintain Comprehensive Selection**

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

**11.7 Additional Products**

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

**11.8 Discontinued Products**

If a product or groups of products covered by the Contract are discontinued by the manufacturer, Contractor shall notify State within 5 (five) business days after receiving the manufacturer’s notification. State, at its discretion, will either allow Contractor to provide substitutes for the discontinued products or delete the products from the scope of the Contract, both of which will be accomplished by Contract Amendment. Contractor shall then update all applicable catalogs and price lists and make them available to all affected entities at no additional cost. The parties shall negotiate in good faith a fair price for any substitute product, but State may elect to delete the products from the scope of the Contract if no agreement is reached on substitute pricing in a timely manner. When notifying State of the discontinuance,



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Contractor shall provide: (a) manufacturer's announcement or documentation stating that the products have been discontinued, with identification by model/part number; (b) documentation demonstrating that the substitute products meet or exceed the specifications for the discontinued products while remaining in the same product groups as were the discontinued ones; and (c) documentation demonstrating that the proposed price for the substitute products is both fair and reasonable and at the same level of discount relative to market price as were the discontinued ones (with demonstration being as described in subparagraph 11.7).

#### **11.9 Forced Substitutions**

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

#### **11.10 Recalls**

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

#### **11.11 Delivery**

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

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

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

#### **11.12 Delivery Time**

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



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**11.13 Delivery Locations**

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

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

**11.14 Conditions at Delivery Location**

Contractor shall verify receiving hours and conditions (i.e. height/weight restrictions, access control, etc.) with the relevant purchaser for the receiving site before scheduling or making a delivery. State will neither allow extra charges for wait time, comebacks, or the like nor excuse late delivery if Contractor has failed to make the verification or comply with the applicable conditions. Contractor shall make each delivery to the specific location indicated in the Order, which Contractor acknowledges might be inside an industrial building, institutional building, low-rise office building, or high-rise office building instead of a normal receiving dock. Contractor might be required to make deliveries to locations inside a secured perimeter at certain institutional facilities such as prisons where prior clearances are required for each delivery and driver individually. Contractor shall contact each such facility directly to confirm its most-current security clearance procedures, allowable hours for deliveries, visitor dress code, and other applicable rules. State will neither allow extra charges for wait time, comebacks, or the like nor excuse late delivery if Contractor has failed to make the confirmation or comply with the applicable conditions.

**11.15 Materials Acceptance**

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

**11.16 Correcting Defects**

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

- 33. Contractor shall be solely responsible for the cost of any associated cutting and patching, temporary protection measures, packing and crating, hoisting and



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loading, transportation, unpacking, inspection, repacking, reshipping, and reinstallation if installation is within the scope of the Contract.

34. If Contractor fails to do so in a timely manner, State will be entitled to exercise its remedies under paragraph 8.5 [*Right of Offset*] of the Uniform Terms and Conditions.
35. Whether State will permit Contractor to repair in place or demands that Contractor remove and replace is at State's discretion in each instance, provided that, State shall not apply that discretion punitively if repair in place is practicable and doing so would not create safety hazards, put property at risk, unreasonably interfere with operations, create public nuisance, or give rise to any other reasonable concern on State's part.

#### **11.17 Returns**

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

#### **11.18 Order Cancellation**

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

36. pay Contractor for any portion of the Materials and Services from that Order that have been properly delivered or performed as of the cancellation effective date plus 1 (one) additional business day;
37. reimburse Contractor for:
  - (a) its actual, documented costs incurred in fulfilling the Order up to the cancellation effective date plus 1 (one) additional business day; and
  - (b) the cost of any obligations it incurred as of the cancellation effective date plus 1 (one) additional business day that demonstrably cannot be canceled, or that have pre-established cancellation penalties specified in the relevant Subcontracts, to the extent the penalties are reasonable and customary for the work in question; and
38. Contractor shall not charge or be entitled to charge State for any new costs it incurs after receiving the cancellation notice plus 1 (one) business day or for any lost profits or opportunity.

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

#### **11.19 Product Safety**

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

#### **11.20 Hazardous Materials**

Contractor shall timely provide State with any "Safety Data Sheets" (SDS) and any other hazard communication documentation required under the US Department of Labor's Occupational Safety and Health Administration (OSHA) "Hazard Communication Standard" (often referred to as the "HazCom 2012 Final Rule") that is reasonably necessary for State to comply



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

**12.0 General Provisions for Services**

**12.1 Applicability**

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

**12.2 Comprehensive Services Offering**

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

**12.3 Additional Services**

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

**12.4 Off-Contract Services**

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

**12.5 Removal of Personnel**

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

**12.6 Transitions**

During commencement, Contractor shall attend transition meetings with any outgoing vendors to coordinate and ease the transition so that the effect on State's operations



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

**12.7 Accuracy of Work**

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

**12.8 Requirements at Services Location**

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

**12.9 Services Acceptance**

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

**12.10 Corrective Action Required**

Notwithstanding any other guarantees, general warranties, or particular warranties Contractor has given under the Contract, if Contractor fails to perform any material portion of the Services, including failing to complete any contractual deliverable, or if its performance fails to meet agreed-upon service levels or service standards set out in or referred to in the Contract, then Contractor shall perform a root-cause analysis to identify the source of the failure and use all commercially reasonable efforts to correct the failure and meet the Contract requirements as promptly as is practicable.

39. 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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- 40. 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.
- 41. Contractor shall take the necessary action to avoid any like failure in the future, if doing so is appropriate and practicable under the circumstances.

**13.0 Data and Information Handling**

**13.1 Applicability**

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

**13.2 Data Protection and Confidentiality of Information**

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

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

**13.3 Personally Identifiable Information.**

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

For purposes of this paragraph:

- 44. PII has the meaning given in the [federal] Office of Management and Budget (OMB) *Memorandum M-07-16 Safeguarding Against and Responding to the Breach of Personally Identifiable Information*; and
- 45. “protect” means taking measures to safeguard personally identifiable information and prevent its breach that are functionally equivalent to those called for in that OMB memorandum and elaborated on in the [federal] General Services Administration (GSA) *Directive CIO P 2180.1 GSA Rules of Behavior for Handling Personally Identifiable Information*.

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

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

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



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

**13.4 Protected Health Information**

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

- 46. 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;
- 47. 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
- 48. will sign any documents that are reasonably necessary to keep both State and Contractor in compliance with the requirements in (1) above, in particular “Business Associate Agreements” in accordance with the Privacy Rule.

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

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

**14.0 Information Technology Work**

**14.1 Applicability**

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

**14.2 Background Checks**

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

**14.3 Information Access**

- 14.3.1 SYSTEM MEASURES. Contractor shall employ appropriate system management and maintenance, fraud prevention and detection, and encryption application and tools to any systems or networks containing or transmitting State’s proprietary data or confidential information.
- 14.3.2 INDIVIDUAL MEASURES. Contractor personnel shall comply with applicable State policies and procedures regarding data access, privacy, and security, including prohibitions on remote access and obtaining and maintaining access IDs and passwords. Contractor is responsible to State for ensuring that any State access IDs and passwords are used only by the person to whom they were issued. Contractor shall ensure that personnel are only provided the minimum only such level of access necessary to



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perform his or duties. Contractor shall on request provide a current register of the access IDs and passwords and corresponding access levels currently assigned to its personnel.

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

#### **14.4 Pass-Through Indemnity**

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

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

- (a) State reserves the right to elect to participate in the action at its own expense;
- (b) State reserves the right to approve or reject any settlement or compromise on reasonable grounds and if done so timely; and
- (c) State shall in any case cooperate in the defense and any related settlement negotiations.

#### **14.5 Systems and Controls**

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

#### **14.6 Redress of Infringement.**

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

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

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



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- (a) for any software created for State under the Contract, the amount State paid to Contactor for creating it;
  - (b) for all other Materials, the net book value of the product provided according to generally accepted accounting principles; and
  - (c) for Services, the amount paid by State or an amount equal to 12 (twelve) months of charges, whichever is less.
- 14.6.3. EXCEPTIONS. Contractor will not be liable for any claim of infringement based solely on any of the following by a State Indemnitee:
- (a) modification or use of Materials other than as contemplated by the Contract or expressly authorized or proposed by a Contractor Indemnitor;
  - (b) operation of Materials with any operating software other than that supplied by Contractor or authorized or proposed by a Contractor Indemnitor; or
  - (c) combination or use with other products in a manner not contemplated by the Contract or expressly authorized or proposed by a Contractor Indemnitor.
- 14.7 First Party Liability Limitation**
- 14.7.1 LIMIT. Subject to the provisos that follow below and unless stated otherwise in the Special Terms and Conditions, State's and Contractor's respective first party liability arising from or related to the Contract is limited to the greater of \$1,000,000 (one million dollars) or 3 (three) times the purchase price of the specific Materials or Services giving rise to the claim.
- 14.7.2 PROVISOS. This paragraph 14.7 limits liability for first party direct, indirect, incidental, special, punitive, and consequential damages relating to the Work regardless of the legal theory under which the liability is asserted. This paragraph 14.7 does not limit liability arising from any:
- (a) Indemnified Claim against which Contractor has indemnified State Indemnitees under paragraph 6.3;
  - (b) claim against which Contractor has indemnified State Indemnitees under paragraph 6.4; or
  - (c) provision of the Contract calling for liquidated damages or specifying amounts or percentages as being at-risk or subject to deduction for performance deficiencies.
- 14.7.2 PURCHASE PRICE DETERMINATION. If the Contract is for a single-agency and a single Order (or if no Order applies), then "purchase price" in Subparagraph 14.7.1 above means the aggregate Contract price current at the time of Contract expiration or earlier termination, including all change orders or other forms of Contract Amendment having an effect on the aggregate price through that date. In all other cases, "purchase price" above means the total price of the Order for the specific equipment, software, or services giving rise to the claim, and therefore a separate limit will apply to each Order.
- 14.7.3 NO EFFECT ON INSURANCE. This paragraph does not modify the required coverage limits, terms, and conditions of, or any insured's ability to claim against, any insurance that Contractor is required by the Contract to provide, and Contractor shall obtain express endorsements that it does not.
- 14.8 Information Technology Warranty**
- 14.8.1 SPECIFIED DESIGN. Where the Scope of Work (Section 2-A of the Solicitation) 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



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

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

- (a) to the extent possible, it will test the software before delivery using commercially available virus detection software conforming to current industry standards;
- (b) the COTS software will, to the best of its knowledge, at the time of delivery be free of viruses, backdoors, worms, spyware, malware, and other malicious code that could hamper performance, collect unlawfully any personally identifiable information, or prevent products from performing as required by the Contract; and
- (c) it will provide a new or clean install of any COTS software that State has reason to 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.

## 15.0 Comments Welcome

Separate and apart from this solicitation, the State Procurement Office periodically reviews the Uniform Terms and Conditions and welcomes any comments the public may have.

The public may submit 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



**Request for Proposals**  
Solicitation No.  
**ADSP018-00007749**  
Description:  
**Real Estate Appraisal Valuation Services**

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

	<b>Contract Amendment</b>		Arizona Department of Administration State Procurement Office 100 N. 15 <sup>th</sup> Avenue, Suite 402 Phoenix, AZ 85007
	Legacy Contract: ADSPO18-193523		
	CTR042816	APP Amendment 3	

**Real Estate Appraisal Valuation Services**  
**Appraisal Technology LLC**

This Amendment Number 3 to extend the Contract period of January 29, 2021 through January 28, 2022 is hereby executed in accordance with the Uniform Terms and Conditions, Section 3.2 Contract Extension and Section 5.1 Amendments.

RECITALS

The State and Supplier entered into that certain agreement title Master Service Agreement effective as of January 29, 2018 pursuant to which Supplier is to provide Real Estate Appraisal Valuation Services.

Thereafter, Amendment Number 1 to extend the Contract period of January 29, 2019 through January 28, 2020 was executed on January 08, 2019.

Thereafter, Amendment Number 2 to extend the Contract period of January 29, 2020 through January 28, 2021 was executed on January 23, 2020.

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

**ACKNOWLEDGEMENT AND AUTHORIZATION**

This amendment shall be fully executed upon the electronic approval in the State e-Procurement system by the Procurement Officer or delegate.



### Contract: CTR041419-1 - - Real Estate Appraisal Valuation Services

#### Contract Header

**Label**  
Real Estate Appraisal Valuation Services

**Supplier**  
APPRAISAL TECHNOLOGY LLC

**Currency**  
USD

**Co-Op Contract Designation**  
yes

**Type**  
Master Agreement

**Contract Code**  
CTR041419-1

**Contract Amount**  
0.00

#### Contract Scope

**Organizations**  
State of Arizona

**Commodities**  
Real estate appraisal and valuation service

#### Contract Validity

**Start Date**  
1/29/2018

**End Date**  
1/28/2023

**Extended to Date**  
1/28/2023

#### Documents

- ADSP018-193523-ADSP018-00007749 Solicitation Amendment No.2.pdf
- Contract Amendment Contract Extension 3.pdf
- COI AL WC Exp 11\_2021.PDF
- ADSP018-193523-Procurement File - ADSP018-0007749~3.zip
- ADSP018-193523-ADSP018-00007749\_RFP\_Real Estate Appraisal Valuation Services~1.pdf
- ADSP018-193523-ADSP018-00007749 Solicitation Amendment No.1.pdf
- ADSP018-193523-ADSP018-00007749\_OPEN\_FIRST\_Real Estate Appraisal Valuation Services.pdf
- ADSP018-193523-PO T and Cs rev 1-10-11.pdf
- ADSP018-193523 Contract Extension to 1.28.20 Amendment 1.pdf
- COI ADSP018-193523\_PL\_Exp\_9\_2020\_GL\_Auto\_WC\_Exp\_11\_2020.pdf
- COI PL Exp 9\_2021.pdf
- ADSP018-193523 Amend 2 Contract Extension 1 yr.pdf
- ADSP018-193523-Contract Documents-Appraisal Technology LLC.pdf
- ADSP018-193523-ADSP018-00007749\_Offer\_Forms\_Real Estate Appraisal Valuation Services~1.docx

#### Items

PR/Order itemsLabel	Product Code
All Categories: General Real Property (Commercial) Appraisal Services, Appraisal Review Services, and Real Estate Consulting Services:price is based on the quote submitted per scope of work	ADSP018-193523-4
Appraisal Review Services , price is based on the quote submitted per scope of work for each appraisal report ordered. IF OFFEROR IS PROPOSING FOR THIS CATEGORY, FOR PROPOSAL SUBMISSION ONL	ADSP018-193523-2
Expert Witness Services - Appraisal. ALL OFFERORS SUBMITTING A PROPOSAL ARE REQUIRED TO INPUT AN HOURLY RATE FOR EXPERT WITNESS SERVICES PER THE SCOPE OF WORK. - \$150 per hour for junior a	ADSP018-193523-6
General Real Property (Commercial) Appraisal Services, price is based on the quote submitted per scope of work for each appraisal report ordered. IF OFFEROR IS PROPOSING FOR THIS CATEGORY.	ADSP018-193523-1
Real Estate Consulting Services , price is based on the quote submitted per scope of work for each appraisal report ordered. IF OFFEROR IS PROPOSING FOR THIS CATEGORY, FOR PROPOSAL SUBMITTI	ADSP018-193523-3
Real Estate Consulting Services. IF OFFEROR IS PROPOSING FOR THIS CATEGORY AN HOURLY AMOUNT IS REQUIRED IN THE UNIT COST FIELD. - \$150 per hour for junior associate.	ADSP018-193523-5