Attachment 1

Offer and Acceptance Form

SUBMISSION OF OFFER: Undersigned hereby offers and agrees to provide SOFTWARE VALUE-ADDED RESELLER SERVICES in compliance with the Solicitation indicated above and our Offer indicated by the latest dated version below:

Initial Offer:	**1.** 11/17/2020 (Date)	x DH (initial)					
Revised Offers:	**2.** 2/24/2022 (date #1)	x DH (initial)	**3.** x (date #1)	x (initial)	**4.** x (date #1)	x (initial)	
	5. x (date #4)	x (initial)	**6.** x (date #5)	x (initial)	**7.** x (date #6)	x (initial)	
Best and Final Offer:	**8.** x 1/14/2022 (Date)	x DH (initial)					

CDW Government LLC	x David C Hutchins
Offeror company name	Signature of person authorized to sign Offer
230 N. Milwaukee Ave.	David Hutchins, VP Strategic Programs
Address	Printed name and title
Vernon Hills, IL 60061	Cailee Filkin, Manager Proposals
City | State | ZIP	Contact name and title
36-4230110	Cailee.filkin@cdwg.com 312 547 2516
Federal tax identifier (EIN or SSN)	Contact Email Address / Contact phone number

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

1. 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;
2. 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;
3. complies with A.R.S. § 41-3532 when offering electronics or information technology products, services, or maintenance; and
4. 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 by the latest date and number at the top of this form (the Accepted Offer). 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: CTR060021 The effective date of the Contract is: 4/25/2022
Contract awarded 4/25/2022

John R
Procurement Officer Signature

John Red Horse
Procurement Officer Printed Name

CDW GOVERNMENT INC

Article / Paragraph or Exhibit Reference	Proposed Changes / Alternate Language	RFP Language	State Response	CDW GOVERNMENT INC Response (7/20/2021)	State Response (10.6)	CDW GOVERNMENT INC Response (10/13/2021)	State Response (12.18.2021)	Supplier Response (12.28.2021)	STATE RESPONSE (1.7.2022)	STATE RESPONSE (1.19.2022)	CDW Response Needed in This Column ASAP (1.20.2022)	CDW Response Needed In This Column ASAP (1.21.2022)	State Response 1.21.2022
ATTACHMENT 5-B Supplement No. 1: **Exceptions to Instructions**													
Section 1-A: Solicitation Details													
	NO EXCEPTIONS TAKEN												
Section 3-A: Instructions to Offerors													
	NO EXCEPTIONS TAKEN												
ATTACHMENT 5-B Supplement No. 2: **Exceptions to Technical and Commercial**													
Section 2-A: Scope of Work (Technical Document)													
2.5.1	Exception: CDW-G can comply with this request, except that CDW-G cannot guarantee that Publishers will follow its guidelines; however, we will make all commercially reasonable efforts to deliver desired information and act as a liaison between Purchasing Entities and Publishers to enable proper planning and execution of true-ups and renewals. Rationale: CDW-G will make commercially reasonable efforts to act as a liaison between Purchasing Entities and Publishers to provide this information as applicable where made available by the Publisher.	Customer Portal. Reseller shall Develop and Maintain a Portal, at the request of Participating Entities, to facilitate tracking, management, usage, ordering, monitoring and reporting of software products and License Agreements.	Please provide proposed language for this section.	Customer Portal. Reseller shall develop and maintain a Portal, at the request of Participating Entities, to facilitate tracking, management, and reporting of software products and License Agreements, subject to the information made available by the Publisher and Reseller will make all commercially reasonable efforts to act as a liaison to provide such information in a timely manner, when available.	State accepts	Thank you.							
Section 2-B: Pricing Document													
3.1.1	Exception: Subject to applicable law, CDW-G warrants that it will provide Customers pricing that is the best pricing through this contract, which shall be equal to or better than, that offered to similarly situated customers at which CDW-G sells equivalent services, items of equipment and materials, given equivalent or reasonably-equivalent quantity of purchase, at the same time and under similar terms and conditions. Rationale: CDW-G is confident that our offer presents an exceptionally competitive ceiling price structure, which through its dynamic model, ensures that NVP Participating Entities always benefit from market-driven price reductions. We are pleased to offer the commitment above, related to best pricing, and will work with the Participating State to request, match other competing prices, where possible. In cases where NVP Participating Entities wish to make large purchases, we can leverage our strong relationship with publishers to achieve the best savings possible.	Pricing 3.1.1 CONTRACTOR'S BEST PRICING. The prices and discounts set out in Part 3 of the Solicitation Documents, Section 3-B Offer Forms, ATTACHMENT 6_PRICING SHEET, including any subsequently agreed-upon amendment to it (the "Contract Pricing"), shall be considered ceiling pricing. Reseller may offer additional discounts based on the volume of a purchase or other factors. Reseller warrants that the pricing extended through this contract shall be equal to or better than the best pricing extended to similarly situated customers at which Reseller sells equivalent services, items of equipment and materials, given equivalent or reasonably-equivalent quantity of purchase. 1. That price-plus/discount equivalence ("Contractor's Best Pricing") is intended to be irrespective of whether or not there other sales have special purchase terms, conditions, rebates or allowances. 2. If Contractor's Best Pricing for equivalent services, items of equipment and materials is better than the Contract Pricing, then Reseller agrees to adjust the Contract Pricing to match the Contractor's Best Pricing for all sales related to the Reseller made after the date when the Contractor's Best Pricing was first better than the Contract Pricing. 3. For clarification of intent, that date is intended to be the date when the difference first occurred, which might have been before the difference was first identified. If it was before, then Reseller agrees to charge at less than the Contract Pricing until the extended difference that would have been realized (i.e., if the Contractor's Best Pricing had been applied when it should have been) has been settled.	Unacceptable. Editing of the State's language is not required as the State's language recognizes volume-based pricing differences.	State accepts language in Cell B17 of this Spreadsheet.	Thank you.						
3.1.3	Exception: CDW-G's cost-plus pricing model will not change during the term of the agreement. With respect to hourly rates in Attachment 6, CDW-G will not raise prices more than the Bureau of Labor Statistics (BLS) index "Quarterly Census of Employment and Wages" annualized average % or 3%, per annum, whichever is less. Rationale: Since the contract term extends to five years with a potential option to renew for an additional two years, CDW-G reserves the ability to adjust services pricing, as its overall costs to perform increase.	1. Initial Contract prices shall be honored for the full term of the Contract, unless a price adjustment is approved in accordance with the Contract Amendment Process. The Lead State will consider requests for price adjustments to cover increase. The requested increase shall be in writing and be based upon a cost increase to the Reseller that was clearly unpredictable at the time of the offer and is directly correlated to the price of the product concerned. Reseller shall provide conclusive evidence of a need for any price increases such as being substantiated by the Producer Price Index, Consumer Price Index, or similar pricing guide. (a) All written requests for price adjustments made by the Reseller shall be initialed thirty (30) days in advance of any desired price increase to allow the Lead State sufficient time to make a fair and equitable determination to any such requests. This may be waived upon proper documentation demonstrating the urgency of the request. (b) All price adjustments shall be implemented by a formal contract amendment. The Lead State shall determine whether the requested price increase or an alternate option is in its best interest. 3.1.4 PRICE REDUCTIONS 1.Price reductions shall be immediately passed along to the Lead State and may be submitted in writing to the Lead State for consideration at any time during the Contract period. The Reseller shall offer the Lead State a price reduction on the Contract product(s) concurrent with a published price reduction made to other customers. 2. The Lead State at its own discretion may accept a price reduction. The price reduction request shall be in writing and include documentation showing the actual reduction of cost. Sales promotions requests shall include difference in pricing, begin, and end date of promotion along with the products covered.	Please provide proposed redlines for this section.	CDW-G doesn't propose any changes to 3.1.3.1.4 to 5. As stated above in our response under Column D for 3.1.1, we have no modifications. Regarding 3.1.4, CDW-G proposes the following language: 3.1.4 PRICE REDUCTIONS: 1. Price reductions, when offered by Reseller, shall be immediately passed along to the Lead State and may be submitted in writing to the Lead State for consideration at any time during the Contract period. The Reseller will make commercially reasonable efforts to offer the Lead State a price reduction on the Contract product(s) concurrent with a published price reduction made to other customers, upon request, for same products and quantities, under same terms and conditions, purchased within the same timeframe. 2. The Lead State at its own discretion may accept a price reduction, when offered by Reseller. The price reduction request shall be in writing and include documentation showing the actual reduction of cost. Sales promotions, as and when offered by Reseller, requests shall include difference in pricing, begin, and end date of promotion along with the products covered.	State Accepts	Thank you.						
ATTACHMENT 5-B Supplement No. 3: **Exceptions to Contract Terms & Conditions**													
Section 2-C: Special Terms & Conditions													
1.37	Exception CDW-G does not consider our Reseller Cost definition, more fully described in our response within Attachment 3A for Categories General, Microsoft, and Oracle, Cat. Pg 9, 75, 148 respectively, to be an exception, however we are including reference to it here, to ensure compliance with the terms of the RFP. X Rationale: We recognize the importance of continuity as well as cost and transparency to the Lead State and Participating entities. CDW-G's model is consistent with the requirements under "Part 3, Section 2B, 3.1.2", as well as those under "Part 3, Section 3.A, 6.1", regarding submitted cost is fair and reasonable under A.2.RO.7-RSOA(4). Our model is also offered under numerous public contracts and is subject to audit under the terms and conditions of each contract. We store historical data which is auditable. CDW-G's ability to share, acquisition pricing information may be limited to the extent allowable by our Publishers.	"Reseller Cost" means the invoice-verifiable price that the Reseller pays the Publisher or Distributor to purchase Software on behalf of the Participating Entity. Reseller Cost should not include any administrative or other mark-up charges. Unless a Publisher is not willing to sell directly to a Reseller and instead utilizes a Distributor, the Reseller Cost must equal the invoice paid by the Software Reseller to the Software Publisher.	Unacceptable. The State requires complete transparency regarding Reseller's acquisition price. "Management costs with procuring, and distributing the inventory" should be built into the Reseller's markup / discount off MSRP.	CDW-G's cost structure provides a transparent, auditable model utilized under similarly situated public contracts which provides a fair and reasonable cost structure. Our cost structure is controlled systematically to meet necessary audit provisions under the Solicitation. As a Reseller our ability to share acquisition pricing is limited with numerous software publishers due to our existing agreements, which are considered confidential and proprietary. CDW-G, as a reseller, has no authority to contractually usurp the terms and conditions offered by Publishers. While the State may assist on specific references, CDW-G is open to discussing alternative language that would more broadly suggest that Publisher EULAs will be the governing terms of use.	Unacceptable. The State has reason to believe that CDW-G's cost-plus model may be at odds with the State's intended pricing model. The State must ensure all Offerors are adding their markups to the same baseline, which is the Reseller's acquisition cost, including "management costs with procuring and distributing the inventory", must be factored into your markup. But it seems CDW-G is adding the markup on top of the "acquisition cost plus an internal management cost". This is why the State is requiring the "Reseller Cost" to be disclosed, so that the State can verify no other costs are being added before the markup. The State requires that CDW-G acknowledge and give assurance that their markup will not include any management costs and will only be CDW-G's acquisition costs.	CDW-G is confident that our submission is compliant with the requirements of this solicitation. CDW-G pricing model provides the State with transparent and verifiable, competitive pricing, represented in our not to exceed cost plus pricing offer. CDW-G's cost model does not include profit or "mark-up" on the "management costs with procuring and distributing the inventory" as it is factored into your markup. But it seems CDW-G is adding the markup on top of the "acquisition cost plus an internal management cost". This is why the State is requiring the "Reseller Cost" to be disclosed, so that the State can verify no other costs are being added before the markup. The State requires that CDW-G acknowledge and give assurance that their markup will not include any management costs and will only be CDW-G's acquisition costs.	Unacceptable. The State must make it clear that when it comes to the cost-plus model, CDW may not include "management costs with procuring and distributing the inventory" as part of the equation. To ensure an apples to apples comparison, the % markup pricing model must be based solely on the invoice-verifiable cost that CDW was charged by the Publisher or Distributor, aka CDW's Acquisition Cost. If the State were to allow CDW's proposed model, it would potentially allow all Resellers to add any number of subjective and unverifiable costs **before** adding their percentage markup. If a Publisher refuses to allow the disclosure of the price of their software, this would demonstrate a lack of understanding of the nature of public procurement and may discourage Public entities, who highly value cost transparency, from purchasing their product in the future.	We recognize State's position on normalizing comparison for evaluation purposes, amongst bidders. Some bidders may have proposed the alternative MSRP structure. The scope of software contemplated under this SVAR solicitation is very broad, including countless new and emerging technologies and various consumption based offerings, for which MSRP prices may not exist. Additionally, not all bidders have the reseller relationships with publishers and hence will need to acquire through distribution, which may represent higher costs. Due to our buying power and market position, CDW-G has exceptionally strong relationships with hundreds of publishers. Our agreements with these publishers, frequently include confidentiality provisions around pricing, which is generally considered confidential, non-public and competitive information. As such, we expect that our competitors also have similar requirements and restrictions. The pricing structure CDW-G proposed is highly competitive and consistent, with our existing NASPO 5VAR contract, as well as a sizable history of other significant public contracts. Our approach provides NASPO 5VAR purchasing entities with an auditable, systematically derived and transparent pricing structure for acquisition of software services for this multiple award contract. There are no profit markups included in the cost. Due to the sheer volume of purchases made by CDW-G, we make frequent purchases of a product at different quantities and prices to keep "up here". It is not possible to ascribe a customers' particular purchase to a specific acquisition price; instead, our inventory management system determines pricing based upon a weighted average of prices and quantities within the inventory . For large purchases, as a case-by-case basis, if CDW-G seeks and receives approval by software publishers to procure an allotment of product specifically for a NASPO 5VAR purchasing entity , and additional approval to disclose special pricing to said purchasing entity, CDW-G will provide quote based on the specific acquisition cost to CDW-G, associated with that particular purchase, whether directly from the manufacturer or from a distributor. Please recognize that this is not a common industry practice, though CDW-G is willing to advocate on behalf of a NASPO member to achieve it.	Unacceptable. The State and CDW have sufficiently discussed this Exception at this time so this will be the final response before BAFO. The State expects an unambiguous response by CDW-G in BAFO that: 1) There will be no management costs or markup of any kind applied in-between CDW-G's invoice-verifiable acquisition cost. 2) CDW-G commits to provide, in writing, to provide their acquisition cost when requested. The sole possible exception to this would be if the Publisher refused to allow any Resellers to reveal their pricing, despite best efforts from the Resellers.	We appreciate the State's patience and time and taking into consideration CDW-G's positions. We are confident the following meets the state's requirements on acquisition cost. 1.CDW-G confirms our acquisition cost will not include management costs or markup of any kind. Due to the large volume of purchases made by CDW-G, we make frequent volume purchases of a product at different quantities and prices which determines a weighted average cost in our system i.e. our acquisition cost. The acquisition price will be derived from our inventory management system which determines pricing i.e. CDW-G acquisition cost , at time of quote. As stated in solicitation, in instances where Publishers don't sell directly to CDW-G and/or don't have a relationship with CDW-G, CDW-G will use distributor cost as the acquisition cost. In the event CDW-G seeks and receives approval by software publisher(s), to procure an allotment of product for a NASPO 5VAR purchasing entity, and CDW-G seeks and receives approval by software publisher(s), and receives approval to disclose special pricing to said purchasing entity, CDW-G will provide quote based on the specific acquisition cost to CDW-G, associated with that particular purchase, whether directly from the Publisher or from a distributor. 2.CDW-G commits to providing acquisition cost, when requested, based on 1 above.	To provide clarity to State and our earlier response on 1/20/2022: CDW-G confirms with respect to Attachment 4 Pricing, Participating Addendum, CDW-G will not charge the State, with no additional fees, for any acquisition fees. Any additional fees are subject to Section 2-C Special Terms and Conditions, 3.13 NASPO ValuePoint Administrative fees and Reporting and State's A&A #34, dated 11.18.2020, where State clarified *"The Contractor shall pay to NASPO ValuePoint, or its assignee, a NASPO ValuePoint Administrative Fee of one quarter of one percent (0.25% or 0.0025) no later than 60 days following the end of each calendar quarter. The NASPO ValuePoint Administrative Fee shall be submitted quarterly and is based on all sales of products and services under the Master Agreement (less any charges for taxes or shipping). Any additional fees at the Participating Entity- level will be negotiated during the PA (Participating Addendum) process and will be applied to Reseller's pricing as agreed to by the Reseller and the Participating Entity."*	Piste accepts
3.5	X Exception: Incorporation of Oracle Supplemental Terms and Conditions. X Rationale: CDW-G is required to incorporate Oracle terms, including subsequent versions, by reference.	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. Notwithstanding the foregoing, the State and Participating Entities acknowledge and agree that Oracle's SUPPLEMENTAL PUBLIC SECTOR LICENSE AND TECHNICAL SUPPORT TERMS AND CONDITIONS 021317 ("Oracle Supplemental Terms and Conditions") are hereby incorporated into the Contract by reference and will apply to the State's or a Participating Entity's purchase and use of Oracle Materials and Services.	Unacceptable. Allowing one Publisher to insert terms and conditions that override the Master Agreement would force the State, in giving each Publisher fair and equal treatment, to open the floodgates and allow all Publisher's Terms and Conditions to be incorporated. CDW-G, as a reseller, has no authority to contractually usurp the terms and conditions offered by Publishers. While the State may assist on specific references, CDW-G is open to discussing alternative language that would more broadly suggest that Publisher EULAs will be the governing terms of use.	Unacceptable. At the PA level, individual states may negotiate the degree to which they will incorporate Oracle Terms and Conditions into the Contract, but not at the Master Agreement level.	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. Notwithstanding the foregoing, the State and Participating Entities acknowledge and agree that its and their use of Software will be pursuant to the standard end user license agreements offered by the Publisher, unless the State or Participating Entity (as applicable) has negotiated separate or different terms with the Publisher or Contractor.	State Accepts						
3.13.a	X Exception: Delete the third sentence. X Rationale: Edit mandated by Oracle as condition of approval to resell.	a. Timely submission of these reports is a material requirement of the Master Agreement. The recipient of the reports shall have exclusive ownership of the media containing the reports. ~~The Lead State and NASPO ValuePoint shall have a~~ perpetual, irrevocable, non-exclusive, royalty free, transferable right to display, modify, copy, and otherwise use ~~the~~ reports, data and information provided under this section. NASPO ValuePoint Administrative Fee shall be based on the gross amount of all sales (less any charges for taxes or shipping) at the adjusted prices (if any) in Participating Addenda	Unacceptable. State's may negotiate these terms in their PAs but allowing each Publisher to modify the Master Agreement would open the door for potentially endless negotiations and the potential perception of preferential treatment to specific Publishers.	Please see Section 3.5. It would be a breach of CDW-G's reseller agreements with the Publishers to grant a license software in conflict with the Publisher EULAs.	It's the State's understanding that this Exception has been withdrawn. These reports refer to usage and spend under the contract and are not related to the licensing of software mentioned in cell E25.	Correct. Exception withdrawn.						
6.3	X Exception: Indemnification limited to third party claims with a direct causal link to the Reseller's negligent acts or omissions. Removal of intangible property damage. X Rationale: Indemnity, by its nature, is intended to cover claims brought by a third party. CDW-G is merely clarifying in order to trigger an obligation there must be a direct causation link to the negligent/willful acts, mere allegations are insufficient. Lastly, "intangible property" is overly vague.	To the fullest extent permitted by law, Reseller shall defend, indemnify, and hold harmless the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") brought by an unaffiliated third party for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Reseller or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of or recovered under the Workers' Compensation Law or arising out of the failure of such Reseller to conform to any federal, state, or local law, statute, ordinance, rule, regulation, or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Reseller from and against any and all claims. It is agreed that Reseller shall be responsible for primary loss investigation, defense, and judgement costs where this indemnification is applicable. In consideration of the award of this contract, the Reseller agrees to waive all rights of subrogation against the State of, its officers, officials, agents, and employees for losses arising from the work performed by the Reseller for the State of Arizona. This indemnification shall survive the termination of the above listed contract with the Reseller. This indemnity shall not apply if the Reseller or sub-contractor(s) is/are an agency, board, commission or university of the State of Arizona.	Still under review	Reserved pending review.	Still under review	Reserved pending review.	The State accepts, with the following exceptions: The addition of "brought by an unaffiliated third party" is acceptable. The deletion of "or intangible" is rejected. The addition of "to the extent caused by Reseller's (includes customers' data. The deletion of "or alleged to be caused" is rejected; defense and hold harmless obligations cannot be contingent on direct causation.	CDW-G agrees to the inclusion of "or alleged to be caused"; however, as a SVAR CDW-G is not the appropriate party to protect the State from claims associated with its data which arise from the Software. Those protections, as agreed in line 27, will be passed through from CDW-G to the State/Participating Member. Revised clause would read: To the fullest extent permitted by law, Reseller shall defend, indemnify, and hold harmless the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") brought by an unaffiliated third party for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Reseller or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of, or recovered under, the Workers' Compensation Law or arising out of the failure of such Reseller to conform to any federal, state, or local law, statute, ordinance, rule, regulation, or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Reseller from and against any and all claims. It is agreed that Reseller shall be responsible for primary loss investigation, defense, and judgement costs where this indemnification is applicable. In consideration of the award of this contract, the Reseller agrees to waive all rights of subrogation against the State of, its officers, officials, agents, and employees for losses arising from the work performed by the Reseller for the State of Arizona. This indemnification shall survive the termination of the above listed contract with the Reseller. This indemnity shall not apply if the Reseller or sub-contractor(s) is/are an agency, board, commission or university of the State of Arizona.		CDW-G accepts the re-insertion of the words "or intangible"	
6.4	X Exception: Strike "Materials" X Rationale: Materials, as defined, is not applicable given the nature of the Contract. Materials are not contemplated under "Software" at the end, referring the State to the pass through model in Section 14.4 which is more relevant to a Reseller.	With respect to ~~Materials or~~ Services provided or proposed by a Reseller indemnitor for performance under the Contract, Reseller 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 U.S. intellectual property right by ~~the Materials and the~~ Services. With respect to the defense and payment of claims under this subparagraph: 1. State shall provide reasonable and timely notification to Reseller of any claim for which Reseller may be liable under this paragraph; 2. Reseller, with reasonable consultation from State, shall have control of the defense of any action on an indemnified claim including all negotiations for its settlement or compromise; 3. State may elect to participate in such action at its own expense; and 4. State may approve or disapprove any settlement or compromise, provided that, (i) State shall not unreasonably withhold or delay such approval or disapproval and (ii) State shall cooperate in the defense and in any related settlement negotiations. If Reseller is a public agency, this paragraph 6.4 does not apply. Indemnity protections related to the Software shall be passed through to State in accordance with the terms of Section 14.4.	Still under review	Reserved pending review.	Still under review	Reserved pending review.	State Accepts Language in C27						
7.1	X Exception: Delete "Materials", reduce warranty period for Services to ninety (90) days Rationale: Warranties for Software will be passed through to the Publisher. Reduced warranty period for Services is in line with previously negotiated agreements with the State.	Contractor warrants that, unless expressly provided otherwise elsewhere in the Contract, the ~~Materials and~~ Services will for ~~1 (one) year~~ ninety (90) days after acceptance and in each instance of renewal: (1) conform to the requirements of the Contract, which by way of reminder include without limitation all descriptions, specifications, and drawings identified in the Scope of Work and any Contractor affirmations included as part of the Contract; (2) be free from defects of material and workmanship; (3) conform to or perform in a manner consistent with current industry standards; and (4) be fit for the intended purpose or use described in the Contract. Mere delivery or performance does not substitute for acceptance by State. Where repetitive testing or other acceptance testing is required for Services, Services cannot be done until after installation, the forgoing warranty will not begin until State's acceptance. Publisher warranties related to the Software, which are intended for the end user, shall be passed through to State.	Unacceptable. State expects Reseller services to be under warranty for a minimum of 1 year. Additionally, as part of "value-add" the State expects the Reseller to not merely be a pass through warranties for the Publisher but to be the single point of contact for the State on all issues regarding products and services bought through this contract, including Publisher warranties.	CDW-G Services contemplated by the RFP are not of the sort that promote extended warranty periods. The results and successful performance of such Services will be apparent to the State relatively quickly after completion. With respect to Products, CDW-G understands the State's concerns and is open to revising the language further to read: Publisher warranties related to the Software, which are intended for the end user, shall be passed through to State. Contractor will assist the State in the facilitation of its warranty claims with the Publisher.	The State can accept the following: Contractor warrants that, unless expressly provided otherwise elsewhere in the Contract, the ~~Materials and~~ Services will for ~~1 (one) year~~ ninety (90) days after acceptance and in each instance of renewal: (1) conform to the requirements of the Contract, which by way of reminder include without limitation all descriptions, specifications, and drawings identified in the Scope of Work and any Contractor affirmations included as part of the Contract; (2) be free from defects of material and workmanship; (3) conform to or perform in a manner consistent with current industry standards; and (4) be fit for the intended purpose or use described in the Contract. Mere delivery or performance does not substitute for acceptance by State. Where repetitive testing or other acceptance testing is required for Services, Services cannot be done until after installation, the forgoing warranty will not begin until State's acceptance. Publisher warranties related to the Software, which are intended for the end user, shall be passed through to State. Contractor will assist the State in the facilitation of its warranty claims with the Publisher.	Thank you. CDW-G agrees to State's language in Cell F28 of this Spreadsheet.						
7.3	X Exception: Delete "Materials", include pass through language. X Rationale: As in Section 7.2, Publisher warranties related to the Software will be passed through to the State.	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. Publisher warranties related to the Software, which are intended for the end user, shall be passed through to State.	Unacceptable. State expects, as part of "value-add", the Reseller to not merely be a pass through warranties for the Publisher but to be the single point of contact for the State on all issues regarding products and services bought through this contract, including Publisher warranties.	See above suggested revision in Section 7.1. CDW-G suggests the same expansion of the red insertion here.		The State can accept the following: 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. Publisher warranties related to the Software, which are intended for the end user, shall be passed through to State. Contractor will assist the State in the facilitation of its warranty claims with the Publisher.	Thank you. CDW-G agrees to State's language in Cell F29 of this Spreadsheet.						
11.1B	X Exception: Returns conditioned on Publisher acceptance. X Rationale: Once resold, CDW-G will only have return privileges for Software to the extent the Publisher grants them.	To the extent permitted by the Publisher, 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 thirty (30) days after receipt. If State elects to return 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 nonconforming 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.	Unacceptable. As the State is willing to pay shipping costs associated with the return, there is no unreasonable burden placed on the Reseller or the Publisher. Reseller is expected to present SVAR contract terms to Publishers as a condition of selling their software.	Parties to discuss the feasibility of Reseller pushing terms upwards to the Publishers. CDW-G is concerned this approach will severely limit the Publishers that will be willing to sell on contract. Specifically to the return of Software, CDW-G makes purchases from the Publishers pursuant to Publisher terms just like the State. If a Publisher is willing to take a return from CDW-G, CDW-G will similarly take a return of software from the State.	The State can accept language that requires the Reseller to clearly state in the Reseller's quotes, that the Publisher's EULA will govern the use of the RFP. If the Reseller fails to notify the State of the Publisher-required deviation, then the Reseller would be responsible for any fees or remaining costs. The State requests CDW-G to suggest language of this nature.	Unless noted as non-cancelable or non-returnable on Reseller's quote, 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 thirty (30) days after receipt. If State elects to return 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 nonconforming 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.	State Accepts						
12.9	X Exception: Defer acceptance criteria to the applicable Statement of Work for Services. X Rationale: Criteria, including an acceptance period, should be mutually agreed based on the work being performed.	State has the right to make acceptance of Services subject to acceptance criteria, as mutually agreed to by the parties in the applicable Statement of Work. The criteria can be applied to testing, or the quality of services performed upon delivery. State may apply an 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.	State accepts.	Thank you.						

14.6	X Exception: Delete references to "Materials" and "software". X Rationale: Necessary to align to earlier edits in 6.3 and 6.4.	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 noninfringing ones; (b) obtain for State the right to continue using the infringing items; or (c) modify the infringing items so that they become non-infringing so long as they continue to function as specified following the modification. 14.6.2 CANCELLATION OPTION. In every case under 14.6.1, if none of those options can reasonably be accomplished, or if the continued use of the infringing items is impracticable, State may cancel the relevant Order or terminate the Contract and Contractor shall take back the infringing items. If State does cancel the Order or terminate the Contract, Contractor shall refund to State: ~~(a) for any software created for State under the Contract, the amount State paid to Contractor for creating it;~~ ~~(b) for all other Materials, the net book value of the product provided according to generally accepted accounting principles; and~~ (a) 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 Services other than as contemplated by the Contract or expressly authorized or proposed by a Contractor Indemnitor; (b) operation of Materials Services 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.	Unacceptable. Resold software may be considered Materials and Reseller should not simply pass through Materials.	CDW-G, as a reseller, is not the proper party to provide indemnity protections against the software it has had no part in creating. Those protections, are rightly passed through from the Publisher to the State by CDW-G.	State accepts.	Thank you.				
14.10	X Exception: Oracle compliance language added. X Rationale: Edit mandated by Oracle as condition of approval to resell.	Unless otherwise stated in the Contract, any electronic or information technology offered to the State of Arizona under the Contract shall comply with A.R.S. § 18-131 and § 18-132 and Section 508 of the Rehabilitation Act of 1973, which requires that employees and members of the public shall have access to and use of information technology that is comparable to the access and use by employees and members of the public who are not individuals with disabilities. ~~The extent to which an Oracle product is, prior to any customizations, capable of providing comparable access to individuals with disabilities consistent with the applicable provisions of the Architectural and Transportation Barriers Compliance Board standards set out in 36 CFR Part 1194 (known as Section 508), effective as of June, 2001, or the Web Content Accessibility Guidelines (known as Revised Section 508) effective as of January, 2018 and the Web Content Accessibility Guidelines (WCAG) version 2.0 level AA, is indicated by the dependencies, comments and exceptions (some of which may be significant, if any) noted on the applicable Voluntary Product Accessibility Templates (VPAT) available at www.oracle.com/accessibility for each product, when they are used in accordance with Oracle's associated documents and other written information and that any other products~~ Oracle's accessibility technology is designed to work with various third party software technologies and any other products used with them properly interoperate with them. In the event that no VPAT is available for a particular Oracle product, please contact the Oracle Accessibility Program Office at accessible_ww@oracle.com. In some cases, the outcome may be that a product is still being evaluated for accessibility, may be scheduled to meet accessibility criteria in a future release, or that Oracle has no current plans to provide accessibility. Oracle customers with disabilities may use the online My Oracle Support or call Oracle Support at 1.800.223.1711. Hearing-impaired customers in the U.S. who wish to speak to an Oracle Support representative may use a telecommunications relay service (TRS). Outside the U.S., customers may find their local TRS information at the FCC site. A list of local telephone numbers is available at http://www.fcc.gov/cgb/dro/trsphone.html. International hearing-impaired customers should use the TRS at +1.605.224.1837. Oracle Support will respond to product accessibility issues according to the current Technical Support Policies. No other terms, conditions, statements or any other such representations regarding or related to accessibility shall apply to the Oracle products provided under this agreement, and Oracle disclaims all liability for any claims that may arise regarding the Oracle products' accessibility, including the availability of VPATs. Product direction remains at the sole discretion of Oracle. Prior to any customizations, the Oracle product(s) and service(s) to be delivered pursuant to the contract are capable of accommodating Internet Protocol version 6 (IPv6) as set forth in USGv6 Profile (NIST Special Publication 500-267) and its corresponding test program. Please note that such capabilities are subject to the dependencies, comments and exceptions (some of which may be significant, if any) noted in such documentation, and require that Oracle product(s) and service(s) are used in accordance with Oracle's associated documents and other written information and that any other products	Unacceptable. State expects, as part of "value-add", the Reseller to not merely pass along the Information Security requirements to the Publisher but rather to make the Publisher's conformance to the Information Security requirements a condition of selling the Publisher's software under this contract.	As above, Publisher terms will govern the use of Publisher Software. As a reseller, CDW-G does not have control over the construction or rights granted by a Publisher to its software. Moreover, as a condition precedent to bidding the Oracle category, each reseller is required to incorporate such terms.	State accepts.	Thank you.				
15.1	X Exception: Condition availability on Publisher provision. X Rationale: CDW-G will be able to provide the requisite information, to the extent such information is made available by the Publisher.	SaaS Products Requirements. For Software as a Service Products sold by the S-VAR, the following information shall, to the extent provided by the Publisher, be made available to the Purchasing Entity upon request.	It is inappropriate for the SVAR to be placed in the position of negotiator for the States and expect Publisher conformance. As above, CDW-G is concerned the State's approach here will severely limit the Publishers willing to sell on contract.	The State can accept language that requires the Reseller to clearly identify in the Reseller's quote, any areas of these requirements that the Publisher refuses to comply with. The State can't show up front that a particular Publisher won't agree to certain Information Security requirements and the State can make an educated purchasing decision.	Upon further review, Section 15.1 seeks information from the S-VAR related to the Publishers' Information Security practices, there does not appear to be any requirements for the Publisher to comply. CDW-G's proposed modification in Cell C34 suggests that, where available from the Publisher, CDW-G will provide information to the State/Participating Entity.	State accepts				
16	Exception: Delete in its entirety and replace with proposed language. Rationale: As a S-VAR, CDW-G has no right to accept terms of use on behalf of a Publisher. Further, Oracle-specific edits are mandated by Oracle as condition of approval to resell.	(a) The Reseller acknowledges that any ~~shall honor~~ Purchasing Entities' existing SaaS Terms and Conditions with Publishers shall govern such Purchasing Entity's use of the SaaS software. (b) Absent existing SaaS Terms and Conditions, Purchasing Entities acknowledge that receives the SaaS software purchased hereunder and the only warranties offered are those of the Cloud Service Provider, not Reseller or its affiliates. In purchasing the SaaS software, Purchasing Entities rely on the Cloud Service Provider's standard terms and conditions, or such other terms as agreed to by Purchasing Entity and the Cloud Service Provider ("Cloud Services Terms and Conditions"). Accordingly, Purchasing Entities shall consider the Cloud Service Provider to be the contracting party and the Cloud Service Provider shall be the party responsible for providing the SaaS software to Participating Entities. Participating Entities will look solely to the Cloud Service Provider for any loss, claims or damages arising from or related to the provision of such SaaS software. (c) Participating Entities acknowledge that Reseller is not the provider of the SaaS software purchased hereunder and the only warranties offered are those of the Cloud Service Provider, not Reseller or its affiliates. In purchasing the SaaS software, Purchasing Entities rely on the Cloud Service Provider's service descriptions and the terms and not on any statements, specifications, service descriptions or other specifications representing the SaaS software that may be provided by Reseller or its affiliates. Participating Entities expressly waive any claim that it or they may have against Reseller or its affiliates based on any product liability or infringement or alleged infringement of any patent, copyright, trade secret or other intellectual property rights with respect to the SaaS software and also waives any right to indemnification from Reseller or its affiliates against any such claim made against the Participating Entity by a third party. (d) With respect to Oracle SaaS software, the Participating Entities acknowledge and agree that Oracle's "SUPPLEMENTAL PUBLIC SECTOR ORACLE CLOUD SERVICES TERMS AND CONDITIONS v102119" (and their successor versions as they may be updated from time to time in Oracle's sole discretion) (error on reference, will apply to Participating Entities' use of such Oracle	Unacceptable. State expects, as part of "value-add", the Reseller to present the Terms and Conditions of this Solicitation to the Publishers. The Reseller is expected to communicate to the Publishers that compliance with the Terms and Conditions of this Solicitation is a requirement to selling their products under a resultant Contract.	See above. CDW-G is a reseller/reteller of SaaS solutions. Any terms governing the provision by Publishers and/or uae by State will be as determined by the Publisher.	Unacceptable. At the PA level, individual states can negotiate the degree to which they will allow this section to be modified. The State can accept language that requires the Reseller to include at the time of the quote, areas of these SaaS Terms and Conditions that the Publisher refuses to comply with.	CDW-G is not in a position to speak to conformance (or lack thereof) on behalf of the Publishers. Just like on-prem software, SaaS software terms of use are dictated by the Publishers. As the S-VAR, CDW-G is able to facilitate a Purchasing Entity's desire to negotiate those terms, but cannot provide negotiation support or guidance on behalf of the Purchasing Entity or a Publisher. In addition, CDW-G has accommodated the State's desire to remove specific references to a particular Publisher's terms. Revised language proposals are offered below for the State's consideration. CDW-G is willing to engage further discussion on this issue should the State believe it beneficial. (a) The Reseller acknowledges that any ~~shall honor~~ Purchasing Entities' existing SaaS Terms and Conditions with Publishers shall govern such Purchasing Entity's use of the SaaS software. Purchasing Entities will receive the SaaS software directly from the applicable provider ("Cloud Service Provider"). Absent existing SaaS Terms and Conditions, a Purchasing Entity's right to use SaaS software will be pursuant to the Cloud Service Provider's standard terms and conditions, a copy of which will be provided upon request at the time of quoting ("Cloud Services Terms and Conditions"). Accordingly, Purchasing Entities shall consider the Cloud Service Provider to be the contracting party and the Cloud Service Provider shall be the party responsible for providing the SaaS software to Participating Entities. Participating Entities will look solely to the Cloud Service Provider for any loss, claims or damages arising from or related to the provision of such SaaS software. (b) Participating Entities acknowledge that Reseller is not the provider of the SaaS software purchased hereunder and the only warranties offered are those of the Cloud Service Provider, not Reseller or its affiliates. In purchasing the SaaS software, Purchasing Entities rely on the Cloud Service Provider's service descriptions and the terms and not on any statements, specifications, service descriptions or other specifications representing the SaaS software that may be provided by Reseller or its affiliates. Participating Entities expressly waive any claim that it or they may have against Reseller or its affiliates based on any product liability or infringement or alleged infringement of any patent, copyright, trade secret or other intellectual property rights with respect to the SaaS software and also waives any right to indemnification from Reseller or its affiliates against any such claim made against the Participating Entity by a third party. (c) Where the State or a Participating Entity requests to negotiate terms of use associated with a Publisher's SaaS software, Reseller agrees to facilitate those discussions between the State or Participating Entity and the Publisher. No fee of SaaS software provided by the S-VAR or Category 1, the S-VAR shall provide a note document that clarifies the difference between	Unacceptable. At the PA level, individual states can negotiate the degree to which they will allow this section to be modified. The State can accept language that requires the Reseller to include at the time of the quote, areas of these SaaS Terms and Conditions that the Publisher refuses to comply with.	To the extent CDW-G is authorized on behalf of a SaaS software Publisher to accept the terms of Section 35, it accepts. Additionally, CDW-G appreciates the State's earlier acknowledgements of the applicability of Publisher EULAs to all Software. With respect to special terms associated to SaaS software, where the Publisher EULA is unacceptable (as in the case of the State), CDW-G will provide a copy of a Purchasing Entity's requirements (or proposed edits to the SaaS Software Publisher's EULA) and facilitate the Purchasing Entity's initial communication with the Publisher to allow the Purchasing Entity an opportunity to negotiate terms which may be agreeable to the Purchasing Entity and the Publisher.
Section 2-O: Uniform Terms & Conditions											
	NO EXCEPTIONS TAKEN										

Part 1:
Solicitation Summary

1.0 What the State Is Soliciting

The Arizona Department of Administration, State Procurement Office division (the State), as authorized under A.R.S.§ 41-2501 is seeking to establish one or more "statewide" contracts to provide Software Value-Added Reseller services.

Additionally, this solicitation will be conducted in partnership with the NASPO ValuePoint Cooperation Purchasing Program (NASPO ValuePoint). As such, the Master Agreements awarded through this solicitation may be utilized by states and other political subdivisions throughout the United States.

The State anticipates awarding multiple Contracts to begin providing services by a target date of April 8, 2021.

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

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

Active Co-Op Members List is available at: https://spo.az.gov/procurement-services/cooperative-procurement/state-purchasing-cooperative .

Persons With Disabilities

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

OFFERORS SHOULD READ THE ENTIRE SOLICITATION CAREFULLY.

2.0 What's in the Solicitation

Part 1	Section 1: Solicitation Summary	*Part_1_BPM002338_OPEN_FIRST_Software VAR.PDF (or as amended)*
Part 2	Section 2-A: Scope of Work	*Part_2_BPM002338_RFP__Software VAR.PDF (or as amended)*
	Section 2-B: Pricing Document	
	Section 2-C: Special Terms and Conditions	
	Section 2-D: Uniform Terms and Conditions	
Part 3	Section 3-A: Instructions to Offerors	

	Section 3-B: Offer forms	*Part_3_BPM002338_Offer_Forms_Software VAR.DOC (or as amended)*

3.0 How and When Proposals Are Due

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

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

- by phone at (602) 542-7600, option2; or
- by email to app@azdoa.gov

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

4.0 Pre-Offer Conference

The State **WILL** conduct a Pre-Offer Conference for this Solicitation at the time and place indicated in the solicitation's '**Process**' field as found within "The State's e-Procurement System" (https://app.az.gov). Attendance is optional but encouraged**.** Refer to paragraph 2.7 of the Instructions to Offerors for more information.

5.0 Inquiries

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

End of Section 1

Part 2: Scope, Pricing and Terms and Conditions

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SECTION 2A: Scope of Work

1.0 Introduction, Purpose, and Background

1.1 Introduction, Purpose, and Background –

The State of Arizona, State Procurement Office (SPO), is requesting proposals for Software Value-Added Reseller (Reseller) services in furtherance of the NASPO ValuePoint Cooperative Purchasing Program (NASPO ValuePoint). The purpose of this Solicitation (RFP or Solicitation) is to establish Master Agreements with qualified Resellers so that eligible entities may acquire Software and related services from Software Value-Added Resellers.

This RFP seeks offers that can provide better value, and in some cases achieve more favorable pricing, than is obtainable by an individual state or local government entity because of the collective volume of potential purchases by numerous state and local government entities. More specifically, this RFP expects offerors to provide a full range of Reseller services and service options to support Purchasing Entities' COTS and SaaS-based software needs. The RFP shall be broken up into three award categories: General Software, Microsoft Software, and Oracle Software. For each of these categories, services related to the software purchase, including but not limited to installation, configuration, maintenance, and advisory services may be offered.

Lead State, Solicitation Number and Lead State Contract Administrator (LSCA)
The State of Arizona, through its State Procurement Office (SPO), is the Lead State and issuing office for this document and all subsequent addenda relating to it. This RFP is a competitive process, in accordance with the Arizona Procurement Code available at https://spo.az.gov/ . The Arizona Procurement Codeconsists of Arizona Revised Statutes (ARS) §§41-2501 et seq. and administrative rules and regulations A.A.C R2-7-1010 et.seq. "Solicitation #BPM002338" shall be referred to on all proposals, correspondence, and documentation relating to this RFP.

The Lead State Contract Administrator (LSCA) identified below is the single point of contact during this procurement process. Offerors and interested persons shall direct to the Lead State Contract Administrator all questions concerning the procurement process, technical requirements of this Solicitation, contractual requirements, requests for brand approval, change, clarification, protests, the award process, and any other questions that may arise related to this solicitation and the resulting Master Agreement. The Lead State Contract Administrator (LSCA) designated by the State of Arizona, State Procurement Office is:

Eric Bell - State Procurement Manager
State of Arizona, State Procurement Office
100 N. 15th Avenue, Suite 402
Phoenix, Arizona 85007
Phone: (602)542.8921

1.2 NASPO ValuePoint Background Information

NASPO ValuePoint is the cooperative purchasing program of all 50 states, the District of Columbia and the territories of the United States. NASPO ValuePoint is a division of the National Association of State Procurement Officials (NASPO), a 501(c)(3) non-profit association dedicated to strengthening the procurement community through education, research, and communication.

NASPO is made up of the directors of the central purchasing offices in each of the 50 states, the District of Columbia and the territories of the United States. NASPO ValuePoint facilitates administration of the cooperative group contracting consortium of state chief procurement officials for the benefit of state departments, institutions, agencies, and political subdivisions and other eligible entities (i.e., colleges, school districts, counties, cities, some nonprofit organizations, etc.) for all states, the District of Columbia, and territories of the United States.

Canadian Participation. Subject to the approval of the awarded Reseller, any Canadian provincial government or provincially funded entity in the Northwest Territories, Yukon, Nunavut, Ontario, Quebec, Nova Scotia, New Brunswick, Manitoba, British Columbia, Prince Edward Island, Saskatchewan, Alberta, and Newfoundland and Labrador, including municipalities, universities, community colleges, school boards, health authorities, housing authorities, agencies, boards, commissions, and crown corporations may be eligible to use the Reseller's contract.

Additional Agreement with NASPO. Upon request by NASPO ValuePoint, awarded Contractor shall enter into a direct contractual relationship with NASPO ValuePoint related to Reseller's obligations to NASPO ValuePoint under the terms of the Master Agreement, the terms of which shall be the same or similar (and not less favorable) than the terms set forth in the Master Agreement.

For more information consult the following websites: www.naspovaluepoint.org and www.naspo.org.

1.3 Schedule of Events

The Procurement Office shall make every effort to adhere to the following schedule. Change in the "Closing Date and Time" (Proposal Due Date) shall only be by an issued Solicitation Amendment.

Anticipated Solicitation Release:	September 8, 2020
Anticipated Pre-Offer Conference:	September 17, 2020
Anticipated Closing Date and Time:	October 21, 2020
Anticipated Award Date:	January 22, 2021

1.4 Purchasing Entities

In addition to the Lead State conducting this RFP, the states listed in Exhibit 1 (One) have signed an Intent to Participate (ITP) document to be named in this Solicitation as potential Participating Entities of the resulting Master Agreement (MPA). Any state that indicates an Intent to Participate are not obligated to either participate

or enter into any contractual relationship with the selected responders. Other eligible entities, including other states, may become Participating Entities after award of the MPA through execution of a Participating Addendum (PA).

A Participating Addendum may include Participating Entity-specific terms and conditions not included in the Master Agreement. Some of these terms and conditions may be provided to the vendors in the RFP (see Exhibit 2 (Two)) as an informational item only, to give vendors an idea of the terms they might be expected to abide by or negotiate during the PA process.

Except to the extent modified by a Participating Addendum, each Purchasing Entity shall follow the terms and conditions of the Master Agreement and shall have the same rights and responsibilities for their purchases as the Lead State has in the Master Agreement, including but not limited to, any indemnity or right to recover any costs as such right is defined in the Master Agreement and applicable Participating Addendum for their purchases. Each Purchasing Entity shall be responsible for its own charges, fees, and liabilities. The Reseller shall apply the charges and invoice each Purchasing Entity individually.

1.5 Historical Usage

Exhibit 3 (Three) contains the usage data in terms of total sales for all contractors from the current set of contracts for Calendar Years 2016, 2017, 2018, and 2019. No minimum or maximum level of sales volume is guaranteed or implied.

2.0 SCOPE OF WORK

2.1 Software Publishers, Categories. The identified software product needs under this solicitation have been divided into three mutually-exclusive categories:

Category I – General software: This category includes all software titles **except** Microsoft and Oracle. Category I has been further sub-divided into three tiers:

- **Tier 1** – Key Itemized Publishers
- **Tier 2 –** Other Itemized Publishers
- **Tier 3 –** Non-Itemized Publishers

Category II – Microsoft-only software, and

Category III – Oracle-only software.

See descriptions and chart which follow. As indicated, it is most desirable for Reseller to have a direct reseller agreement with the itemized software Publishers. If a direct reseller agreement is not already in place between itemized software Publishers and the Reseller, the Reseller is expected to enter into a direct reseller agreement and submit a rate for that Itemized Publisher that is better than the rate for a Non-Itemized Publisher. Over the life of this contract, product needs or volumes may change and new Publishers may be added by amendment to the Itemized Publishers' lists.

2.1.1 Category 1 – General Software Resellers

2.1.1.1 ***Tier 1*** *– Key Itemized Publishers:* The products of the Publishers in this tier represent the highest tier of sales volume outside of the two (2) Publisher Specific Categories. This tier is the one most likely to include a Participating Entity's enterprise or high-volume agreements with a Publisher. Resellers shall be a certified direct resellers for Publishers in this category, except in the case where certain Publishers do not sell directly through Resellers. The preferred pricing that a Reseller receives based on their reseller certification status, in conjunction with the anticipated considerable volume of purchases through these Contracts, is the expected foundation for a very competitive base Reseller Cost, with further reductions of Reseller Cost as they are achieved through ongoing Reseller negotiations. If a Reseller's proposal includes the General Category, the Reseller must be able to resell, and must provide pricing for each Tier 1 Itemized Publisher (see Pricing Sheet). Specific requirements may be required for some Publishers in this category in an individual Participating Entity's PA.

2.1.1.2 ***Tier 2*** *- Other Itemized Publishers:* The products of the Publishers in this category represent a high level of sales volume as identified for this solicitation. This category may include a Participating Entity's high-

volume agreements or VLAs with a Publisher. It is desirable for Resellers to be certified direct resellers for Publishers in this category. If a Reseller's proposal includes the General Category, the Reseller must be able to resell, and must provide pricing for, each Tier 2 Itemized Publisher (see Pricing Sheet). Specific requirements may be required for some Publishers in this category in an individual Participating Entity's PA.

2.1.1.3 **Tier 3 -** Non-Itemized Publishers (all other distributed software purchases). This category is defined to include all other distributed computer software Publishers not specifically itemized. New or existing software products can be added to this category at any time during the term of the Contract without the written consent of the LSCA, provided the offerings, including pricing and terms, meet the requirements of the Contract, and may be itemized in the online catalog, if volume justifies the addition. If a Reseller's proposal includes the General Category, the Reseller must provide pricing applicable to all Non-Itemized Publishers resold by the Reseller. Specific requirements may be required for some Publishers in this category in an individual Participating Entity's PA.

KEY ITEMIZED PUBLISHERS **Certification of Direct Reseller status required, except in the case where certain Publishers do not sell directly through Resellers**	OTHER ITEMIZED PUBLISHERS **Certification of Direct Reseller status desirable. If not certified, the percentage rate should be no greater than Non-Itemized Rate**	NON-ITEMIZED PUBLISHERS
ADOBE	AUTODESK	ALL OTHER PUBLISHERS
CA TECHNOLOGIES	BARRACUDA NETWORKS	
CISCO	BMC SOFTWARE	
COMMVAULT	CHECK POINT SOFTWARE	
IBM	CHERWELL	
RED HAT	CITRIX	
SPLUNK	CPI	
TABLEAU	CROWDSTRIKE	
VEEAM	DELL	
VMWARE	DELPHIX	
	DOCUSIGN	
	DYNATRACE	
	FORCEPOINT	
	FORTINET	
	GOOGLE	

	INFORMATICA	
	IVANTI	
	KNOWBE4	
	MCAFEE	
	MICRO FOCUS	
	MULESOFT	
	NETMOTION	
	OKTA	
	OPENTEXT	
	PROGRESS SOFTWARE	
	PROOFPOINT	
	QUEST SOFTWARE	
	RAPID7	
	RSA SECURITY	
	SALESFORCE	
	SAP	
	SOLARWINDS	
	SOPHOS	
	SPILLMAN	
	SYMANTEC	
	TENABLE	
	TREND MICRO	
	VARONIS	
	VERITAS	
	ZOHO	

2.1.1 Category II: Microsoft Resellers

This Category shall be restricted to only Microsoft software products.

2.1.2 Category III: Oracle Resellers

This Category shall be restricted to only Oracle software products.

2.1.3 Software Publishers, General Representation.

Excluded Software Publishers. The Reseller shall agree to enter into good faith negotiations with any Software Publisher willing to do business with them. Resellers

shall advise the LSCA or designee of any Software Publishers with whom the Reseller was unable to enter into a reseller certification following negotiations.

Expanded Representation. The Reseller is expected to continue to work towards reseller certifications with Publishers not currently represented, particularly with those Publishers whose sales volume merit classification into the Itemized Publisher lines. Similarly, Reseller is expected to continue to work towards a higher certification level with current Publishers

2.2 Category 1 - Software Value-Added Reseller ('Reseller' – "SVAR") – All Publishers Excluding Microsoft and Oracle Software

2.2.1 Software Value-Added Reseller ('Reseller" or "SVAR") shall be a large account reseller, with a national presence, authorized to sell products direct from software Publishers or authorized distributors.

2.2.2 **SOFTWARE PRODUCTS**, including Software as a Service (SaaS)

2.2.2.1 Out of Scope Products - Non-SaaS cloud computing products such as Infrastructure as a Service ("IaaS"), Platform as a Service ("PaaS"), and Software provided by a Managed Services Provider are generally out of scope of this Contract. IaaS shall be allowable **only** as an incidental product when 1) SaaS is the primary and predominate title being purchased, and 2) the limited and incidental licensing of the publisher's IaaS is essential to the successful and efficient implementation and or deployment of the SaaS software. This determination should be made by the purchasing entity in advance of any IaaS purchase.

2.2.2.2 Most Current Version - Purchase orders shall be deemed to reference a manufacturer's most recent release model or version of the product at the time of the order, unless the Purchasing Entity specifically requests in writing an earlier model or version and the Reseller is willing to provide such model or version.

2.2.2.3 Licenses and Maintenance Agreements - The Reseller shall honor existing Purchasing Entities' Volume License Agreements (VLA's) or Enterprise License Agreements (ELA's) with Publishers and include those licenses as part of the Reseller's license tracking service. Following an executed PA with a Purchasing Entity, and if so required by the Purchasing Entity and/or an individual Publisher, the Reseller shall identify itself to software Publishers as Reseller for that Purchasing Entity. If so required by the Publisher and Purchasing Entity, the Reseller shall execute a change of channel partner agreement with the Publisher. Resellers shall sell additional seats consistent with Purchasing Entities' VLAs or ELAs. Reseller shall work with Participating Entities, Purchasing

Entities and Publishers as needed to establish new VLAs or ELAs. The Reseller shall work with the Publisher and Purchasing Entities as necessary to ensure the Purchasing Entity receives timely and pertinent license information, such as: license or agreement renewals, and opportunities based on actual volume.

Reseller shall work directly with Purchasing Entities in establishing, signing and maintaining enrollment agreements. If a Reseller is the sole Reseller in a State, the Reseller shall aggregate all enrollments together for Master Agreement reporting purposes. If a Participating Entity elects to have multiple SVAR contractors, Reseller's responsibilities shall be delineated in that State or Entity's PA. Resellers shall monitor and be able to report on the current levels of software ordered towards any of the Purchasing Entities' VLA-required sales levels to ensure the Purchasing Entity does not fall short and thereby incur Publisher penalties. The Reseller shall be responsible for providing license usage information to the Publishers, if such information is required by the Publishers, in a timely manner (e.g., for 'true up' assessments)

2.2.2.4 Subscription-based Software Licenses. Purchasing Entities can purchase monthly or annual licenses or subscriptions through the Reseller, which provides access to and use of the software during the subscription term

2.2.2.5 Individual Software Licenses. Purchasing Entities can purchase individual COTS licenses, such as perpetual and non-perpetual licenses, through the Reseller.

2.2.2.6 Software Maintenance and Support Agreements.

Purchasing Entities can purchase maintenance agreements, including upgrade protection, through the Reseller. Resellers shall sell software maintenance agreements, even if the software was not purchased under this agreement, such as on-going support for a User's existing perpetual license. As requested, Reseller shall explain what product support or services are included in a Publisher's maintenance agreement.

2.2.2.7 Software Maintenance and Support. Reseller to provide needed services to support maintenance products such as maintenance agreements, software upgrades, annual updates, patches and fixes needed to improve functionality and keep the software in working order. Such services may include providing recommendations on the most cost-effective or appropriate long-term maintenance plan. Reseller shall provide such support, not only to maintenance packages purchased under this Contract, but in support of any other existing and current agreements.

2.2.2.8 Software Updates. Resellers shall ensure Users are eligible to receive, from the Publisher, all new releases and updates of the software, at no additional charge, while under a maintenance agreement at the time such releases and updates are released to any customers of the Publisher.. A "Release" means any collection of enhancements or updates which the Publisher generally makes available to its installed base of customers of such programs. The Reseller shall assist the Purchasing Entity to obtain such releases or updates for their Users from the Publisher.

Should a User not want to receive the next update, the User shall so notify the respective Publisher.

2.2.2.9 Leases

Lease purchase and term leases are allowable only for Purchasing Entities whose rules and regulations permit leasing of software. Individual Purchasing Entities may enter into a lease agreement for the products covered in this Master Agreement, if they have the legal authority to enter into these types of agreements without going through a competitive process and if the applicable Pas permit leasing. No lease agreements shall be reviewed or evaluated as part of this RFP evaluation process.

2.2.3 **VALUE-ADDED SERVICES – MANDATORY BASIC SERVICES:** Reseller shall provide the following Basic Services at no additional charge:

2.2.3.1 Provide Software Products, including COTS, Software as a Service (SaaS), and Related Services

2.2.3.2 Honor existing Volume or Enterprise license agreements held by the Purchasing Entity.

2.2.3.3 Retain or enhance Reseller certifications with software Publishers - At a minimum, maintain Reseller certification levels held at time of award.

If Reseller's certification or reseller status is withdrawn or reduced, Reseller is required to immediately notify, in writing, the Lead State Contract Administrator (LSCA), each Participating Entity, and each Purchasing Entity explaining:

- The change;
- The impact on their costs to obtain the product;
- Limitations on the products or services they may provide; and,
- The reasons for the change.

Failure to provide the required notification, regarding significant negative changes in their reseller status, may be grounds for suspension or cancellation of the MPA and PA's.

2.2.3.4 If a Purchasing Entity requests software from a Publisher with which the Reseller has no established relationship, the Reseller shall agree to enter into good faith negotiations with the Software Publisher. Resellers shall advise the LSCA or designee of any Software Publishers with whom the Reseller was unable to enter into a reseller certification following negotiations.

2.2.3.5 Provide Pre-Sale Advisement:

- Advise the Purchasing Entity in making strategic software application decisions by providing evaluation copies, product comparisons, needs analysis, product information and application recommendations.
- Assist the Purchasing Entity to make cost neutral adjustments to bundled titles to substitute for or delete duplicative Publisher titles.
- Example: In selecting the most-beneficial basket of applications from a Publisher's library (ex: Microsoft or Adobe applications)

2.2.3.6 Act as liaison between the Purchasing Entity and individual Publishers to identify best approaches and cost savings opportunities for the Purchasing Entity. Examples of such are:

- Selecting appropriate software subscription plan options, software enhancements, and sets of features;
- Explaining Volume License Agreements with complicated rules;
- Determining the most cost-effective buying strategies;
- Finding software options to meet a specific need, for example, online survey software or risk management software.

2.2.3.7 Negotiate with Publishers to reduce Reseller Cost, and pass on savings to Purchasing Entities.

2.2.3.8 Provide assistance in developing Volume License and Enterprise Agreements.

2.2.3.9 Provide Software installation assistance including, but not limited to:.

- Provide, at no additional cost, assistance or advice in basic installation or implementation of software products.

- If the Purchasing Entity encounters difficulty in downloading or installing the software, the Reseller shall provide assistance within eight (8) business hours of being informed of the problem.

2.2.3.10 Provide Software De-Installation Assistance.

2.2.3.11 Notify Purchasing Entities of Publisher publicly announced changes pertinent to User licensing.

2.2.3.12 Provide Basic License Management to include:

- Reseller shall have in place a product license inventory and a basic software asset management system, which shall include an accurate inventory record of product licenses purchased under this Contract.
- Reseller shall also have the capability of tracking maintenance renewal and other significant due dates.

2.2.3.13 License Confirmations For licenses ordered under the contract by Purchasing Entity(ies), Reseller shall be able to provide:

- Certified Licensing Confirmation Certificates for all software licenses;
- Reseller's certified license confirmation certificates in the name of such Licensee; or,
- Written confirmation from the Reseller or Publisher accepting the Participating Entities' contract or purchase order as proof of license

2.2.3.14 Transitioning License Tracking Information Reseller shall store license information data acquired and retained shall as sortable data fields and transfer the license information to the Purchasing Entity upon contract termination. Reseller shall work with Purchasing Entities to ensure that the license information data has been successfully transferred in a usable format.

2.2.4 **VALUE-ADDED SERVICES - PREMIUM SERVICES:** The Reseller may offer Premium Value-Added Services related to the software being purchased. The following may be an additional cost:

2.1.3.1 Offer maintenance and support packages on licenses already owned by the Purchasing Entity.

2.1.3.2 Provide advanced or refresh Training Services related to a software purchase under this Contract or existing software held by the Purchasing Entity.

2.1.3.3 Optional Value-Added Premium Services as provided in the proposal and approved by NASPO ValuePoint and the LSCA.

2.3 Category 2 – Microsoft SVAR

2.3.1 Software Value-Added Reseller ('Reseller' – "SVAR") shall be a large account reseller, with a national presence, authorized by Microsoft as a Licensing Solution Provider (LSP) for all current and existing, and new Microsoft products and subscriptions.

2.3.2 **Out of Scope Products -** Non-SaaS cloud computing products such as Infrastructure as a Service ("IaaS"), Platform as a Service ("PaaS"), and Software provided by a Managed Services Provider are generally out of scope of this Contract. IaaS shall be allowable only as an incidental product when 1) SaaS is the primary and predominate title being purchased, and 2) the limited and incidental licensing of the publisher's IaaS is essential to the successful and efficient implementation and or deployment of the SaaS software. This determination should be made by the purchasing entity in advance of any IaaS purchase.

2.3.3 **Software Products,** including Software as a Servce

2.3.3.1 Provide an up to date list of all software products and subscriptions offered by Microsoft.

2.3.3.2 Purchase orders shall be deemed to reference the most recent release of the Software Product at the time of the order.

2.3.3.3 Licenses and Maintenance Agreements

- The Reseller shall honor the Purchasing Entity's existing Select Agreements, Enterprise License Agreements and Volume License Agreements.
- Following an executed Order with a Purchasing Entity and/or Microsoft, the Reseller shall identify itself to Microsoft as the Reseller for that Purchasing Entity. If so required by the Microsoft and Purchasing Entity, Reseller shall execute a change of channel partner agreement with the Microsoft.
- Resellers shall sell additional seats consistent with Purchasing Entities' Select, Enterprise or Volume Agreements. Reseller shall work with Purchasing Entity and Microsoft as needed to establish new Select, Enterprise and Volume License Agreements.
- The Reseller shall work with the Microsoft and Purchasing Entity as necessary to ensure the Purchasing Entity receives timely and

pertinent license information, such as: license or agreement renewals, or opportunities based on actual volume.

- Reseller shall work directly with Purchasing Entity in establishing, signing and maintaining enrollment agreements.
- If a Reseller is the sole Microsoft Reseller for a Purchasing Entity, Reseller shall aggregate all enrollments together for Master Agreement reporting purposes. If a Participating Entity elects to have multiple SVAR contractors, Reseller's responsibilities shall be delineated in that State or Entity's PA.
- Resellers shall monitor and be able to report on the current levels of software ordered towards any of the Purchasing Entities VLA-required sales levels to ensure the Purchasing Entity does not fall short and thereby incur Publisher penalties.
- The Reseller shall be responsible for providing license usage information to Microsoft, if such information is required by Microsoft, in a timely manner (e.g., for 'true up' assessments)
- Subscription-based Software Licenses. Purchasing Entities can purchase monthly or annual licenses or subscriptions through the Reseller, which provides access to and use of the software during the subscription term
- Purchasing Entities can purchase individual COTS licenses, such as perpetual and non-perpetual licenses, through the Reseller.

2.3.3.4 Software Maintenance and Support Agreements

- Purchasing Entities can purchase maintenance agreements, including upgrade protection, through the Reseller. Resellers shall sell software maintenance agreements, even if the software was not purchased under this agreement, such as on-going support for a User's existing perpetual license. As requested, Reseller shall explain what product support or services are included in a publisher's maintenance agreement.
- Reseller to provide needed services to support maintenance products such maintenance agreements, software upgrades, annual updates, patches and fixes needed to improve functionality and keep the software in working order. Such services may include the provision of recommendations on the most cost-effective or appropriate long-term maintenance plan. Reseller shall provide such support, not only to maintenance

packages purchases under this agreement, but in support of any existing and current agreements.

2.3.3.5 Leases. Lease purchase and term leases are only allowed for Purchasing Entities whose rules and regulations permit leasing of software. Individual Purchasing Entities may enter into a lease agreement for the products covered in this Master Agreement, if they have the legal authority to enter into these types of agreements without going through a competitive process. No lease agreements shall be reviewed or evaluated as part of this RFP evaluation process.

2.3.4 **VALUE-ADDED SERVICES – MANDATORY BASIC SERVICES**

The reseller shall identify core value added services it provides to all Purchasing Entities at no charge. The services outlined in this section depict a minimum level of services that shall be provided to any Purchasing Entity.

2.3.4.1 Advise the Purchasing Entity in making strategic software application decisions by providing evaluation copies, product comparisons, needs analysis, product information and application recommendations.

2.3.4.2 Act as liaison between the Purchasing Entity and Microsoft in identifying best approaches and cost savings opportunities for the Purchasing Entity. Examples include, but are not limited to:

- selecting appropriate software;
- explaining Volume License Agreements rules;
- determining the most cost-effective buying strategies;
- ensuring that Purchasing Entity is in compliance with licensing requirements;
- finding software options to meet a specific need;
- developing software migration strategies;
- developing enterprise level licensing optimization strategies that include department/agency software consolidation and rationalization;
- bundling and unbundling software titles into software packages to provide the most cost effective solutions for the Purchasing Entity; and
- developing alternative software options and strategies when a Microsoft software title becomes unfeasible for the Purchasing Entity.

2.3.4.3 Negotiate to reduce Reseller Cost, to pass savings on to the Purchasing Entity.

2.3.4.4 Identify pricing tiers and standard pricing models available to all Purchasing Entities under this Master Agreement.

2.3.4.5 Provide assistance to the Purchasing Entity by explaining and assisting the Purchasing Entity in the development of Volume License and Enterprise Agreements.

2.3.4.6 Assist the Purchasing Entity to determine optimum enterprise wide allocation total to obtain the best pricing and tiers for quantities that can be purchased.

2.3.4.7 Provide the Purchasing Entity with regular education and training by knowledgeable staff on new and emerging software and software related technologies offered or planned to be offered by Microsoft.

2.3.4.8 Provide a list of all Microsoft Solution Specialists that includes their specialty and their contact information.

2.3.4.9 For all Microsoft software and subscription products, provide a list of all security control systems, standards and certifications the product is in compliance with. For example: FedRAMP, NIST, CSA, SOC 2, ISO, etc. Include the specific standard by title, number and control identifier.

2.3.4.10 Return all phone calls within 2 business days and all e-mails within 24 hours.

2.3.4.11 Provide Software Installation advise, assistance and/or training.

- Provide assistance or advice with basic installation or implementation of COTS product.
- If the Purchasing Entity encounters difficulty in downloading or installing the software, the Reseller shall provide assistance within eight (8) business hours of being informed of the problem.
- Provide Software De-Installation Assistance.

2.3.4.12 Provide Tracking, Management, Usage Monitoring and Reporting of Licenses

- Reseller shall have in place a license inventory and software asset management section in their portal page for each Purchasing Entity, which shall include:
  - An accurate tracking and inventory record of software licenses purchased and added on to enrollment under this Contract;
  - All licenses on current enrollment;

- Quantities of licenses at department/agency levels within a Purchasing Entity; and
- Licenses to and from each department/agency within a Purchasing Entity.
- If required by the Purchasing Entity, an accurate tracking and inventory of Microsoft licenses from third-party computer contracts.

- Reseller shall also have the capability of tracking and reporting maintenance renewal and other significant due dates.
- At a minimum, this system shall be able to provide this information by Purchasing Entity, and department and agency level within a purchasing entity
- Reseller shall work with Purchasing Entity, publishers, previous and subsequent contract software resellers, and hardware computer contractors to ensure the most comprehensive record of licenses is created, maintained, and the information transferrable.
- Provide reports with the content and frequency required by the Purchasing Entity.
- The Purchasing Entity may choose to award multiple PA's under this Agreement. Details on how licenses are to be tracked and managed under multiple awards shall be determined by Purchasing Entity.
- As may be required by a Purchasing Entity, Reseller shall work with NASPO ValuePoint computing equipment contractors, or a Participating State's comparable computer hardware Reseller, to see that any software acquired under those contracts can be tracked through this contract.
- Notify Purchasing Entity of Publisher publicly announced changes pertinent to User licensing.

2.3.4.13 Provide training services to Purchasing Entities that include, but are not limited to the following topics:

- Installation
- De Commissioning
- Implementation
- Maintenance
- Configuration

- Product orientation for all SaaS products
- Select and Enterprise licensing
- Use of the Portal and any reseller applications and tools to support this contract.
- Use of the contract including training and aids on the processes provided for quotes and placing orders.
- Forms of training shall include, but are not limited to:
    - Online training available on the Portal,
    - Supplementary electronic (e.g. Webinars, emails), telephone or on-site training provided, as needed, during standard working hours.
    - Training shall be available in the form of tutorials for basic installation and web-based training for software operation, basic phone support.
    - Provision of information on how to access a Software Publisher's "Help Desk" (either telecom or web-based) for basic use questions.
- More detailed and targeted training unique to specific product offerings may be provided at the request of the Purchasing Entity.

2.3.4.14 License Confirmations. For licenses ordered under the contract by Purchasing Entity, the Reseller shall provide certified license confirmation certificates in the name of such Licensee; or written confirmation from the Reseller or Microsoft accepting the Purchasing Entity's contract or purchase order as proof of license.

- The form of "Proof of License" provided shall be acceptable proof to Microsoft, and in the format requested by the Purchasing Entity. The Proof of License shall be provided as an electronic file and/or a hardcopy document, as required by the Purchasing Entity. Reseller shall retain an electronic file of Purchasing Entity's Proof of Licenses.

2.3.4.15 Transitioning License Tracking Information at Contract Termination. The license information data acquired and retained by Reseller shall be stored as sortable data fields so the license information can be transferred to the Purchasing Entity or their designees in a useable format as determined by the purchasing entity upon contract termination.

2.3.5 **PREMIUM VALUE-ADDED SERVICES:** The Reseller may offer Optional Value-Added Services related to the software being purchased. These services may be priced to include added compensations for each additional Optional Value Added Service, or may be provided by the Reseller at no additional charge. Examples of Optional Value Added Services include, but are not limited to:

2.3.5.1 Offer maintenance and support packages on licenses already owned by the Purchasing Entity.

2.3.5.2 Provide advanced or refresh Training Services related to a software purchase under this contract or existing software held by the Purchasing Entity.

2.3.5.3 Optional Value Added Premium Services as provided in the proposal and approved by NASPO ValuePoint and the LSCA.

2.4 Category 3 – Oracle SVAR

2.4.1 Software Value-Added Reseller ('Reseller' – "SVAR") shall be a large account reseller, with a national presence, authorized by Oracle as a Licensing Solution Provider (LSP) for all current and existing, and new Oracle products and subscriptions.

2.4.2 **Out of Scope Products** - Non-SaaS cloud computing products such as Infrastructure as a Service ("IaaS"), Platform as a Service ("PaaS"), and Software provided by a Managed Services Provider are generally out of scope of this Contract. IaaS shall be allowable only as an incidental product when 1) SaaS is the primary and predominate title being purchased, and 2) the limited and incidental licensing of the publisher's IaaS is essential to the successful and efficient implementation and or deployment of the SaaS software. This determination should be made by the purchasing entity in advance of any IaaS purchase.

2.4.3 **Software Products,** including Software as a Service

2.4.3.1 Provide an up to date list of all Oracle software and subscription products offered.

2.4.3.2 Purchase orders shall be deemed to reference the most recent release of the Software Product at the time of the order.

2.4.3.3 Licenses and Maintenance Agreements

- The Reseller shall honor the Purchasing Entities existing Enterprise License Agreements and Volume License Agreements.

- Following an executed PA with a Purchasing Entity and/or Oracle, the Reseller shall identify itself to Oracle as the Reseller for that Purchasing Entity. If so required by the Oracle and Purchasing Entity, Reseller shall execute a change of channel partner agreement with Oracle.
- Resellers shall sell additional seats consistent with Purchasing Entities' Enterprise or Volume Agreements. Reseller shall work with Purchasing Entity and Oracle as needed to establish new Enterprise and Volume License Agreements.
- The Reseller shall work with the Oracle and Purchasing Entity as necessary to ensure the Purchasing Entity receives timely and pertinent license information, such as: license or agreement renewals, or opportunities based on actual volume.
- Reseller shall work directly with Purchasing Entity in establishing, signing and maintaining enrollment agreements.
- If Reseller is sole SVAR Reseller for Oracle in a Purchasing Entity, Reseller shall aggregate all enrollments together for Master Agreement reporting purposes. If a Purchasing Entity elects to have multiple SVAR contractors, Reseller's responsibilities shall be delineated in that Purchasing Entity's PA.
- Resellers shall monitor and be able to report on the current levels of software ordered towards any of the Purchasing Entities license agreements required sales levels to ensure the Purchasing Entity does not fall short and thereby incur Publisher penalties.
- The Reseller shall be responsible for providing license usage information to Oracle, if such information is required by Oracle, in a timely manner (e.g., for 'true up' assessments)
- Subscription-based Software Licenses. Purchasing Entities can purchase monthly or annual licenses or subscriptions through the Reseller, which provides access to and use of the software during the subscription term
- Purchasing Entities can purchase individual COTS licenses, such as perpetual and non-perpetual licenses, through the Reseller.

2.4.3.4 Software Maintenance and Support Agreements

- Purchasing Entities can purchase maintenance agreements, including upgrade protection, through the Reseller. Resellers shall sell software maintenance agreements, even if the

software was not purchased under this agreement, such as on-going support for a User's existing perpetual license. As requested, Reseller shall explain what product support or services are included in a publisher's maintenance agreement.

- Reseller to provide needed services to support maintenance products such maintenance agreements, software upgrades, annual updates, patches and fixes needed to improve functionality and keep the software in working order. Such services may include providing recommendations on most cost-effective or appropriate long-term maintenance plan. Reseller shall provide such support, not only to maintenance packages purchases under this agreement, but in support of any existing and current agreements.

2.4.3.5 Leases. Lease purchase and term leases are allowable only for Purchasing Entities whose rules and regulations permit leasing of software. Individual Purchasing Entities may enter into a lease agreement for the products covered in this Master Agreement, if they have the legal authority to enter into these types of agreements without going through a competitive process. No lease agreements shall be reviewed or evaluated as part of this RFP evaluation process.

2.4.4 **VALUE-ADDED SERVICES – MANDATORY BASIC SERVICES**

The reseller shall identify core value added services it provides to all Purchasing Entities at no charge. The services outlined in this section depict a minimum level of services that shall be provided to any Purchasing Entity.

2.4.4.1 Advise the Purchasing Entity in making strategic software application decisions by providing evaluation copies, product comparisons, needs analysis, product information and application recommendations.

2.4.4.2 Act as liaison between the Purchasing Entity and Oracle in identifying best approaches and cost savings opportunities for the Purchasing Entity. Examples include, but are not limited to:

- selecting appropriate software;
- explaining Volume License Agreements rules;
- determining the most cost-effective buying strategies;
- ensuring that Purchasing Entity is in compliance with licensing requirements;
- finding software options to meet a specific need;
- developing software migration strategies;

- developing enterprise level licensing optimization strategies that include department/agency software consolidation and rationalization;
- bundling and unbundling software titles into software packages to provide the most cost effective solutions for the Purchasing Entity; and
- Developing alternative software options and strategies when an Oracle software title becomes unfeasible for the Purchasing Entity.

2.4.4.3 Negotiate to reduce Reseller Cost, to pass on savings to the Purchasing Entity.

2.4.4.4 Identify pricing tiers and standard pricing models available to all Purchasing Entities under this master agreement.

2.4.4.5 Provide assistance to the Purchasing Entity by explaining and assisting the Purchasing Entity in the development of Volume License and Enterprise Agreements.

2.4.4.6 Assist the Purchasing Entity to determine optimum enterprise wide allocation total to obtain the best pricing and tiers for quantities that can be purchased.

2.4.4.7 Provide regular education and training on new and emerging software and software related technologies offered or planned by Oracle by knowledgeable

2.4.4.8 Provide a list of all Oracle Solution Specialists that includes their specialty and their contact information

2.4.4.9 For each software and subscription product offered, provide a list of all security control systems, standards and certifications the product is in compliance with. For example: FedRAMP, NIST, CSA, SOC 2, ISO, etc. Include the specific standard by title, number and control identifier.

2.4.4.10 Return all phone calls and emails within 2 business days.

2.4.4.11 Provide Software Installation advise, assistance and/or training.

- Provide assistance or advice in basic installation or implementation of COTS product.
- If the Purchasing Entity encounters difficulty in downloading or installing the software, the Reseller shall provide assistance within eight (8) business hours of being informed of the problem.
- Provide Software De-Installation Assistance.

2.4.4.12 Provide Tracking, Management, Usage Monitoring and Reporting of Licenses

- Reseller shall have in place a license inventory and software asset management section in their portal page for each Purchasing Entity, which shall include:
    - An accurate tracking and inventory record of software licenses purchased and added on to enrollment under this Contract;
    - All licenses on current enrollment;
    - Quantities of licenses at department/agency levels within a Purchasing Entity; and
    - Licenses to and from each department/agency within a Purchasing Entity.
    - If required by the Purchasing Entity, an accurate tracking and inventory of Oracle licenses from third party computer contracts.
- Reseller shall also have the capability tracking and reporting maintenance renewal and other significant due dates.
- At a minimum, this system shall be able to provide this information by Purchasing Entity, department and agency level within a purchasing entity
- Reseller shall work with Purchasing Entity, publishers, previous and subsequent contract software resellers, and hardware computer contractors to ensure the most comprehensive record of licenses is created, maintained, and the information transferrable.
- Provide reports with the content and frequency required by the Purchasing Entity.
- The Participating Entity may choose to award multiple PA's under this Agreement. Details on how licenses are to be tracked and managed under multiple awards shall be determined by Participating Entity.
- As may be required by a Purchasing Entity, Reseller shall work with NASPO ValuePoint computing equipment contractors, or a Participating State's comparable computer hardware Reseller, to see that any software acquired under those contracts can be tracked through this contract.

- Notify Purchasing Entity of publisher publicly announced changes pertinent to User licensing.

2.4.4.13 Provide training services to Purchasing Entities that include, but are not limited to the following topics:

- Installation
- De Commissioning
- Implementation
- Maintenance
- Configuration
- Product orientation for all SaaS products
- Enterprise licensing
- Use of the Portal and any reseller applications and tools to support this contract.
- Use of the contract including training and aids on the processes provided for quotes and placing orders.
- Forms of training shall include, but are not limited to:
  - Online training available on the Portal,
  - Supplementary electronic (e.g. webinars, emails), telephone or on-site training provided, as needed, during standard working hours.
  - Training shall be available in the form of tutorials for basic installation and web-based training for software operation, basic phone support.
  - Provision of information on how to access a Software Publisher's "Help Desk" (either telecom or web-based) for basic use questions.
- More detailed and targeted training unique to specific product offerings may be provided at the request of the Purchasing Entity.

2.4.4.14 License Confirmations. For licenses ordered under the contract by Purchasing Entity, the Reseller shall provide certified license confirmation certificates in the name of such Licensee; or written confirmation from the Reseller or Oracle accepting the Purchasing Entity's contract or purchase order as proof of license.

- The form of "Proof of License" provided shall be acceptable proof to Oracle, and in the format requested

by the Purchasing Entity. The Proof of License shall be provided as an electronic file and/or a hardcopy document, as required by the Purchasing Entity. Reseller shall retain an electronic file of Purchasing Entity's Proof of Licenses.

2.4.4.15 Transitioning License Tracking Information at Contract Termination. The license information data acquired and retained by Reseller shall be stored as sortable data fields so the license information can be transferred to the Purchasing Entity or their designees in a useable format as determined by the purchasing entity upon contract termination.

2.4.5 **PREMIUM VALUE-ADDED SERVICES:** The Reseller may offer Optional Value-Added Services related to the software being purchased. These services may be priced to include added compensations for each additional Optional Value Added Service, or may be provided by the Reseller at no additional charge. Examples of Optional Value Added Services include, but are not limited to:

2.4.5.1 Offer maintenance and support packages on licenses already owned by the Purchasing Entity.

2.4.5.2 Provide advanced or refresh Training Services related to a software purchase under this contract or existing software held by the Purchasing Entity.

2.4.5.3 Optional Value Added Premium Services as provided in the proposal and approved by NASPO ValuePoint and the LSCA.

2.5 General Requirements – All Categories

2.5.1 **Customer Portal.** Reseller shall Develop and Maintain a Portal, at the request of Participating Entities, to facilitate tracking, management, usage, ordering, monitoring and reporting of software products and License Agreements. The Portal shall include, but shall not be limited to:

Mandatory Elements:

- Signed Master Agreement
- Signed Participating Addendum
- Designated Baseline price list(s) (MSRP or Cost Plus, List Price, Education) and associated discounts.
- Service options available on the contract

- Contact information for order placement, service concerns (warranty and maintenance) , problem reporting, and billing concerns, including problem escalation. The Reseller shall provide an incident escalation path for each Participating Entity, showing on that Participating Entity's webpagee, the name, contact information, and role of individuals to whom problems should be escalated if the problems are not resolved by primary assigned contacts.
- Sales representatives and their contact information to include direct telephone number and email address for Purchasing Entities
- The Portal shall be operational twenty-four (24) hours per day, seven (7) days per week, except for regularly scheduled maintenance times, and shall be ADA Section 508 compliant. The website shall be separate from the Contractor's commercially available (i.e., public) on-line catalog and ordering systems. No other items or pricing may be shown on the website without written approval from the Lead State.
- Within 60 calendar days of execution of a Participating Addendum, the Reseller shall provide a Universal Resource Locator (URL) for the website to the Participating Entity and the LSCA within sixty (60) days of the execution of the PA. The Lead State shall review and determine acceptability of the website format and data. If the information is determined to be unacceptable or incorrect, the Reseller shall have 15 calendar days to provide revisions to the Lead State. Once the website is approved, the Reseller may not make material changes to the website without notifying the Lead State and receiving written approval of the changes. Pricing shall be kept current.

Desirable Elements:

- Purchase order tracking
- Copy of RFP Response
- Online ordering capability with the ability to remember multiple ship to locations
- If elements of the website require a secure log-in, Responder shall provide listing of items that would require a secure sign-in option e.g. reprinting of invoices, or purchase order tracking.

- If the Reseller is acquired by another company during the contract term, the new Reseller shall maintain documentation on the website that informs the end users of the change. This may include a memo or summary letter outlining the operational effects e.g. formal name change
- A repository of commonly-encountered EULAs to assist states when considering the purchase of specific software
- Tracking, Management, Usage Monitoring and Reporting of Licenses for each Purchasing Entity
- Software Title Offerings: Contactor maintains a searchable index of all software title offerings from all Publishers under the scope of this contract for end users to utilize. For the Key Itemized and Other Itemized Publishers, this index shall include product descriptions, security standards, certifications and security controls met by each software product
- Non-authorized products or groups of products shall not be on included in the Online Catalog. Reseller shall not use this proposed website to cross-sell or cross-advertise other products and or services the Reseller may be able to offer.
- User Differentiation. Catalog should be designed to provide a means to identify the Purchasing Entity. The method used shall not require any undue administrative tasks on the part of the user. Website should allow Users to develop personal lists and profiles, including an option to securely store and maintain procurement card information.
- The ability for the Purchasing Entity to create custom reports. The requesting Purchasing Entity shall be able to select specific fields and create a necessary report for their specific needs. Data Fields shall include, but not be limited to, Purchasing Entity, Purchase Order Number, Order date, Invoice date, Publisher, Publisher Part Number, Software Reseller's Part Number, Description, Quantity Shipped, Unit actual price, Extended Price, Sales Tax and order total. Reports shall be able to be shown online as well as emailed to the requesting Purchasing Entity representative, if requested. Examples of Reseller's standard and online reports shall be submitted with the offer.
- The capability of being used as a 'Punch Out' to an individual state's electronic purchasing system. For this paragraph, "Punch Out" means a mechanism by which the e-procurement

application makes it possible for a buyer to access a supplier's website from the buyer's own procurement application.

2.5.2 **Price Quote, General**. For categories 1, 2, and 3, pricing is reflected in the MPA as either 1) a percentage of the invoice paid by the Software Reseller to the Software Publisher or 2) a percentage discount off of the Publishers List/MSRP price.

Individual PA's shall use the MPA pricing as a base and may negotiate an adjusted rate. Any negotiated PA rates, exclusive of taxes or any individual state's administrative fee, shall not exceed the MPA rates. As requested by Purchasing Entity, for example on a high-volume single order, Reseller shall negotiate to reduce Reseller Cost, to pass on savings to the Purchasing Entity. Firm individual order quotes shall be provided to Purchasing Entity prior to order submittal.

2.5.2.1 *Telephone or Email Quote Support*. Reseller shall accept requests for quotes by telephone, fax, email, or online. Reseller shall accept collect telephone calls and/or provide and maintain a toll-free number for eligible agency use. Reseller shall provide an email address for receipt of requests for price quotes. Reseller shall provide written quotes by fax, email or online as requested by the Participating State.

2.5.2.2 *Quoted Delivery Method*. The quote shall clearly indicate the method of delivery, whether via media, download, or other methods.

2.5.2.3 *Timely Quotes*. Reseller agrees to work with Publishers and distributors to obtain quotes and deliver software in a timely fashion. Expected response should be within twenty-four (24) hours but no more than three (3) business days. If, after three (3) business days, the Reseller has been unable to obtain the quote or assurances that they can obtain the software, the Reseller shall contact the Purchasing Entity with a status report. The Reseller and the Purchasing Entity shall mutually agree as to whether the Reseller shall continue to pursue a quote and within what timeframe, or whether the Reseller shall provide the Participating State/Purchasing Entity with a written statement that the Reseller cannot supply the software. If the Reseller has been unable to obtain a quote within ten (10) days of the request for quote, the Reseller shall provide a written statement (email is sufficient) to Participating State/Purchasing Entity, and the LSCA as may be required under the PA, that the Reseller cannot supply the software, and the reason why.

2.5.2.4 Guaranteed 30 Day Quote. Reseller is required to honor all quotes for thirty (30) calendar days.

2.5.3 **Optional Services Cap.** Individual Purchasing Entities shall reserve the right to establish caps on services in their Participating Addendum. For example, a Purchasing Entity may, at its discretion, establish a cap that limits services expenditures to 30% of the value of the related software purchase.

2.5.4 **Optional Software Related Technical Services**

For Category 1,2, and 3 each reseller may resell additional Technical Software Related Services provided by the Publisher for the Category or by a Publisher's Top Tier Level Certified Partner as listed below. These services shall be priced separately and are in addition to mandatory value add services provided by the reseller and included in their mandatory service offerings.

Nature of the Technical Services. The technical services go beyond providing software product information and assistance, but include work products and deliverables provided by trained, qualified and Publisher certified technicians to perform software related services needed and specified in a scope of work by the purchasing entity. Services are limited to:

- Commissioning and Decommissioning Services, including installation
- Implementation Services
- Maintenance Services
- Configuration Services
- Software Integration Services, and
- training services.

No other Software Related Technical Services may be provided under this RFP award unless specifically approved by LSCA as within the scope.

Out of scope services. Stand-alone services not related to a software product purchased or licensed through the Reseller, staff augmentation (stand-alone hourly based IT Services), services provided on a time_and_material basis with no fixed pricing. Questions about services included in the scope shall be determined by the LSCA.

2.5.5 **Training, General**

For Category I, 2 and 3 training may be in the form of online tutorials for basic installation and web-based training for software operation, basic phone support. Training may also include in-person or webinar training.

Provision of information on how to access a Software Publisher's "Help Desk" (either telecom or web-based) for basic use questions.

2.5.6 **Customer Service and Representation, General**

For Category I, 2 and 3 resellers shall provide customer service representation as follows:

2.5.6.1 *Dedicated Representation and Timely Response*. Reseller shall provide dedicated representatives for each Participating Entity. Such representative shall become familiar with the Purchasing Entity (for example, a state and its cooperative partners) and shall provide a single point of contact for quote assistance, offer software recommendations, track and report on renewal deadlines, and serve as a contact point for the LSCA. **Reseller shall commit to returning phone calls or responding to emails within two (2) business days**.

2.5.6.2 *Problem Escalation*. The Reseller shall provide an incident escalation path for each Participating Entity, showing on that Participating Entity's website, the name, contact information, and role of individuals to whom problems should be escalated if the problems are not resolved by primary assigned contacts.

2.5.6.3 *Product purchasing trends.* **The Reseller shall speak with LSCA and sourcing team annually** to review usage and discuss possible revisions of the categorization of Publishers based upon actual sales volume or other changes.

2.5.7 **Contract Reviews.**

2.5.7.1 Reseller is expected to conduct **quarterly reviews** of all sales volumes and report sales figures and savings from Publisher's list price, by Publisher and by PA, as well as observed trends or purchasing patterns, and **to present the information to the LSCA**.

2.5.7.2 At the discretion of the individual Purchasing Entities, an equivalent review, limited to that entity, shall be presented to the Purchasing Entity.

2.5.7.3 **All awardees under this contract shall meet once a year with the LSCA and Sourcing Team** to review usage and discuss possible revisions of the categorization of Publishers based upon actual sales volume, and to discuss any service concerns, industry trends, and the effectiveness of the contract.

- Reseller is expected to **conduct a customer satisfaction survey** and an audit prior to this discussion and be prepared to discuss the results, and provide reports, at this review. At a minimum, the audit shall report address quoting and billing accuracy, and any Reseller Cost that exceeds a Publisher's List price for that item.

- Based on historical sales volume information, Reseller should be prepared to discuss potential cost savings opportunities which could be passed through to Purchasing Entities .
- **In a renewal year, the annual review shall take place prior to contract extensions.**

2.5.8 **Interactions with Software Publishers, General**

For Categories 1,2 and 3, resellers shall provide interaction with the respective software Publishers to include:

2.5.8.1 *Best Interests of Purchasing Entity*. Reseller would represent the best interests of the Purchasing Entity in negotiating or otherwise working with Publishers for such items as: maximizing cost savings with best use of volume or enterprise license agreements, better pricing on individual volume buys, maximizing the value of software bundling options, and taking advantage of Publishers' specials, promotions, coupons or other savings opportunities.

2.5.8.2 *Liaison with Publisher*. A Purchasing Entity may establish, in their individual PA, the ability for Reseller to arrange with the software Publisher or software Publisher's designee for Enterprise Agreements, which may include implementation, training, support, maintenance and other services directly related to the software purchase. **The provision of said services shall be under a separate Enterprise Agreement between the Purchasing Entity and the applicable parties and terms of the Master Agreement and Participating Addendum would flow down into the Enterprise Agreement**.

2.5.9 **Purchasing Entity Utilization of Local Partners, General**

For Categories 1,2, and 3, the Reseller may offer Partners (Sub-Contractors) to provide additional services in support of this Contract, if submitted as a part of the Resellers response to this Request for Proposal, or after award of an MPA, if approved by a Participating Entity. The partners may provide the following:

- Software Related Technical Services
- Optional Value Added Services

If the Reseller chooses to allow partners to provide administrative services as noted above, Reseller has the responsibility to vet or ensure the partners capabilities including their financial systems and business processes to accept and process contract obligations and financial documents timely and accurately. By listing a company as a partner, the terms and conditions set forth in Special Terms and Conditions 3.10 Subcontracts shall apply to the relationship between the Reseller and partner(s). The

ultimate responsibility for the performance of these partners rests with the Contractor. A Participating Entity or Purchasing Entity shall not be obligated or forced to utilize a partner(s) or compensate a partner(s) directly.

2.5.10 Reporting

2.5.10.1 Standard Reports

Individual Participating Entities or Purchasing Entities may require their own standard reports, such as report on savings. Reseller shall provide these reports at the intervals, and in the format, as reasonably requested by the entity. Reseller shall advise of standard reports which they can provide, and work with Participating Entities and Purchasing Entities on additional standard reports.

2.5.10.2 Online Reports

The SVAR shall be able to provide online, real time, reporting capabilities using website established for the state. These reports may include Back Order or Current Order Status reports. In addition, the system shall be able to provide the ability for the User agency to create custom reports. The requesting Purchasing Entity shall be able to select specific fields and create a necessary report for their specific needs. Data Fields shall include, but not be limited to, purchasing entity, Purchase Order Number, Order date, Invoice date, Publisher, Publisher Part Number, Software Reseller's Part Number, Description, Quantity Shipped, Unit actual price, Extended Price, Sales Tax and order total. Reports shall be able to be shown online as well as emailed to the requesting Participating State, if requested. Examples of Reseller's standard and online reports shall be submitted with the offer.

2.5.10.3 Custom Reports

Participating Entity and SVAR may mutually agree to include terms and conditions and pricing for the development and provision of customized reports as an optional service in a Participating Addendum.

The following Exhibit applies to the Scope of Work:

SECTION 2-A_EXHIBIT 1 – LIST OF ENTITIES WITH INTENT TO PARTICIPATE
SECTION 2-A_EXHIBIT 2 – SAMPLE STATE TERMS & CONDITIONS
SECTION 2-A_EXHIBIT 3 – HISTORICAL SPEND

End of Section 2-A

SECTION 2-B: Pricing Document

3.1 Pricing

3.1.1 CONTRACTOR'S BEST PRICING. The prices and discounts set out in Part 3 of the Solicitation Documents, Section 3-B Offer Forms, ATTACHMENT 4_PRICING SHEET, including any subsequently agreed-upon amendment to it (the "Contract Pricing"), shall be considered ceiling pricing. Reseller may offer additional discounts based on the volume of a purchase or other factors. Reseller warrants that the pricing extended through this contract shall be equal to or better than the lowest prices and largest discounts, both separately and in combination, at which Reseller sells equivalent services, items of equipment and materials, given equivalent or reasonably-equivalent quantity of purchase.

1. That price-plus-discount equivalence ("Contractor's Best Pricing") is intended to be irrespective of whether or not those other sales have special purchase terms, conditions, rebates or allowances.
2. If Contractor's Best Pricing for equivalent services, items of equipment and materials is better than the Contract Pricing, then Reseller agrees to adjust the Contract Pricing to match the Contractor's Best Pricing for all sales related to the Reseller made after the date when the Contractor's Best Pricing was first better than the Contract Pricing.
3. For clarification of intent, that date is intended to be the date when the difference first occurred, which might have been before the difference was first identified. If it was before, then Reseller agrees to charge at less than the Contract Pricing until the extended difference that would have been realized (i.e., if the Contractor's Best Pricing had been applied when it should have been) has been settled.

3.1.2 PRICING-ALL-INCLUSIVE:

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

3.1.3 PRICE INCREASES:

1. Initial Contract prices shall be honored for the full term of the Contract, unless a price adjustment is approved in accordance with the process outlined in this section. The Lead State may review a fully documented request for a price increase. The requested increase shall be in writing and be based upon a cost increase to the Reseller that was clearly unpredictable at the time of the offer and is directly correlated to the price of the product concerned. Reseller shall provide conclusive evidence of a need for any price increases such as being substantiated by the Producer Price Index, Consumer Price Index, or similar pricing guide.

   (a) All written requests for price adjustments made by the Reseller shall be initiated thirty (30) days in advance of any desired price increase to allow the Lead State sufficient time to make a fair and equitable determination to any such requests. This may be waived upon proper documentation demonstrating the urgency of the request.

   (b) All price adjustments shall be implemented by a formal contract amendment. The Lead State shall determine whether the requested price increase or an alternate option is in its best interest.

3.1.4 PRICE REDUCTIONS:

1. Price reductions shall be immediately passed along to the Lead State and may be submitted in writing to the Lead State for consideration at any time during the Contract period. The Reseller shall offer the Lead State a price reduction on the Contract product(s) concurrent with a published price reduction made to other customers.

2. The Lead State at its own discretion may accept a price reduction. The price reduction request shall be in writing and include documentation showing the actual reduction of cost. Sales promotions requests shall include difference in pricing, begin, and end date of promotion along with the products covered.

3.1.5 ADDITIONAL CHARGES:

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

3.1.6 TRAVEL.

1. Reseller shall obtain written approval from the Participating Entity or Purchasing Entity, as applicable, prior to any travel under the Contract in which reimbursement of expenses shall be requested. Reseller shall be reimbursed for actual expenses incurred in accordance with the current rates specified in the Participating Entity or Purchasing Entity's Travel Policy. Reseller shall itemize all per diem and lodging

charges. The Purchasing Entity may reject any claim for travel reimbursement without prior written approval.

3.2 Funding

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

3.3 Invoicing

3.3.1 INVOICES GO TO PURCHASING ENTITY. Reseller shall submit all billing notices or invoices to the Purchasing Entity (e.g. Eligible Agency or Co-Op Buyer) at the address indicated on the applicable Order document or by utilizing the Purchasing Entity's purchasing tool/process.

3.3.2 MINIMUM INVOICE REQUIREMENTS. Every invoice shall include the following information:

Item	Required
Bill-to name and address	■
Reseller name and contact information	■
Remit-to address	■
State contract number	■
Order number (typically The State's e-Procurement System PO #)	■
Invoice number and date	■
Date the items shipped or services performed	■
Applicable payment terms	■
Contract line item number	■
Contract line item description	■
When required by the Purchasing Entity, include a complete description of monthly usage at full enterprise detail level as provided by the publisher	SaaS only
Quantity delivered or performed	■
Line item unit of measure	■
Reseller Cost as invoiced by Publisher, if applying a Reseller markup	■
Reseller markup %	■
MSRP or List Price, if applying a Reseller discount	■
Discount off list or catalog	■
Final Item price to Customer	■

Extended pricing	■
Taxes *(as a separate invoice line item)*	■
Upcharge shipping/freight, etc. *(as a separate invoice line item)*	Materials only
Total invoice amount due	■

3.3.3 NO INVOICE WITHOUT AUTHORIZATION. Reseller shall not seek payment for any:

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

3.3.4 PRE-INVOICE REVIEW For all SaaS monthly invoices, when required by the Purchasing Entity, provide a summary-level invoice and a more-detailed invoice that reconciles with the deepest level of detail provided by the Publisher that demonstrates usage at levels acceptable to the Purchasing Agency. If a more-detailed invoice is required by the Purchasing Entity, provide an example for approval by the Purchasing Entity before the first billing.

3.3.5 SUBMITTING INVOICES. Reseller shall submit an invoice to the Purchasing Entity or Co-Op Buyer using the form and/or process provided or required by the ordering Purchasing Entity/Customer (Eligible Agency or Co-Op Buyer). Every invoice shall be signed by Contractor's authorized representative and accompanied by all supporting information and documentation required by the Contract and applicable laws. Upon request, Reseller shall provide evidence supporting the stated Reseller Cost shown on an invoice.

3.3.6 DEFECTIVE INVOICES. Without prejudice to its other rights under the Contract or further obligation to Reseller, the Purchasing Entity (Eligible Agency or Co-Op Buyer) may, at its discretion, reject any materially defective invoice.

1. The Purchasing Entity (Eligible Agency or Co-Op Buyer) shall notify Reseller within 5 (five) business days after receipt if it determines an invoice to be materially defective.
2. Invoices shall be deemed automatically rejected upon delivery if they:
   (a) are sent to an incorrect address;
   (b) do not reference the correct State contract number; or
   (c) are payable to any Person other than the Reseller.

3. The Purchasing Entity (Eligible Agency or Co-Op Buyer) shall have no obligation to pay against a defective invoice unless and until Reseller has re-submitted it free of defects.

3.4 Payments

3.4.1 PAYMENT. The applicable Purchasing Entity or Co-Op Buyer shall pay undisputed amounts due to Reseller within the time period specified in Section 4.0 Costs and Payments of the Uniform Terms and Conditions

3.4.2 JOINT CHECKS OR DIRECT PAY. applicable Purchasing Entity or Co-Op Buyer may, but is under no obligation to, pay by joint check or to pay directly to any SubReseller or other creditor to whom any portion of Contractor's requested payment is owed.

3.4.3 RECOVERY OF OVER-PAYMENT. If applicable Purchasing Entity or Co-Op Buyer determines that an over-payment has been made to Reseller on any prior invoice, it shall inform Reseller of the amount and date of the over-payment and may deduct the over-paid amount from amounts then or thereafter due to Reseller.

3.4.4 PAYMENTS TO SUBCONTRACTORS. Reseller shall make payment of all undisputed amounts due to Subcontractors within thirty (30) days of receipt of funds from applicable Purchasing Entity or Co-Op Buyer applicable to their services.

3.4.5 PURCHASING CARD. Applicable Purchasing Entity or Co-Op Buyer may pay invoices for some or all Orders using a purchasing card. Any and all fees related to payment using a Purchasing Card are the responsibility of Reseller. Unless otherwise stated in the Contract there shall be no additional fees or increase in prices associated with this method of payment.

3.4.6 AUTOMATED CLEARING HOUSE. Applicable Purchasing Entity 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 in the State of Arizona, Reseller shall 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

3.5 Exhibits to the Pricing Document

■ **NONE**

End of Section 2-B

SECTION 2-C: Special Terms and Conditions

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

1.0 Definition of Terms

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

1.1	Acceptance	"Acceptance" means the document headed "Offer and Acceptance Form" bearing the State contract number once Procurement Officer has signed it to signify (1) State's formal acceptance of the Accepted Offer and (2) the formation of the Contract. For clarity of intent, the foregoing is not to be confused with the term "acceptance" used throughout the Contract in the context of delivery, inspection, etc., with respect to Materials or Services. **"**Acceptance" is defined by the applicable commercial code, except Acceptance of a Product for which acceptance testing is not required shall not occur before the completion of delivery in accordance with the Order, installation, if required, and a reasonable time for inspection of the Product.
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	Appliance	"Appliance" means a separate and discrete hardware device with integrated software (firmware), specifically designed to provide a specific computing resource. For the purposes of this solicitation only an "Appliance" which is the sole means of obtaining the Software product is allowable.
1.4	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.
1.5	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.
1.6	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. "Attachment" means any item the Solicitation requires an Offeror to submit as part of the Offer.
1.7	Awarded Reseller or Contractor	"Awarded Reseller" or "Contractor" means a Software Value-Added Reseller who is awarded under this solicitation, has a fully-executed (MPA and PA-s) contract, and is delivering products or performing services under the terms and conditions set forth in this Master Agreement.
1.8	Best and Final Offer (BAFO)	"Best and Final Offer (BAFO)" means a revision to an Offer submitted after negotiations are completed that contains the Offeror's most favorable terms for price, service, and products to be delivered.
1.9	Commercial Off the Shelf (COTS)	"Commercial Off the Shelf" ("COTS") for the purposes of this solicitation means Software that already exists and is available to the general public in the commercial marketplace. COTS

		products are designed to be implemented easily into existing systems without the need for customization
1.10	Contract Amendment	"Contract Amendment" means a document signed by Procurement Officer that has been issued for the purpose of making changes to the Contract after execution.
1.11	Contract Terms and Conditions	"Contract Terms and Conditions" means the Special Terms and Conditions and these Uniform Terms and Conditions taken collectively.
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"
1.14	Eligible Agency	If the Special Terms and Conditions indicate that the Contract is a "single-agency" contract, then "Eligible Agency" means the particular State of Arizona agency, university, commission, or board identified therein. If the Special Terms and Conditions indicate that the Contract is a "statewide" contract, then "Eligible Agency" means any State of Arizona department, agency, university, commission, or board.
1.15	Embedded Software	"Embedded Software" means one or more software applications which permanently reside on a computing device.
1.16	End-User License Agreement (EULA)	"End-User License Agreement (EULA)" is a legal contract between the manufacturer (Publisher) and the end User of an application that details how the software can and cannot be used.
1.17	eProcurement (Electronic Procurement)	"eProcurement (Electronic Procurement)" means conducting all or some of the procurement function over the Internet. Point, click, buy and ship Internet technology is replacing paper-based procurement and supply management business processes. Elements of eProcurement also include Invitation for Bids, Request for Proposals, and Request for Quotations.
1.18	Excluded Software Publishers	"Excluded Software Publishers" means a Software Publisher who is unwilling to do business with a Reseller.
1.19	Exhibit	"Exhibit" means any document or object labeled as an Exhibit in the Solicitation or placed in the Exhibits section of the Solicitation.
1.20	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.
1.21	Instructions to Offerors	"Instructions to Offerors" is Section 3-A of Part 3 of the Solicitation Documents.
1.22	Intellectual Property	"Intellectual Property" means any and all patents, copyrights, service marks, trademarks, trade secrets, trade names, patentable inventions, or other similar proprietary rights, in tangible or intangible form, and all rights, title, and interest therein.
1.23	Lead State	"Lead State" means the State centrally administering any resulting Master Agreement(s).
1.24	Lead State Contract Administrator (LSCA)	"Lead State Contract Administrator" ("LSCA") means the Procurement Officer for the Master Agreement.
1.25	Master Agreement (MPA)	"Master Agreement (MPA)" means the contractual agreement executed between the winning (awarded) contractor(s) and the Lead State conducting the procurement on behalf of NASPO ValuePoint.
1.26	Non-Perpetual License or Subscription License	"Non-perpetual license" or "Subscription License" is a temporary license that provides the right to use a particular licensed product until the end of the license-agreement term.
1.27	Order	"Order" means the instrument by which State authorizes Contractor to perform some or all of the Work. Whether the Contract will have one Order or many Orders depends the scope of the

		Contract and how State will use it. The Special Terms and Conditions provide that information. Any of the following is to be construed as being an "Order": 1. "Release" or "Release Purchase Order" in The State's e-Procurement System; 2. "task order", "service order," or "job order" when a Release Purchase Order for Services has already been committed in The State's e-Procurement System; or "Purchase order" for buying by Co-Op Buyers, if co-op buying applies.
1.28	Order or Purchase Order	"Order" or "Purchase Order" means any purchase order, sales order, contract or other document used by a Purchasing Entity to order the products.
1.29	Participating Addendum	"Participating Addendum" means a bilateral agreement executed by a Contractor and a Purchasing] Entity incorporating this Master Agreement and any other additional Purchasing Entity-specific language or other requirements, e.g. ordering procedures specific to the Participating State, other terms and conditions.
1.30	Perpetual License	"Perpetual license" means a license which is everlasting and valid if the software is being used in accordance with the license-agreement requirements.
1.31	Person	"Person" means any corporation, business, individual, union, committee, club, or other organization or group of individuals
1.32	Pricing Document	"Pricing Document" means Section 2-B of Part 2 of the Solicitation Documents, provided that, if there is no such Section in the Contract, then "Pricing Document" is to be construed as referring to whatever item in the Contract contains the contracted pricing and payment provisions.
1.33	Product	"Product" means any equipment, software (including embedded software), documentation, service or other deliverable supplied or created by the Contractor pursuant to this Master Agreement. The term Products, supplies and services, and products and services are used interchangeably in these terms and conditions.
1.34	Publisher	"Publisher" means a software manufacturer who owns the intellectual property rights of the software.
1.35	Purchasing Entity	"Purchasing Entity" Means a state (as well as the District of Columbia and U.S. territories), or other eligible entity, public or non-profit, domestic or foreign, that issues a Purchase Order against the Master Agreement and becomes financially committed to the purchase "Purchasing Entity" means a state or other entity, public or non-profit, domestic or foreign, that is eligible to participate under the Master Agreement and has properly executed a Participating Addendum.
1.36	Purchasing Entity Contract Administrator (PECA)	"Purchasing Entity Contract Administrator" ("PECA") means the Procurement Officer for the Purchasing Entity.
1.37	Reseller Cost	"Reseller Cost" means the invoice-verifiable price that the Reseller pays the Publisher or Distributor to purchase Software on behalf of the Participating Entity. Reseller Cost should not include any administrative or other mark-up costs. Unless a Publisher is not willing to sell directly to a Reseller and instead utilizes a Distributor, the Reseller Cost must equal the invoice paid by the Software Reseller to the Software Publisher.
1.38	Service Level Agreement	Service Level Agreement (SLA) means a written agreement between both the Purchasing Entity and the Contractor that is subject to the terms and conditions in this Master Agreement and relevant Participating Addendum unless otherwise expressly agreed in writing between the Purchasing Entity and the Contractor. SLAs should include: (1) the technical service level performance promises, (i.e. metrics for performance and intervals for measure), (2) description of service quality, (3) identification of roles and responsibilities, (4) remedies, such as credits, and (5) an explanation of how remedies or credits are calculated and issued.
1.39	Software	"Software" means the computer program, including media and associated documentation.
1.40	Software as a Service (SaaS)	"Software as a Service" ("SaaS") means software that is owned, delivered and managed remotely by one or more providers. The provider delivers software based on one set of common code and data definitions that is consumed in a one-to-many model by all contracted customers at any time on a pay-for-use basis or as a subscription based on use metrics.

1.41	Software Licensing	"Software Licensing" means allowing an individual or group to use a piece of software.
1.42	Software Maintenance and Support	"Software Maintenance and Support" means any software upgrades, annual updates, patches and fixes needed to improve functionality and keep the software in working order.
1.43	Software Value-Added Reseller (SVAR)	"Software Value-Added Reseller" ("SVAR") means a company that resells software and offers value beyond order fulfillment.
1.44	Solicitation Amendment	"Solicitation Amendment" means a change to the Solicitation issued by the Procurement Officer.
1.45	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.
1.46	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.
1.47	The State's e-Procurement System	"The State's e-Procurement System" means State's official electronic procurement system, established pursuant to A.A.C. R2-7-201 as set forth in the Arizona Department of Administration State Procurement Office policy document *Technical Bulletin No. 020, The State's e-Procurement System – The Official State eProcurement System*. NOTE (1): Technical Bulletin No. 020 is available online at: https://spo.az.gov/administration-policy/state-procurement-resource/procurement-regulations
1.48	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.
1.49	Volume License Agreements (VLA)	"Volume License Agreements (VLAs)" means an agreement with a Software Publisher wherein the Participating State's total expected purchasing over a period of time is considered in establishing the discount level.
1.50	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.
1.51	Commissioning Services	"Commissioning Services" means is the process of assuring that all components software are designed, installed, tested, operated, and maintained according to the operational requirements of the Publisher or Purchasing Entity
1.52	Implementation Services	"Implementation Services" means all the post-sale processes involved for software to operate properly in its environment, including analyzing requirements, installation, configuration, customization, running, testing, systems integrations, user training, and delivery.
1.53	Maintenance Services	"Maintenance Services" means long-term and pay-as-you-go (incident-based) support to include remote troubleshooting and support provided via the telephone and online channels, as well as installation assistance and basic usability assistance. In some cases, maintenance services may include new product installation services, installation of product updates, migrations for major releases of software and other types of proactive or reactive on-site services.
1.54	Configuration Services	"Configuration Services" means support in determining the manner in which software components are arranged to make up the computer system.
1.55	Software Integration Services	"Software Integration Services" means the process of bringing together various types of software sub-systems so that they create a unified single system.
1.56	Participating Entity	"Participating Entity" means a state, or other legal entity, properly authorized to enter into a Participating Addendum.

2.0 Contract Interpretation

2.1 Usage

Where the Contract:

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

2.2 Contract Order of Precedence

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

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

(a) A Participating Entity's Participating Addendum ("PA") and any amendments to the PA.

(b) the Master Agreement ("MPA") Solicitation Documents, including the mutually agreed upon changes detailed in Attachment 5-B Conformance Statements of the Accepted Offer, in the following order:

(1) Special Terms and Conditions;

(2) Exhibits to the Special Terms and Conditions;

(3) Uniform Terms and Conditions;

(4) Scope of Work;
(5) Exhibits to the Scope of Work;
(6) Pricing Document;
(7) Exhibits to the Pricing Document;
(8) Specifications; and
(9) any other documents referenced or included in the Solicitation;

(c) Orders, in reverse chronological order; and

(d) Accepted Offer (with the exception of Attachment 5-B Conformance Statements, which is integrated in Sub-Section (b) above).

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

2.3	Independent Contractor	Contractor is an independent contractor and shall act in an independent capacity in performance under the Contract. Neither party is or is to be construed as being to be the employee or agent of the other party, and no action, inaction, event, or circumstance will be grounds for deeming it to be so.
2.4	Complete Integration	The Contract, including any documents incorporated into the Contract by reference, is intended by the parties as a final and complete expression of their agreement. There are no prior, contemporaneous, or additional agreements, either oral or in writing, pertaining to the Contract.

3.0 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 **five (5) years unless cancelled, terminated, or permissibly extended**.
3.2	Contract Extensions	State may at its discretion extend the initial Contract term in increments of one year and do so up to two times, provided that, the maximum aggregate term of the Contract including extensions cannot exceed the maximum aggregate term of seven (7) years.
3.3	Notices and Correspondence	3.3.1 TO CONTRACTOR. Purchasing Entity 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 The State's e-Procurement System 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 PURCHASING ENTITY. Contractor shall : (a) address all Contract correspondence other than format notices to the email address indicated in "Contact Instructions" in The State's e-Procurement System Summary for State, or equivalent contact instructions as indicated by the Purchasing Entity; and (b) address any required notices to State to Procurement Officer, or the equivalent for a Purchasing Entity, identified as "Purchaser" in the State's e-Procurement System Summary at the following mailing address: Arizona Department of Administration State Procurement Office 100 N 15th Ave., Suite 402 Phoenix, AZ 85007

		Or the equivalent for each Purchasing Entity; and 3.3.3 CHANGES. State, or Participating Entity, may change the designated Procurement Officer, update contact information, or change the applicable mailing address by Contract Amendment.
3.4	Signing of Contract Amendments	Contractor's counter-signature – or "approval" in The State's e-Procurement System, or equivalent eProcurement System of a Purchasing Entity, in the case of an amendment – is not required to give effect if the Contract Amendment only covers either: 1. extension of the term of the Contract within the maximum aggregate term; 2. revision to Procurement Officer appointment or contact information; or 3. Modifications of a clerical nature that have no effect on terms, conditions, price, scope, or other material aspect of the Contract. In every case other than those listed in *(1)*, *(2)*, and *(3)* above, both parties' signature – or "approval" in The State's e-Procurement System, or Purchasing Entity's equivalent system, in the case of an Amendment – are required to give it effect.
3.5	Click Through Terms and Conditions	If either party uses a web based ordering system, an electronic purchase order system, an electronic order acknowledgement, a form of an electronic acceptance, or any software based ordering system with respect to the Contract (each an "Electronic Ordering System"), the parties acknowledge and agree that an Electronic Ordering System is for ease of administration only, and Contractor is hereby given notice that the persons using Electronic Ordering Systems on behalf of State do not have any actual or apparent authority to create legally binding obligations that vary from the terms and conditions of the Contract. Accordingly, where an authorized State user is required to "click through" or otherwise accept or be made subject to any terms and conditions in using an Electronic Ordering Systems, any such terms and conditions are deemed void upon presentation. Additionally, where an authorized State user is required to accept or be made subject to any terms and conditions in accessing or employing any Materials or Services, those terms and conditions will also be void.
3.6	Books and Records	3.6.1 RETAIN RECORDS. By A.R.S. § 41-2548(B), Contractor shall retain and shall contractually require each Subcontractor to retain books and records relating for any cost and pricing data submitted in satisfaction of § 41-2543 for the period specified in the statute. 3.6.2 RIGHT TO AUDIT. The retained books and records are subject to audit by State during that period. By A.R.S. § 41-2548(B), Contractor shall retain and shall contractually require each Subcontractor to retain books and records relating to performance under the Contract for the period specified in the statute and those retained books and records are subject to audit by State during that period. 3.6.3 AUDITING. Contractor or Subcontractor shall either make all such books and records under subparagraphs 3.6.1 and 3.6.2 available to State at all reasonable times or produce the records at a designated State office on State's demand, the choice of which being at State's discretion. For the purpose of this paragraph, "reasonable times" are during normal business hours and in such a manner so as to not unreasonably interfere with normal business activities.
3.7	Contractor Licenses	Contractor shall maintain current all federal, state and local licenses and permits required for the operation of its business in general, for its operations under the Contract, and for the Work itself.
3.8	Inspection and Testing	By A.R.S. § 41-2547, State may at reasonable times inspect the part of Contractor's or Subcontractors' plant or places of business related to performance under the Contract. Accordingly, Contractor agrees to permit (for itself) and ensure (for Subcontractors) access for inspection at any reasonable time to its facilities, processes, and services. State may inspect or test, at its own cost, any finished goods, work-in-progress, components, or unfinished materials that are be supplied under the Contract or that will be incorporated into something to be supplied under the Contract. If the inspection or testing shows non-conformance or defects, then Contractor will owe State reimbursement or payment of all costs it incurred in carrying out or contracting for the inspection and testing, as well as for any re-inspection or re-testing that might be necessary. Neither inspection of facilities nor testing of goods, work, components, or unfinished materials will of itself constitute acceptance by State of those things.

3.9	Ownership of Intellectual Property	3.9.1	RIGHTS IN WORK PRODUCT. All intellectual property originated or prepared by Contractor pursuant to the Contract, including but not limited to, inventions, discoveries, intellectual copyrights, trademarks, trade names, trade secrets, technical communications, records reports, computer programs and other documentation or improvements thereto, including Contractor's administrative communications and records relating to the Contract, are considered work product and Contractor's property, provided that, State has Government Purpose Rights to that work product as and when it was delivered to State. (a) "Government Purpose Rights" are: i. the unlimited, perpetual, irrevocable, royalty free, non-exclusive, worldwide right to use, modify, reproduce, release, perform, display, sublicense, disclose and create derivatives from that work product without restriction for any activity in which State is a party; ii. the right to release or disclose that work product to third parties for any State government purpose; and iii. the right to authorize those to whom it rightfully releases or discloses that work product to use, modify, release, create derivative works from the work product for any State government purpose; such recipients being understood to include the federal government, the governments of other states, and various local governments. (b) "Government Purpose Rights" do not include any right to use, modify, reproduce, perform, release, display, create derivative works from, or disclose that work product for any commercial purpose or to authorize others to do so.
		3.9.2	JOINT DEVELOPMENTS. The parties may each use equally any ideas, concepts, know-how, or techniques developed jointly during the course of the Contract, and may do so at their respective discretion, without obligation of notice or accounting to the other party.
		3.9.3	PRE-EXISTING MATERIAL. All pre-existing software and other materials developed or otherwise obtained by or for Contractor or its affiliates independently of the Contract or applicable Purchase Orders are not part of the work product to which rights are granted State under subparagraph 3.9.1 above, and will remain the exclusive property of Contractor, provided that: (a) any derivative works of such pre-existing material or elements thereof that are created pursuant to the Contract are part of that work product; (b) any elements of derivative work of such pre-existing material that was not created pursuant to the Contract are not part of that work product; and (c) Except as expressly stated otherwise, nothing in the Contract is to be construed to interfere or diminish Contractor's or its affiliates' ownership of such pre-existing materials.
		3.9.4	DEVELOPMENTS OUTSIDE OF CONTRACT. Unless expressly stated otherwise in the Contract, 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 Subcontracts will not relieve Contractor of any of its obligations or duties under the Contract, including, among other things, the duty to supervise and coordinate the work of Subcontractors. Nothing contained in any Subcontract will create or is to be construed as creating any contractual relationship between State and the Subcontractor.

3.11 Offshore Performance of Certain Work Prohibited

Contractor shall only perform those portions of the Services that directly serve State or its clients and involve access to secure or sensitive data or personal client data within the defined territories of the United States. Unless specifically stated otherwise in the Scope of Work, this paragraph does not apply to indirect or overhead services, redundant back-up services, or services that are incidental to performance under the Contract. This provision applies to work performed by Subcontractors at all tiers.

3.12 Orders

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

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

3.12.3 ORDERS ARE OBLIGATORY. Until the expiration or earlier termination of the Contract, State may issue and Contractor shall accept Orders that make proper reference to the Contract and are permissible hereunder, provided that, Contractor is not obliged to accept any Order that is not consistent with the then-current pricing, lead times, specifications, or payment provisions of the Contract. Contractor shall fulfill and complete any Orders that are begun but not yet completed as of expiration or earlier termination of the Contract unless State instructs otherwise at the time.

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

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

3.12.6 NON-CONTRACTED MATERIALS OR SERVICES. Any attempt to knowingly represent for sales, marketing, or related purposes that goods or services not specifically awarded are under a State contract is a violation of the Contract and law.

3.13	NASPO ValuePoint Administrative fees and Reporting	The Contractor shall pay to NASPO ValuePoint, or its assignee, a NASPO ValuePoint Administrative Fee of one-quarter of one percent (0.25% or 0.0025) no later than 60 days following the end of each calendar quarter. The NASPO ValuePoint Administrative Fee shall be submitted quarterly and is based on all sales of products and services under the Master Agreement (less any charges for taxes or shipping). The NASPO ValuePoint Administrative Fee is not negotiable. This fee is to be included as part of the pricing submitted with proposal. In addition to other reports that may be required by this solicitation, the Contractor shall provide the following NASPO ValuePoint reports. a. Summary Sales Data. The Contractor shall submit quarterly sales reports directly to NASPO ValuePoint using the NASPO ValuePoint Quarterly Sales/Administrative Fee Reporting Tool found at http://www.naspo.org/WNCPO/Calculator.aspx. The SVAR Detailed Reporting Template is provided as a reference (see see Exhibit 4(Four)). Any/all sales made under the contract shall be reported as cumulative totals by state. Even if Contractor experiences zero sales during a calendar quarter, a report is still required. Reports shall be due no later than 30 day following the end of the calendar quarter (as specified in the reporting tool). B. Detailed Sales Data. Contractor shall also report detailed sales data by: (1) state; (2) entity/customer type, e.g. local government, higher education, K12, non-profit; (3) Purchasing Entity name; (4) Purchasing Entity bill to and ship-to locations; (4) Purchasing Entity and Contractor Purchase Order identifier/number(s); (5) Purchase Order Type (e.g. sales order, credit, return, upgrade, determined by industry practices); (6) Purchase Order date; (7) Ship Date; (8) and line item description, including product number if used. The report shall be submitted in any form required by the solicitation. Reports are due on a quarterly basis and must be received by the Lead State and NASPO ValuePoint Cooperative Development Team no later than thirty (30) days after the end of the reporting period. Reports shall be delivered to the Lead State and to the NASPO ValuePoint Cooperative Development Team electronically through a designated portal, email, CD-ROM, flash drive or other method as determined by the Lead State and NASPO ValuePoint. Detailed sales data reports shall include sales information for all sales under Participating Addenda executed under this Master Agreement. The format for the detailed sales data report is in shown in EXHIBIT III_Cooperative Contract Sales Reporting Data Requirements and Data Format. c. Reportable sales for the summary sales data report and detailed sales data report includes sales to employees for personal use where authorized by the solicitation and the Participating Addendum. Report data for employees should be limited to ONLY the state and entity they are participating under the authority of (state and agency, city, county, school district, etc.) and the amount of sales. No personal identification numbers, e.g. names, addresses, social security numbers or any other numerical identifier, may be submitted with any report. d. Contractor shall provide the NASPO ValuePoint Cooperative Development Coordinator with an executive summary each quarter that includes, at a minimum, a list of states with an active Participating Addendum, states that Contractor is in negotiations with and any PA roll out or implementation activities and issues. NASPO ValuePoint Cooperative Development Coordinator and Contractor will determine the format and content of the executive summary. The executive summary is due 30 days after the conclusion of each calendar quarter. e. Timely submission of these reports is a material requirement of the Master Agreement. The recipient of the reports shall have exclusive ownership of the media containing the reports. The Lead State and NASPO ValuePoint shall have a perpetual, irrevocable, non-exclusive, royalty free, transferable right to display, modify, copy, and otherwise use reports, data and information provided under this section. NASPO ValuePoint Administrative Fee shall be based on the gross amount of all sales (less any charges for taxes or shipping) at the adjusted prices (if any) in Participating Addenda.
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3.14	NASPO ValuePoint Cooperative Program	a. The Contractor agrees to work cooperatively with NASPO ValuePoint personnel. Contractor agrees to present plans to NASPO ValuePoint for the education of Contractor's contract

	Marketing, Training, and Performance Review	administrator(s) and sales/marketing workforce regarding the Master Agreement contract, including the competitive nature of NASPO ValuePoint procurements, the Master agreement and participating addendum process, and the manner in which qualifying entities can participate in the Master Agreement. b. Contractor agrees, as Participating Addendums become executed, if requested by ValuePoint personnel to provide plans to launch the program within the participating state. Plans will include time frames to launch the agreement and confirmation that the Contractor's website has been updated to properly reflect the contract offer as available in the participating state. c. Contractor agrees, absent anything to the contrary outlined in a Participating Addendum, to consider customer proposed terms and conditions, as deemed important to the customer, for possible inclusion into the customer agreement. Contractor will ensure that their sales force is aware of this contracting option. d. Contractor agrees to participate in an annual contract performance review at a location selected by the Lead State and NASPO ValuePoint, which may include a discussion of marketing action plans, target strategies, marketing materials, as well as Contractor reporting and timeliness of payment of administration fees. e. Contractor acknowledges that the NASPO ValuePoint logos may not be used by Contractor in sales and marketing until a logo use agreement is executed with NASPO ValuePoint.
3.15	Multiple-Use Provisions	Eligible Agencies may issue Orders for Services in several forms, all of which become final and effective by a "Release Purchase Order" in The State's e-Procurement System. Orders issued by Co-Op Buyers will be in whatever form the Co-Op Buyer normally uses. Regardless of origin, Orders must cite the State contract number to be valid. State may, at its discretion in each instance, determine the scope, schedule, and price for each Order in any of the following ways: 1. By choosing some or all of the Materials or Services items covered by the Contract for which a price is established in the Pricing Document, then preparing an Order using those prices (e.g., filling out an order form), and sending it to Contractor. 2. By instructing Contractor to provide a comprehensive proposal of item quantities, combinations, etc., or services hours, personnel, etc., for a defined scope using those established prices as a basis, then validating and negotiating the proposal with Contractor and issuing an Order if and when reaching agreement. 3. As described in *(2)* above but requesting the proposal from both Contractor and other vendors who are contracted within the applicable scope categories and locations, either sequentially or concurrently, then selecting the proposal or proposals combination that is most advantageous to State. 4. As described in *(3)* above but introducing ad-hoc commercial competition by making the selection and ordering conditional on obtaining more favorable prices than the contractually-established ones. When evaluating the proposals under *(3)* and *(4)* above, State may select based on price (for example, a quoted number of hours times the contracted or improved rate plus a fixed amount for incidentals), by experience and qualifications (for example, having an office nearer the required work location), or whatever combination thereof it determines is most appropriate to the work in question.
3.16	Other Contractors	State may undertake with its own forces or award other contracts to the same or other vendors for additional or related work. In such cases, Contractor shall cooperate fully with State's employees and such other vendors and carefully coordinate, fit, connect, accommodate, adjust, or sequence its work to the related work by others. Where the Contract requires handing-off Contractor's work to others, Contractor shall cooperate as State instructs regarding the necessary transfer of its work product, services, or records to State or the other vendors. Contractor shall not commit or permit any act that interferes with the State's or other vendors' performance of their work, provided that, State shall enforce the foregoing section equitably among all its vendors so as not impose an unreasonable burden on any one of them.

3.17	Work on State Premises	3.16.1	COMPLIANCE WITH RULES. Contractor is responsible for ensuring that its personnel comply with State's rules, regulations, policies, documented practices, and documented operating procedures while delivering or installing Materials or performing Services on State's grounds or in its facilities. For clarity of intent, the foregoing means that if Contractor is required to comply with certain security requirements in order to deliver, install, or perform at that particular location, then it shall do so nonetheless and without entitlement to any additional compensation or additional time for performance if those particular requirements are not expressly stated in the Contract. Contractor is reminded that violation of the prohibition under A.R.S. § 13-1502 against possession of weapons on State's property by anyone for whom Contractor is responsible is a material breach of contract and grounds for termination for default.
		3.16.2	PROTECTION OF GROUNDS AND FACILITIES. Contractor shall deliver or install the Materials and perform the Services without damaging any State grounds or facilities. Contractor shall repair or replace any damage it does cause promptly and at its own expense, subject to whatever instructions and restrictions State needs to make to prevent inconvenience or disruption of operations. If Contractor fails to make the necessary repairs or replacements and do so in a timely manner, State will be entitled to exercise its remedies under paragraph 8.5 [*Right of Offset*].

4.0 Costs and Payments

4.1	Payments	4.1.1	PAYMENT DEADLINE. State shall make payments in compliance with Arizona Revised Statues Titles 35 and 41. Unless and then only to the extent expressly stated otherwise in the Pricing Document, State shall make payment in full for Materials that have been delivered and accepted and Services that have been performed and accepted within the time specified in A.R.S. § 35-342 after both of the following become true: (a) all of the Materials being invoiced have been delivered or installed (as applicable) and accepted and all of the Services being invoiced have been performed and accepted; and (b) Contractor has provided a complete and accurate invoice in the form and manner called for in the Pricing Document, provided that, State will not make or be liable for any payments to Contractor until Contractor has registered properly in The State's e-Procurement System and provided a current IRS Form W-9 to State unless excused by law from providing one.
		4.1.2	PAYMENTS ONLY TO CONTRACTOR. Unless compelled otherwise by operation of law or order of a court of competent jurisdiction, State will only make payment to Contractor under the federal tax identifier indicated on the Accepted Offer.
4.2	Applicable Taxes	4.2.1	CONTRACTOR TO PAY ALL TAXES. State is subject to Arizona TPT. Therefore, Arizona TPT applies to all sales under the Contract and Arizona TPT is Contractor's responsibility (as seller) to remit. Contractor's failure to collect Arizona TPT or any other applicable sales or use taxes from an Eligible Agency or Co-Op Buyer (as buyer) will not relieve Contractor of any obligation to remit sales or use taxes that are due under the Contract or laws. Unless stated otherwise in the Pricing Document, all prices therein include Arizona TPT as well as every other manner of transaction privilege or sales/use tax that is due to a municipality or another state or its political subdivisions. Contractor shall pay all federal, state, and local taxes applicable to its operations and personnel.
		4.2.2	TAX INDEMNITY. Contractor shall hold State harmless from any responsibility for taxes or contributions, including any applicable damages and interest, that are due to federal, state, and local authorities with respect to the Work and the Contract, as well any related costs; the foregoing expressly includes Arizona TPT, unemployment compensation insurance, social security, and workers' compensation insurance.

5.0 Contract Changes

5.1	Contract Amendments	The Contract is issued for State under the authority of Procurement Officer. Only a 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 Requirements

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

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

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

1. Commercial General Liability (CGL) – Occurrence Form

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

General Aggregate	$2,000,000
Products – Completed Operations Aggregate	$1,000,000
Personal and Advertising Injury	$1,000,000
Damage to Rented Premises	$ 50,000
Each Occurrence	$1,000,000

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

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

2. Business Automobile Liability

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

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

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

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

3. Worker's Compensation and Employers' Liability

Workers' Compensation……	Statutory
Each Accident	$1,000,000
Disease – Each Employee	$1,000,000
Disease – Policy Limit	$1,000,000

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

b. This requirement shall not apply to each Contractor or subcontractor that is exempt under A.R.S. 23-901, and when such contractor or subcontractor executes the appropriate waiver form (Sole Proprietor/Independent Contractor).

5. Technology Errors & Omissions Insurance – *Required as applicable to the services provided*.

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

a. Such insurance shall cover any, and all errors, omissions, or negligent acts in the delivery of products, services, and/or licensed programs under this contract.

b. Coverage shall include copyright infringement, infringement of trade dress, domain name, title or slogan.

c. In the event that the Tech E&O insurance required by this Contract is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of this Contract and, either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years, beginning at the time work under this Contract is completed.

d. Technology Errors and Omissions insurance coverage shall only be required from each Contractor or subcontractor who is providing one of the following Training Delivery Formats:

1. Computer Based training (CBT) and/or

2. E-Learning (E).

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

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

a. Such insurance shall include, but not be limited to, coverage for third party claims and losses with respect to network risks (such as data breaches, unauthorized access or use, ID theft, theft of data) and invasion of privacy regardless of the type of media involved in the loss of private information, crisis management and identity theft response costs. This should also include breach notification costs, credit remediation and credit monitoring, defense and claims expenses, regulatory defense costs plus fines and penalties, cyber extortion, computer program and electronic data restoration expenses coverage (data asset protection), network business interruption, computer fraud coverage, and funds transfer loss.

b. In the event that the Network Security and Privacy Liability insurance required by this Contract is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of this Contract and, either continuous coverage will be maintained, or an extended discovery period will be exercised for a period of two (2) years beginning at the time work under this Contract is completed.

c. The policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to vicarious liability of the insured arising out of the activities performed by or on behalf of the Contractor.

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

e. Network Security (Cyber) and Privacy Liability coverage shall only be required from each Contractor or subcontractor who is providing one of the following Training Delivery Formats:

1. Computer Based training (CBT) and/or
2. E-Learning (E).

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

1. The Contractor's policies, as applicable, shall stipulate that the insurance afforded the Reseller shall be primary and that any insurance carried by the Department, its agents, officials, employees or the State of Arizona shall be excess and not contributory insurance, as provided by A.R.S. § 41-621 E
2. Insurance provided by the Reseller 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, Reseller shall provide notice to the State of Arizona if they receive notice of a policy that has been or shall be suspended, canceled, materially changed for any reason, has expired, or shall be expiring. Such

notice shall be sent directly to the Department and shall be mailed, emailed, hand delivered or sent by facsimile transmission to State Procurement Office.

ACCEPTABILITY OF INSURERS: Contractor's Insurance shall be placed with companies licensed in the State of Arizona or hold approved non-admitted status on the Arizona Department of Insurance List of Qualified Unauthorized Insurers. Insurers shall have an "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 Reseller from potential insurer insolvency.

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

All such certificates of insurance and policy endorsements shall be received by the State before work commences. The State's receipt of any certificates of insurance or policy endorsements that do not comply with this written agreement shall not waive or otherwise affect the requirements of this agreement.

Each insurance policy required by this Contract shall be in effect at, or prior to , commencement of work under this Contract. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.

All such certificates required by this Contract shall be sent directly to the Arizona State Procurement Office. The State of Arizona project/contract number and project description shall be noted on the certificate of insurance. The State of Arizona reserves the right to require complete, certified copies of all insurance policies required by this Contract at any time.

SUBCONTRACTORS: Contractors' certificate(s) shall include all subcontractors as insured under its policies or Reseller shall be responsible for ensuring and/or verifying that all subcontractors have valid and collectable insurance as evidenced by the certificates of insurance and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum Insurance Requirements identified above. The Department reserves the right to require, at any time throughout the life of this contract, proof from the Reseller 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 shall not require a formal Contract amendment but may be made by administrative action.

EXCEPTIONS: In the event the Reseller 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 Reseller or sub-contractor(s) is/are a State of Arizona agency, board, commission, or university, none of the above shall apply.

6.3 Indemnification

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

consideration of the award of this contract, the Reseller agrees to waive all rights of subrogation against the State of, its officers, officials, agents, and employees for losses arising from the work performed by the Reseller for the State of Arizona. This indemnification shall survive the termination of the above listed contract with the Reseller.

This indemnity shall not apply if the Reseller or sub-contractor(s) is/are an agency, board, commission or university of the State of Arizona.

6.4 Patent and Copyright Indemnification

CONTRACTOR/VENDOR (NOT PUBLIC AGENCY). With respect to Materials or Services provided or proposed by a Reseller Indemnitor for performance under the Contract, Reseller 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:

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

If Reseller is a public agency, this paragraph 6.4 does not apply.

6.5 Force Majeure

6.5.1 DEFINITION. For this paragraph, “force majeure” means an occurrence that is (a) beyond the control of the affected party, (b) occurred without the party’s fault or negligence, and (c) something the party was unable to prevent by exercising reasonable diligence. Without limiting the generality of the foregoing, force majeure expressly includes acts of God, acts of the public enemy, war, riots, strikes, mobilization, labor disputes, civil disorders, fire, flood, lockouts, injunctions-intervention-acts, failures or refusals to act by government authorities, and, subject to paragraph 7.66 [*Performance in Public Health Emergency*], declared public health emergencies. Force majeure expressly does not include late delivery caused by congestion at a manufacturer’s plant or elsewhere, an oversold condition of the market, late performance by a Subcontractor unless the delay arises out of an occurrence of force majeure, or inability of either Contractor or any Subcontractor to acquire or maintain any required insurance, bonds, licenses, or permits.

6.5.2 RELIEF FROM PERFORMANCE. Except for payment of sums due, the parties are not liable to each other 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	Conformity to Requirements	Contractor warrants that, unless expressly provided otherwise elsewhere in the Contract, the Materials and Services will for 1 (one) year after acceptance and in each instance: (1) conform to the requirements of the Contract, which by way of reminder include without limitation all descriptions, specifications, and drawings identified in the Scope of Work and any Contractor affirmations included as part of the Contract; (2) be free from defects of material and workmanship; (3) conform to or perform in a manner consistent with current industry standards; and (4) be fit for the intended purpose or use described in the Contract. Mere delivery or performance does not substitute for express acceptance by State. Where inspection, testing, or other acceptance assessment of Materials or Services cannot be done until after installation, the forgoing warranty will not begin until State's acceptance.
7.2	Contractor Personnel	Contractor warrants that its personnel will perform their duties under the Contract in a professional manner, applying the requisite skills and knowledge, consistent with industry standards, and in accordance with the requirements of the Contract. Contractor further warrants that its key personnel will maintain any certifications relevant to their work, and Contractor shall provide individual evidence of certification to State's authorized representatives upon request.
7.3	Intellectual Property	Contractor warrants that the Materials and Services do not and will not infringe or violate any patent, trademark, copyright, trade secret, or other intellectual property rights or laws, except only to the extent the Specifications do not permit use of any other product and Contractor is not and cannot reasonably be expected to be aware of the infringement or violation.
7.4	Licenses and Permits	Contractor warrants that it will maintain all licenses required under paragraph 3.7 [*Contractor Licenses*] and all required permits valid and in force.
7.5	Operational Continuity	Contractor warrants that it will perform without relief notwithstanding being sold or acquired; no such event will operate to mitigate or alter any of Contractor's duties hereunder absent a consented delegation under paragraph 5.3 [*Assignment and* Delegation] that expressly recognizes the event.
7.6	Performance in Public Health Emergency	Contractor warrants that it will: 1. have in effect promptly after commencement a plan for continuing performance in the event of a declared public health emergency that addresses, at a minimum: (a) identification of response personnel by name; (b) key succession and performance responses in the event of sudden and significant decrease in workforce; and (c) alternative avenues to keep sufficient product on hand or in the supply chain; and 2. Provide a copy of its current plan to State within 3 (three) business days after State's written request. If Contractor claims relief under paragraph 6.5 [*Force Majeure*] for an occurrence of force majeure that is a declared public health emergency, then that relief will be conditioned on Contractor having first implemented its plan and exhausted all reasonable opportunity for that plan implementation to overcome the effects of that occurrence, or mitigate those effects to the extent that overcoming entirely is not practicable. For clarification of intent, being obliged to implement the plan is not of itself an occurrence of force majeure, and Contractor will not be entitled to any additional compensation or extension of time by virtue of having to implement it. Furthermore, failure to have or implement an appropriate plan will be a material breach of contract.
7.7	Lobbying	7.7.1 PROHIBITION.

(a) Contractor warrants that:

i. it will not engage in lobbying activities, as defined in 40 CFR part 34 and A.R.S. § 41-1231, et seq., using monies awarded under the Contract, provided that, the foregoing does not intend to constrain Contractor's use of its own monies or property, including without limitation any net proceeds duly realized under the Contract or any value thereafter derived from those proceeds; and

ii. Upon award of the Contract, it will disclose all lobbying activities to State to the extent they are an actual or potential conflict of interest or where such activities could create an appearance of impropriety.

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

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

7.7.2 EXCEPTION. This paragraph does not apply to the extent that the Services are defined in the Contract as being lobbying for State's benefit or on State's behalf.

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

8.0 State's Contractual Remedies

No modifications to uniform terms and conditions section

9.0 Contract Termination

No modifications to uniform terms and conditions section

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.
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	Discounted 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, 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.
11.9	Forced Substitutes	Forced substitutions will not be permitted; Contractor shall obtain State's prior written consent before making any discretionary substitution for any product covered by the Contract.
11.10	Recalls	In the event of a recall notice, technical service bulletin, or other important notification affecting a product offered under the Contract (collectively, "recalls" hereinafter), Contractor shall send timely notice to State for each applicable Order referencing the affected Order and product. Notwithstanding whatever protection Contractor might have under A.R.S. § 12-684 with respect to a manufacturer, Contractor shall handle recalls entirely and without obligation on State's part, other than to permit removal of installed products, retrieval of stored products, etc., as necessary to implement the recall
		11.11.1 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

11.11	Delivery	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
11.13	Delivery Locations	Contractor shall offer deliveries to every location served under the scope of the Contract, specifically 1. if the Contract is for a single State agency in a single area, then Contractor shall deliver to any agency location in that area; 2. if the Contract is for a single State agency in all its locations, then Contractor shall deliver to any of that agency's location in Arizona; 3. if the Contract is for statewide use but excludes certain areas, then Contractor shall deliver to any Eligible Agency or Co-Op Buyer location that is not in the excluded areas; and 4. if the Contract is for unrestricted statewide use, then: i. 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

		State has the right to make acceptance of Materials subject to a complete inspection on delivery and installation, if installation is Contractor's responsibility.
11.15	Materials	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	Acceptance	
11.17	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 1. Contractor shall be solely responsible for the cost of any associated cutting and patching, temporary protection measures, packing and crating, hoisting and loading, transportation, unpacking, inspection, repacking, reshipping, and reinstallation if installation is within the scope of the Contract. 2. If Contractor fails to do so in a timely manner, State will be entitled to exercise its remedies under paragraph 8.5 [*Right of Offset*] of the Uniform Terms and Conditions. 3. 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.
11.18	Returns	
11.19	Order Cancellations	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 thirty (30) 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. 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: 1. pay Contractor for any portion of the Materials and Services from that Order that have been properly delivered or performed as of the cancellation effective date plus one (1) additional business day 2. reimburse Contractor for: (a) its actual, documented costs incurred in fulfilling the Order up to the cancellation effective date plus one (1) additional business day;

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

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

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

11.20	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
11.21	Hazardous Materials	Contractor shall timely provide State with any "Safety Data Sheets" (SDS) and any other hazard communication documentation required under the US Department of Labor's Occupational Safety and Health Administration (OSHA) "Hazard Communication Standard" (often referred to as the "HazCom 2012 Final Rule") that is reasonably necessary for State to comply with regulations when it or its other contractors install, handle, operate, repair, maintain or remove any Materials. Note that, in the past, those documents might have been referred to as "Material Safety Data Sheets" or "Product Safety Data Sheets", but State (and this Contract) use only the more up-to-date "SDS" reference. Contractor shall ensure that all its relevant personnel understand the nature of and hazards associated with, to the extent it they are Contractor's responsibility under the Contract, the design, shipping, handling, delivery, installation, repair and maintenance of any portion of the Work that is, contains or will become upon use a hazardous material, with "hazardous material" being any material or substance that is: (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 Pricing Document for ordering by Eligible Agencies, and Co-Op Buyers if co-op buying applies.
12.3	Additional Services	State at its discretion may modify the scope of the Contract by Contract Amendment to include additional services or service categories that are within the general scope of the ones originally covered by the Contract if it determines that doing so is in its best interest. 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 instructs Contractor to remove any of its personnel from State's facilities or from further assignment under the Contract. In such cases, Contractor shall promptly replace them with other personnel having equivalent qualifications, experience, and capabilities.
12.6	Transitions	During commencement, Contractor shall attend transition meetings with any outgoing vendors to coordinate and ease the transition so that the effect on State's operations is kept to a minimum. State may elect to have outgoing vendors complete some or all of their work or an order 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. 1. Contractor shall provide to State a report detailing the identified cause and setting out its detailed corrective action plan promptly after the date the failure occurred (or the date when the failure first became apparent, if it was not apparent immediately after occurrence).

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

13.0 Data and Information Handling

13.1	Applicability	Article 13 applies to the extent the Work includes handling of any (1) State's proprietary and sensitive data or (2) confidential or access-restricted information obtained from State or from others at State's behest.
13.2	Data Protection and Confidentiality of Information	Contractor warrants that it will establish and maintain procedures and controls acceptable to State for ensuring that State's proprietary and sensitive data is protected from unauthorized access and information obtained from State or others in performance of its contractual duties is not mishandled, misused, or inappropriately released or disclosed. For purposes of this paragraph, all data created by Contractor in any way related to the Contract, provided to Contractor by State, or prepared by others for State are proprietary to State, and all information by those same avenues is State's confidential information. To comply with the foregoing warrant: 1. Contractor shall: (a) notify State immediately of any unauthorized access or inappropriate disclosures, whether stemming from an external security breach, internal breach, system failure, or procedural lapse; (b) cooperate with State to identify the source or cause of and respond to each unauthorized access or inappropriate disclosure; and (c) notify State promptly of any security threat that could result in unauthorized access or inappropriate disclosures; and 2. Contractor shall not: (a) release any such data or allow it to be released or divulge any such information to anyone other than its employees or officers as needed for each person's individual performance of his or her duties under the Contract, unless State has agreed otherwise in advance and in writing; or (b) respond to any requests it receives from a third party for such data or information, and instead route all such requests to State's designated representative.
13.3	Personally Identifiable Information.	Without limiting the generality of paragraph 13.2, Contractor warrants that it will protect any personally identifiable information ("PII") belonging to State's employees' or other contractors or members of the general public that it receives from State or otherwise acquires in its performance under the Contract. For purposes of this paragraph: 1. PII has the meaning given in the [federal] Office of Management and Budget (OMB) *Memorandum M-17-12 Preparing for and Responding to a Breach of Personally Identifiable Information", January 3, 2017*; and 2. "protect" means taking measures to safeguard personally identifiable information and prevent its breach that are functionally equivalent to those called for in that OMB memorandum and elaborated on in the [federal] General Services Administration (GSA) *Directive CIO P* 2180*.1 GSA Rules of Behavior for Handling Personally Identifiable Information*. NOTE (1): For convenience of reference only, the OMB memorandum is available at: https://dpcld.defense.gov/Privacy/Authorities-and-Guidance/ NOTE (2): For convenience of reference only, the GSA directive is available at: http://www.gsa.gov/portal/directive/d0/content/658222
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:

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

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

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

14.0 Information Technology Work

14.1 Applicability

Article 14 applies to any Invitation for Bids, Request for Proposals, or Request for Quotations for "Information Technology," as defined In A.R.S. § 41-3501(6) 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 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:

(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.

14.7.3 PURCHASE PRICE DETERMINATION. If the Contract is for a single-agency and a single Order (or if no Order applies), then "purchase price" in Subparagraph 14.7.1 above means the aggregate Contract price current at the time of Contract expiration or earlier termination, including all Contract Amendments having an effect on the aggregate price through that date. In all other cases, "purchase price" above means the total price of the Order for the specific equipment, software, or services giving rise to the claim, and therefore a separate limit will apply to each Order.

14.7.4 NO EFFECT ON INSURANCE. This paragraph does not modify the required coverage limits, terms, and conditions of, or any insured's ability to claim against, any insurance that Contractor is required by the Contract to provide, and Contractor shall obtain express endorsements that it does not.

14.8 Information Technology Warranty

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

(a) modified or altered by anyone not authorized by Contractor to do so;

(b) maintained in a way inconsistent to any applicable manufacturer recommendations; or

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

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

(a) to the extent possible, it will test the software before delivery using commercially available virus detection software conforming to current industry standards;

(b) if requested by the Purchasing Entity and available from the Publisher, include a statement from the Publisher that the Publisher has mitigated the risk of software vulnerabilities by adopting a Secure Software Development Framework (SSDF) that complies with all applicable software producer practices in the NIST Cybersecurity White Paper of April 23, 2020, Mitigating the Risk of Software Vulnerabilities by Adopting a Secure Software Development Framework (SSDF).

(c) 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

(d) at no expense to the Purchasing Entity it will provide a new or clean install of any COTS software that the Purchasing Entity 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 forgoing options can reasonably be effected, or if the use of the materials by State is made impractical by the nonconformance, then State may seek any remedy available to it under law.
14.10	Section 508 Compliance	Unless specifically authorized in the Contract, any electronic or information technology offered to the State of Arizona under this Contract shall comply with A.R.S. § 18-131 and § 18-132 and Section 508 of the Rehabilitation Act of 1973, which requires that employees and members of the public shall have access to and use of information technology that is comparable to the access and use by employees and members of the public who are not individuals with disabilities.
14.11	Prohibited Software	**Prohibited Software** • S-VAR shall not sell 1) software prohibited under Section 889 of the National Defense Authorization Act of 2019; or 2) software found to contain malware as determined by the Lead State. • For any software not sold due to a (above), the S-VAR shall identify reasonable substitute software that will be sold. This may include a comparison for lead state to understand the comparable capabilities.

15.0 Information Security

15.1 Information Security	SaaS Products Requirements. For Software as a Service Products sold by the S-VAR, the following information shall be made available to the Purchasing Entity upon request: SECURITY OF INFORMATION • Describe the measures the Publisher takes to protect data. Include a description of the method by which the Publisher will hold, protect, and dispose of data following completion of any contract services. • Describe how the SaaS product will not access a Purchasing Entity's user accounts or data, except in the course of data center operations, response to service or technical issues, as required by the express terms of the Master Agreement, the applicable Participating Addendum, and/or the applicable Service Level Agreement. PRIVACY AND SECURITY • List all government or standards organization security certifications the Publisher currently holds that apply specifically to the SaaS product

offered as well as those in process at time of response. Specifically include HIPAA, FERPA, CJIS Security Policy, PCI Data Security Standards (DSS), IRS Publication 1075, FISMA, NIST 800-53, NIST SP 800- 171, FIPS 199 and 200 if they apply, and FedRAMP High, Mod, Low.

- Describe security practices for the SaaS product in place to secure data and applications, including threats from outside the service center as well as other customers co-located within the same service center.

- Describe data confidentiality standards and practices that are in place for the SaaS product to ensure data confidentiality. This must include not only prevention of exposure to unauthorized personnel, but also managing and reviewing access that administrators have to stored data. Include information on your hardware policies (laptops, mobile etc).

- Provide a list of current third-party attestations, reports, security credentials (e.g. AZRAMP, Cloud Security Alliance, FedRAMP), and certifications relating to data security, integrity, and other controls for the SaaS product offered.

- Describe security procedures (background checks, foot printing logging, etc.) which are in place regarding Publisher's employees who have access to sensitive data stored on or transited through the SaaS product offered.

- Describe the security measures and standards which the SaaS product has in place to secure the confidentiality of data at rest and in transit.

- Describe policies and procedures regarding notification to both the Purchasing Entity and third parties whose PPI has been breached, and the mitigation of such a breach.

SaaS Products Terms and Conditions

- Unless otherwise agreed to by the Purchasing Entity, Software-as-a-Service Products offered by the S-VAR shall comply with the terms and conditions in Part 2-C: Special Terms and Conditions Section 16 Software as a Service Terms and Conditions.

SaaS Products. Cloud Security Alliance Security Trust Assurance and Risk (STAR) Registry

- Unless otherwise agreed to by the Purchasing Entity, SaaS products offered by the SVAR shall be listed on the Cloud Security Alliance STAR Registry for each Solution offered.

15.2 Information Security. Compliance with NIST 800-53, FIPS 199 and 200	All SaaS Products and COTS software and software related services shall be compatible and support each Purchasing Entity's implementation of NIST Cyber Security Framework SP 800-53, FIPS 199 and 200 as applicable unless otherwise provided by the Purchasing Entity in the Participating Addendum.

16.0 Software as a Service Terms and Conditions

(a) The Reseller shall honor Purchasing Entities' existing SaaS Terms and Conditions with Publishers.

(b) For all SaaS software provided by the S-VAR in Category 1, the S-VAR shall provide a guide document that identifies the difference between the publishers terms and conditions and the terms and conditions in Section 16.0 if requested by the Purchasing Entity.

(c) For SaaS software provided by the S-VAR in Categories 2 or 3, the terms and conditions in Section 16.0 shall apply to all SaaS software, unless an exception or an addition is approved by the Lead State.

(d) Any exception and/or addition regarding the SaaS Terms and Conditions must follow the instructions provided in Part 3 of the Solicitation, Section 3-A Instructions to Offerors, 3.5 Exceptions to Solicitation Documents, and contain the following:

i. The rationale for the specific requirement being unacceptable to the Offeror submitting the exception and/or addition;

ii. Recommended verbiage for the Lead State's consideration that is consistent in content, context, and form with the Master Agreement Terms and Conditions;

iii. Explanation of how the Lead State's acceptance of the recommended verbiage is fair and equitable to both the Lead State, the Participating Entities, and to the Offeror submitting the modification and/or exception.

16.1	Data Ownership	The Purchasing Entity will own all right, title and interest in its data that is related to the Services provided by this Master Agreement. The SaaS provider shall not access Purchasing Entity user accounts or Purchasing Entity data, except (1) in the course of data center operations, (2) in response to service or technical issues, (3) as required by the express terms of this Master Agreement, Participating Addendum, SLA, and/or other contract documents, or (4) at the Purchasing Entity's written request. SaaS provider shall not collect, access, or use user-specific Purchasing Entity Data except as strictly necessary to provide Service to the Purchasing Entity. No information regarding a Purchasing Entity's use of the Service may be disclosed, provided, rented or sold to any third party for any reason unless required by law or regulation or by an order of a court of competent jurisdiction. This obligation shall survive and extend beyond the term of this Master Agreement.
16.2	Data Protection	Protection of personal privacy and data shall be an integral part of the business activities of the SaaS provider to ensure there is no inappropriate or unauthorized use of Purchasing Entity information at any time. To this end, the SaaS provider shall safeguard the confidentiality, integrity and availability of Purchasing Entity information and comply with the following conditions:

		a. The SaaS provider shall implement and maintain appropriate administrative, technical and organizational security measures to safeguard against unauthorized access, disclosure or theft of Personal Data and Non-Public Data. Such security measures shall be in accordance with recognized industry practice and not less stringent than the measures the SaaS provider applies to its own Personal Data and Non-Public Data of similar kind. b. All data obtained by the SaaS provider in the performance of the SaaS product shall become and remain the property of the Purchasing Entity. c. All Personal Data shall be encrypted at rest and in transit with controlled access. Unless otherwise stipulated, the SaaS provider is responsible for encryption of the Personal Data. Any stipulation of responsibilities will identify specific roles and responsibilities and shall be included in the service level agreement (SLA) or otherwise made a part of Participating Addendum executed by the Purchasing Entity. d. Unless otherwise stipulated, the SaaS provider shall encrypt all Non-Public Data at rest and in transit. The Purchasing Entity shall identify data it deems as Non-Public Data to the SaaS provider. The level of protection and encryption for all Non-Public Data shall be identified in the SLA. e. At no time shall any data or processes — that either belong to or are intended for the use of a Purchasing Entity or its officers, agents or employees — be copied, disclosed or retained by the SaaS provider or any party related to the SaaS provider for subsequent use in any transaction that does not include the Purchasing Entity. f. The SaaS provider shall not use any information collected in connection with the Services issued from this Master Agreement for any purpose other than fulfilling the Services.
16.3	Data Location	The SaaS provider shall provide its services to the Purchasing Entity and its end users solely from data centers in the U.S. Storage of Purchasing Entity data at rest shall be located solely in data centers in the U.S. The SaaS provider shall not allow its personnel or SaaS providers to store Purchasing Entity data on portable devices, including personal computers, except for devices that are used and kept only at its U.S. data centers. The SaaS provider shall permit its personnel and SaaS providers to access Purchasing Entity data remotely only as required to provide technical support. The SaaS provider may provide technical user support on a 24/7 basis using a Follow the Sun model, unless otherwise prohibited in a Participating Addendum.
16.4	Security Incient or Data Breach Notification	a. Incident Response: SaaS provider may need to communicate with outside parties regarding a security incident, which may include contacting law enforcement, fielding media inquiries and seeking external expertise as mutually agreed upon, defined by law or contained in the contract. Discussing security incidents with the Purchasing Entity should be handled on an urgent as- needed basis, as part of SaaS provider's communication and mitigation processes as mutually agreed upon, defined by law or contained in the Master Agreement. b. Security Incident Reporting Requirements: The SaaS provider shall report a security incident to the Purchasing Entity identified contact immediately as soon as possible or promptly without out reasonable delay, or as defined in the SLA.

		c. Breach Reporting Requirements: If the SaaS provider has actual knowledge of a confirmed data breach that affects the security of any purchasing entity's content that is subject to applicable data breach notification law, the SaaS provider shall (1) as soon as possible or promptly without out reasonable delay notify the Purchasing Entity, unless shorter time is required by applicable law, and (2) take commercially reasonable measures to address the data breach in a timely manner.
16.5	Personal Data Breach Responsibilities	This section only applies when a Data Breach occurs with respect to Personal Data within the possession or control of the SaaS provider. a. The SaaS provider, unless stipulated otherwise, shall immediately notify the appropriate Purchasing Entity identified contact by telephone in accordance with the agreed upon security plan or security procedures if it reasonably believes there has been a security incident. b. The SaaS provider, unless stipulated otherwise, shall promptly notify the appropriate Purchasing Entity identified contact within 24 hours or sooner by telephone, unless shorter time is required by applicable law, if it has confirmed that there is, or reasonably believes that there has been a Data Breach. The SaaS provider shall (1) cooperate with the Purchasing Entity as reasonably requested by the Purchasing Entity to investigate and resolve the Data Breach, (2) promptly implement necessary remedial measures, if necessary, and (3) document responsive actions taken related to the Data Breach, including any post-incident review of events and actions taken to make changes in business practices in providing the services, if necessary. c. Unless otherwise stipulated, if a data breach is a direct result of SaaS provider's breach of its contractual obligation to encrypt personal data or otherwise prevent its release as reasonably determined by the Purchasing Entity, the SaaS provider shall bear the costs associated with (1) the investigation and resolution of the data breach; (2) notifications to individuals, regulators or others required by federal and state laws or as otherwise agreed to; (3) a credit monitoring service required by state (or federal) law or as otherwise agreed to; (4) a website or a toll-free number and call center for affected individuals required by federal and state laws — all not to exceed the average per record per person cost calculated for data breaches in the United States (currently $242 per record/person) in the 2019 Cost of Data Breach Study: Global Analysis published by the Ponemon Institute at the time of the data breach; and (5) complete all corrective actions as reasonably determined by SaaS provider based on root cause.
16.6	Notification of Legal Requests:	The SaaS provider shall contact the Purchasing Entity upon receipt of any electronic discovery, litigation holds, discovery searches and expert testimonies related to the Purchasing Entity's data under the Master Agreement, or which in any way might reasonably require access to the data of the Purchasing Entity. The SaaS provider shall not respond to subpoenas, service of process and other legal requests related to the Purchasing Entity without first notifying and obtaining the approval of the Purchasing Entity, unless prohibited by law from providing such notice.

16.7	Termination and Suspension of Service:	a. In the event of a termination of the Master Agreement or applicable Participating Addendum, the SaaS provider shall implement an orderly return of purchasing entity's data in a CSV or another mutually agreeable format at a time agreed to by the parties or allow the Purchasing Entity to extract it's data and the subsequent secure disposal of purchasing entity's data. b. During any period of service suspension, the SaaS provider shall not take any action to intentionally erase or otherwise dispose of any of the Purchasing Entity's data. c. The purchasing entity shall be entitled to any post termination assistance generally made available with respect to the services, unless a unique data retrieval arrangement has been established as part of an SLA. d. Upon termination of the Services or the Agreement in its entirety, SaaS provider shall securely dispose of all Purchasing Entity's data in all of its forms, such as disk, CD/ DVD, backup tape and paper, unless stipulated otherwise by the Purchasing Entity. Data shall be permanently deleted and shall not be recoverable, according to National Institute of Standards and Technology (NIST)-approved methods. Certificates of destruction shall be provided to the Purchasing Entity.
16.8	Background Checks	Upon the request of the Purchasing Entity, the SaaS provider shall conduct criminal background checks and not utilize any staff, including subcontractors, to fulfill the obligations of the Master Agreement who have been convicted of any crime of dishonesty, including but not limited to criminal fraud, or otherwise convicted of any felony or misdemeanor offense for which incarceration for up to 1 year is an authorized penalty. The SaaS provider shall promote and maintain an awareness of the importance of securing the Purchasing Entity's information among the SaaS provider's employees and agents. If any of the stated personnel providing services under a Participating Addendum is not acceptable to the Purchasing Entity in its sole opinion as a result of the background or criminal history investigation, the Purchasing Entity, in its' sole option shall have the right to either (1) request immediate replacement of the person, or (2) immediately terminate the Participating Addendum and any related service agreement.
16.9	Access to Security Logs and Reports	The SaaS provider shall provide reports on a schedule specified in the SLA to the Purchasing Entity in a format as specified in the SLA agreed to by both the SaaS provider and the Purchasing Entity.
16.10	Data Center Audit	The SaaS provider shall perform an independent audit of its data centers at least annually at its expense, and provide an unredacted version of the audit report upon request to a Purchasing Entity. The SaaS provider may remove its proprietary information from the unredacted version. A Service Organization Control (SOC) 2 audit report or approved equivalent sets the minimum level of a third-party audit.
16.11	Change Control and Advance Notice:	The SaaS provider shall give a minimum forty-eight (48) hour advance notice (or as determined by a Purchasing Entity and included in the SLA) to the Purchasing Entity of any upgrades (e.g., major upgrades, minor upgrades, system changes) that may impact service availability and performance. A major upgrade is a replacement of hardware, software or firmware with a newer or better version in order to bring the system up to date or to improve its characteristics. It usually includes a new version number.

		SaaS provider will make updates and upgrades available to Purchasing Entity at no additional costs when SaaS provider makes such updates and upgrades generally available to its users. No update, upgrade or other charge to the Service may decrease the Service's functionality, adversely affect Purchasing Entity's use of or access to the Service, or increase the cost of the Service to the Purchasing Entity. SaaS provider will notify the Purchasing Entity at least sixty (60) days in advance prior to any major update or upgrade.
16.12	Security	As requested by a Purchasing Entity, the SaaS provider shall disclose its non-proprietary system security plans (SSP) or security processes and technical limitations to the Purchasing Entity such that adequate protection and flexibility can be attained between the Purchasing Entity and the SaaS provider. For example: virus checking and port sniffing — the Purchasing Entity and the SaaS provider shall understand each other's roles and responsibilities.
16.13	Non-disclosure and Separation of Duties:	The SaaS provider shall enforce separation of job duties, require commercially reasonable non-disclosure agreements, and limit staff knowledge of Purchasing Entity data to that which is absolutely necessary to perform job duties.
16.14	Responsibilities and Uptime Guarantee:	The SaaS provider shall be responsible for the acquisition and operation of all hardware, software and network support related to the services being provided. The technical and professional activities required for establishing, managing and maintaining the environments are the responsibilities of the SaaS provider. The system shall be available 24/7/365 (with agreed-upon maintenance downtime), and provide service to customers as defined in the SLA.
16.15	Compliance with Accessibility Standards:	The SaaS provider shall comply with and adhere to Accessibility Standards of Section 508 Amendment to the Rehabilitation Act of 1973, or any other state laws or administrative regulations identified by the Participating Entity.
16.16	Web Services	The SaaS provider shall use Web services exclusively to interface with the Purchasing Entity's data in near real time.
16.17	Encryption of Data at Rest:	The SaaS provider shall ensure hard drive encryption consistent with validated cryptography standards as referenced in FIPS 140-2, Security Requirements for Cryptographic Modules for all Personal Data, unless the Purchasing Entity approves in writing for the storage of Personal Data on a SaaS provider portable device in order to accomplish work as defined in the statement of work.
16.18	Subscription Terms	SaaS provider grants to a Purchasing Entity a license to: (i) access and use the Service for its business purposes; (ii) for SaaS, use underlying software as embodied or used in the Service; and (iii) view, copy, upload and download (where applicable), and use SaaS provider's documentation.

The following Exhibit applies to the Special Terms and Conditions:

SECTION 2-C_EXHIBIT 4 - SVAR DETAILED REPORTING TEMPLATE

End of Section 2-C

SECTION 2-D:

Uniform Terms and Conditions

Version: 9 (7/1/2013)

1.0 Definition of Terms

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

1.1	**Attachment**	"Attachment" means any item the solicitation requires the Offeror to submit as part of the Offer.
1.2	**Contract**	"Contract" " means the combination of the Solicitation, including the Uniform and Special Instructions to Offerors, the Uniform and Special Terms and Conditions, and the Specifications and Statement or Scope of Work; the Offer and any Best and Final Offers; and any Solicitation Amendments or Contract Amendments.
1.3	**Contract Amendment**	"Contract Amendment" means a written document signed by the Procurement Officer that is issued for the purpose of making changes in the Contract.
1.4	**Contractor**	"Contractor" means any Person who has a Contract with the State.
1.5	**Days**	"Days" means calendar days unless otherwise specified.
1.6	**Exhibit**	"Exhibit" means any item labeled as an Exhibit in the Solicitation or placed in the Exhibits section of the Solicitation.
1.7	**Gratuity**	"Gratuity" means a payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.
1.8	**Materials**	"Materials" means all property, including equipment, supplies, printing, insurance and leases of property but does not include land, a permanent interest in land or real property or leasing space.
1.9	**Procurement Officer**	"Procurement Officer" means the person, or his or her designee, duly authorized by the State to enter into and administer Contracts and make written determinations with respect to the Contract.
1.10	**Services**	"Services" has the meaning given in A.R.S. § 41-2503(35), which, for convenience of reference only, is "… the furnishing of labor, time, or effort by [the] [C]ontractor or [S}ubcontractor which does not involve the delivery of a specific end product other than required reports and performance [but] does not include employment agreements or collective bargaining agreements." Services include Building Work and the service aspects of software described in paragraph 1.8.
1.11	**State**	"State" means the State of Arizona and Department or Agency of the State that executes the Contract.
1.12	**State Fiscal Year**	"State Fiscal Year" means the period beginning with July 1 and ending June 30.
1.13	**Subcontract**	"Subcontract" means any Contract, express or implied, between the Contractor and another party or between a subcontractor and another party delegating or assigning, in whole or in part, the making or furnishing of any material or any service required for the performance of the Contract.

2.0 Contract Interpretation

2.1	**Arizona Law**	The Arizona law applies to this Contract including, where applicable, the Uniform Commercial Code as adopted by the State of Arizona and the Arizona Procurement Code, Arizona Revised

Statutes (A.R.S.) Title 41, Chapter 23, and it's implementing rules, Arizona Administrative Code (A.A.C.) Title 2, Chapter 7.

2.2 Implied Terms

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

2.3 Contract Order of Precedence

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

2.3.1. Special Terms and Conditions;

2.3.2. Uniform Terms and Conditions;

2.3.3. Statement or Scope of Work;

2.3.4. Specifications;

2.3.5. Attachments;

2.3.6. Exhibits;

2.3.7. Documents referenced or included in the Solicitation.

2.4 Relationship of Parties

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

2.5 Severability

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

2.6 No Parole Evidence

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

2.7 No Waiver

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

3.0 Contract Administration and Operation

3.1 Records

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

3.2 Non-Discrimination

The Contractor shall comply with State Executive Order No. 2009-09 and all other applicable Federal and State laws, rules and regulations, including the Americans with Disabilities Act.

3.3 Audit

Pursuant to ARS § 35-214, at any time during the term of this Contract and five (5) years thereafter, the Contractor's or any subcontractor's books and records shall be subject to audit by the State and, where applicable, the Federal Government, to the extent that the books and records relate to the performance of the Contract or Subcontract.

3.4 Facilities Inspection and Materials Testing

The Contractor agrees to permit access to its facilities, subcontractor facilities and the Contractor's processes or services, at reasonable times for inspection of the facilities or materials covered under this Contract. The State shall also have the right to test, at its own cost, the materials to be supplied under this Contract. Neither inspection of the Contractor's facilities nor materials testing shall constitute final acceptance of the materials or services. If the State determines noncompliance of the materials, the Contractor shall be responsible for the payment of all costs incurred by the State for testing and inspection.

3.5 Notices

Notices to the Contractor required by this Contract shall be made by the State to the person indicated on the Offer and Acceptance form submitted by the Contractor unless otherwise

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

3.6 Advertising, Publishing and Promotion of Contract

The Contractor shall not use, advertise or promote information for commercial benefit concerning this Contract without the prior written approval of the Lead State Procurement Officer. The Contractor shall not make any representations of NASPO ValuePoint's opinion or position as to the quality or effectiveness of the services that are the subject of this Master Agreement without prior written consent from NASPO ValuePoint. Failure to adhere to this requirement may result in termination of the Master Agreement for cause.

3.7 Property of the State

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

3.8 Ownership of Intellectual Property

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

3.9 Federal Immigration and Nationality Act

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

3.10 E-Verify Requirements

In accordance with A.R.S. § 41-4401, Contractor warrants compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with Section A.R.S. § 23-214, Subsection A.

3.11 Offshore Performance of Work Prohibited.

Any services that are described in the specifications or scope of work that directly serve the State of Arizona or its clients and involve access to secure or sensitive data or personal client data shall be performed within the defined territories of the United States. Unless specifically stated otherwise in the specifications, this paragraph does not apply to indirect or 'overhead' services, redundant back-up services or services that are incidental to the performance of the contract. This provision applies to work performed by subcontractors at all tiers.

4.0 Costs and Payments

4.1 Payments

Payments shall comply with the requirements of A.R.S. Titles 35 and 41, Net 30 days. Upon receipt and acceptance of goods or services, the Contractor shall submit a complete and accurate invoice for payment from the State within thirty (30) days.

4.2 Delivery

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

4.3 Applicable Taxes

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

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

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

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

4.4 Availability of Funds for the Next State fiscal year

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

4.5 Availability of Funds for the current State fiscal year

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

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

4.5.2. Cancel the Contract; or

4.5.3. Cancel the contract and re-solicit the requirements

5.0 Contract Changes

5.1 Amendments

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

5.2 Subcontracts

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

5.3 Assignment and Delegation

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

6.0 Risk and Liability

6.1 Risk of Loss

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

6.2 Indemnification

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

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

6.3 Indemnification – Patent and Copyright

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

6.4 Force Majeure

6.4.1 Except for payment of sums due, neither party shall not be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of force majeure. The term *"force majeure"* means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes acts of God; acts of the public enemy; war; riots; strikes; mobilization; labor disputes; civil disorders; fire; flood; lockouts; injunctions-intervention-acts; or failures or refusals to act by government authority; and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence.

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

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

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

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

equal to the time that results or effects of such delay prevent the delayed party from performing in accordance with this Contract.

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

6.5 Third Party Antitrust Violations

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

7.0 Warranties

7.1 Liens

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

7.2 Quality

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

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

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

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

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

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

7.3 Fitness

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

7.4 Inspection/Testing

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

7.5 Compliance with Laws

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

7.6 Survival of Rights and Obligations after Contract Expiration or Termination

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

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

8.0 State's Contractual Remedies

8.1 Right to Assurance

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

8.2 Stop Work Order

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

by the State after the order is delivered to the Contractor. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage.

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

8.3 Non-exclusive Remedies

The rights and the remedies of the State under this Contract are not exclusive.

8.4 Nonconforming Tender

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

8.5 Right of Offset

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

9.0 Contract Termination

9.1 Cancellation for Conflict of Interests

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

9.2 Gratuities

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

9.3 Suspension or Debarment

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

9.4 Termination for Convenience

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

work completed and materials accepted before the effective date of the termination. The cost principles and procedures provided in A.A.C. R2-7-701 shall apply.

9.5 Termination for Default

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

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

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

9.6 Continuation of Performance Through Termination

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

10.0 Contract Claims

10.1 Contract Claims

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

11.0 Arbitration

11.1 Arbitration

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

12.0 Comments Welcome

12.1 Comments Welcome

The State Procurement Office periodically reviews the Uniform Terms and Conditions and welcomes any comments you may have. Please submit your comments to: State Procurement Administrator, State Procurement Office, 100 North 15th Avenue, Suite 402, Phoenix, Arizona, 85007.

End of Section 2-D

End of Part 2

Part 3 of the Solicitation

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Section 3-A: Instructions to Offerors

1.0 Definition of Terms

As used in these Instructions to Offerors, the terms listed below are defined as follows:

1.1 Arizona Procurement Code; A.R.S.; A.A.C.

"Arizona Procurement Code" means, collectively, Title 41 Chapter 23, *et. sequitur,* in the Arizona Revised Statutes (abbreviated "A.R.S.") and administrative rules R2-7-101 *et. sequitur* in the Arizona Administrative Code (abbreviated "A.A.C.").

NOTE: There are frequent references to the Arizona Procurement Code throughout the Solicitation Documents, therefore, you will need to be familiar with its provisions to be able to understand the Solicitation Documents fully.

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

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

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

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

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

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

1.2 Clarifications

"Clarifications" means, per A.A.C. R2-7-C313, communications between the Procurement Officer and Offeror for the purpose of providing a greater mutual understanding of the Offer. Clarifications may include demonstrations, questions and answers, or elaborations on previously-submitted information.

1.3 Contract

"Contract" is defined in paragraph 1.2 of the Uniform Terms and Conditions.

1.4 Contract Amendment

"Contract Amendment" is defined in paragraph 1.3 of the Uniform Terms and Conditions.

1.5 Contract Terms and Conditions

Contract Terms and Conditions" is defined in paragraph 1.11 of the Special Terms and Conditions.

1.6 Contractor

"Contractor" is defined in paragraph 1.4 of the Uniform Terms and Conditions.

1.7 Evaluation

"Evaluation" means, per A.A.C. R2-7-316, the process whereby the Procurement Officer will determine which Responsive offers, revised offers, and best and final offers are the most advantageous to State taking into consideration the evaluation factors set forth in the Solicitation Documents.

1.8 Negotiation

"Negotiation" means, per A.A.C. R2-7-101(32), an exchange or series of exchanges between State and an offeror for the purposes set forth in A.A.C. R2-7-C314.

1.9 Not Susceptible for Award

"Not Susceptible for Award" means, per A.A.C. R2-7-C311, that the relevant offer has been determined by the Procurement Officer to fail one or more of the tests and comparisons set forth therein. NOTE: A determination of Not Susceptible for Award and a determination of Responsive are mutually exclusive.

1.10	**Offer: Initial Offer; Revised Offer; Best and Final Offer (BAFO)**	"Initial Offer" means, per A.A.C. R2-7-101(33), Offeror's proposal submitted to State in response to the Solicitation, as initially submitted. "Revised Offer" means any revised versions of the Initial Offer that Offeror has submitted to State at State's request as permitted under A.A.C. R2-7-C314 and R2-7-C315. "Best and Final Offer" ("BAFO") means, per A.A.C. R2-7-101(8), the Revised Offer submitted after negotiations have been completed that contain Offeror's most favorable terms for price, service, and products to be delivered. Reference to "an Offer, "the Offer," or "your Offer" means any of the Initial Offer, a Revised Offer, or the Best and Final Offer.
1.11	**Offeror**	"Offeror" is the Person submitting an Offer; instructions addressed to "you" and references to "your" items are to be construed as being synonymous with "Offeror" and "Offeror's" throughout these Instructions to Offerors.
1.12	**Pricing Document**	"Pricing Document" means Section 2-B of the Solicitation Documents. Also known as Pricing Document as defined in the Special Terms and Conditions.
1.13	**The State's e-Procurement System**	"The State's e-Procurement System" is defined in paragraph 1.47 of the Special Terms and Conditions.
1.14	**Procurement Officer**	"Procurement Officer" means the person, or his or her designee, who has been duly authorized by State to administer the Solicitation and make written determinations with respect to the Solicitation. The Procurement Officer is identified in The State's e-Procurement System.
1.15	**Small Business**	"Small Business" means a for-profit or not-for-profit organization, including its affiliates, with fewer than 100 full-time employees or gross annual receipts of less than $4 million for the last complete fiscal year.
1.16	**Solicitation**	"Solicitation" means this procurement solicitation, which State is issuing as either: 1. an invitation for bids ("IFB") under A.R.S. § 41-2533; 2. a request for proposals ("RFP") under A.R.S. § 41-2534; 3. a request for quotations ("RFQ") under A.R.S. § 41-2535; or 4. a request for qualifications under A.R.S. §41-2558. Refer to the Solicitation Summary for which of the foregoing is this Solicitation.
1.17	**Solicitation Amendment**	"Solicitation Amendment" means, per A.A.C. R2-7-303, a change to the Solicitation that has been issued by Procurement Officer.
1.18	**Solicitation Summary**	"Solicitation Summary" means Section 1 of the Solicitation Documents.
1.19	**State**	"State" is defined in paragraph 1.11 of the Uniform Terms and Conditions.
1.20	**Subcontract**	"Subcontract" is defined in paragraph 1.13 of the Uniform Terms and Conditions.
1.21	**Subcontractor**	"Subcontractor" is defined in paragraph 1.48 of the Special Terms and Conditions.

2.0 Solicitation Inquiries

2.1 Duty to Examine

Examine the entire Solicitation, obtain clarification in writing for any questions or concerns by submitting inquiries, then examine your Offer thoroughly and carefully for completeness and accuracy before submitting it. Lack of care in preparing an Offer will not be grounds for modifying or withdrawing it after the due date and time.

2.2 State Contact Person

Direct all inquiries related to the Solicitation to Procurement Officer, including requests for or inquiries regarding standards referenced in the Solicitation. Apart from the State's e-Procurement System Help Desk, do not contact any State personnel other than Procurement Officer concerning the Solicitation while it is in progress, through and including award.

2.3 Submission of Inquiries

Submit all inquiries related to the Solicitation in The State's e-Procurement System. The Procurement Officer will not respond to inquiries received in any other manner.

1. Submit technical inquiries about navigating and/or submitting proposals in the State's e-Procurement System to the State's e-Procurement System Help Desk:
   - by phone at (602) 542-7600, option2; or
   - by email to app@azdoa.gov.
2. Submit all other inquiries about the Solicitation using the **"Discussions with Buyer" tab in the State's e-Procurement System.** Always refer to the appropriate Solicitation document by page and paragraph number. Except for technical inquiries about navigating and/or submitting proposals in the State's e-Procurement system, the State is not responsible for responding to any inquiries submitted **less than three (3) business days before the Bid/Offer due date and time**.

2.4 Timeliness

Any inquiry or exception to the solicitation shall be submitted as soon as possible and should be submitted at least three (3) days before the Bid/Offer due date and time for review and determination by the State. Failure to do so may result in the inquiry not being considered for a Solicitation Amendment.

2.5 Verbal or Email Responses

An Offeror shall not rely on verbal responses to inquiries. A verbal reply to an inquiry does not constitute a modification of the solicitation.

2.6 Solicitation Amendments

Only a Solicitation Amendment issued in The State's e-Procurement System can change the Solicitation.

2.7 Pre-Offer Conference

A Pre-Offer Conference will be held at the time and place indicated in the solicitation's "Process" field as found within the State's e-Procurement system, (https://app.az.gov); attendance **is not** required. The purpose of the conference will be to clarify the contents of the solicitation in order to prevent any misunderstanding of the State of Arizona's position. Any doubt as to the requirements of the solicitation or any apparent omission or discrepancy should be presented to the

State at the conference. The State of Arizona will then determine the appropriate action necessary, if any, and issue a written amendment to the solicitation if required. Oral statements or instructions will not constitute an amendment to the solicitation.

Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, or this document in an alternative format, by contacting the State Procurement Office. Requests should be made as early as possible to allow sufficient time to arrange for accommodation.

3.0 Offer Preparation

3.1 Online Documents

The Solicitation Documents are only provided online in The State's e-Procurement System; State will not provide any printed copies or other formats.

SUPPLIER REFERENCE GUIDES at: https://spo.az.gov/app/supplier/QRG

3.2 Electronic Submissions

When submitting an Offer, only include files that are Microsoft Word documents, Excel workbooks, or PowerPoint presentations and Adobe Acrobat documents. Obtain advance approval from the State's e-Procurement Help Desk before submitting files in any other format.

Maximum file size allowed is 25mb.

3.2.1 Separate your documents into three (3) parts/files:

Pricing: Prepare your pricing submission following the instructions in *4.3 Pricing* below.

Confidential documents:

- Use Attachment 5-A (Designation of Confidential Information) to indicate that your offer contains Confidential Information.
- Prepare and submit your confidential information following the instructions in *4.7 Confidential Information* below.

Non-Confidential documents: All other documents not considered Confidential can be uploaded in a single file following the file size requirement.

3.3 Deviations in Offer

When submitting an Offer, clearly indicate in writing any deviations from the Specifications or other Solicitation technical requirements documents. Any un-identified deviation will be deemed void upon submission.

NOTE: Deviations are technical exceptions of a significant but not material nature, typically having to do with part/model numbers, details of attachments, mountings, clearances, internal configurations, etc., and are not to be confused with the material exceptions covered in paragraph 3.5.

3.4 Evidence of Intent

Every one of your Offer submissions **(e.g. initial submission and any subsequent re-submission)** must contain Attachment 1 [*Offer and Acceptance Form*] with a signature by your duly authorized officer, executive, principal, or agent. The signature will be deemed to signify your intent to be bound by that Offer and the

terms of the Solicitation, and your representation that the information you have provided in that Offer is true and accurate.

3.5 Exceptions to Solicitation Documents

If you are submitting an Offer conditioned on exceptions to the Solicitation Documents, indicate "NO" on Attachment 5-B [*Conformance Statement*] and provide the required justification. Any exceptions taken elsewhere in an Offer or any of your preprinted or standard terms will be void in that Offer and without force or effect in any resulting contract.

3.6 Insurance and Bonds

Provide the evidence of insurance availability, evidence of insurance in place, evidence of bonding capacity, bonds in hand, or other security that are called for in Attachment 5-C [*Insurance and Bonding Evidence*].

If you intend to withhold or redact any element of your evidence of insurance policy compliance required by Section 6.2 of the Special Terms and Conditions [*Contractor Insurance Requirements*] on the grounds that it is confidential information, then **you must claim it as such and submit the necessary substantiated justification with each Offer using Attachment 5-A** [*Designation of Confidential Information*] **and as per Instruction 4.7 Confidential Documents below.**

Unless Procurement Officer has determined that your evidence documentation, or some or all your insurance program, is confidential information under paragraph 4.7, refusing after contract award to provide the complete, un-redacted copies of policies as called for in that exhibit will be a material breach of the Contract.

3.7 Identification of Taxes in Offer

State is subject to Arizona Transaction Privilege Tax as well as certain local sales/use taxes, as described in the Contract Terms and Conditions.

3.8 Excise Tax

State is exempt from certain federal excise tax on manufactured goods; State will provide the necessary exemption certificates as evidence to the extent exemption applies to the Work.

3.9 Tax Identification

You must provide to State your federal employer identification number or social security number for the purposes of reporting monies paid under the Contract to appropriate taxing authorities. The submission is mandatory under 26 U.S.C. §6041A. If the identifier provided is a social security number, State shall only use it for tax reporting purposes and only share it with appropriate government officials.

3.10 Disclosure

If you are submitting an Offer despite having been debarred, suspended or otherwise lawfully precluded from participating in any public procurement activity, including being disapproved as a subcontractor with any federal, state or local government, or if any such preclusion from participation from any public procurement activity is currently pending, then you must provide with that Offer the name and address of the governmental unit, the effective date, duration, and circumstances of the suspension, debarment, or other preclusion, and your justification for State to consider the Offer despite the suspension, debarment, or other preclusion. Include in your disclosure any suspension, debarment, or other preclusion that is pending, but indicate that it is pending.

3.11 Federal Immigration Laws

By signing an Offer, you will be deemed to have represented that both you and all your proposed subcontractors are in compliance with federal immigration laws and regulations relating to the immigration status of their personnel. State may, at its discretion, demand evidence of compliance during Evaluation, which you must

provide promptly. Not providing the evidence will be grounds for Procurement Officer to determine that the Offer is Not Susceptible for Award.

3.12 Cost of Offer Preparation

State will not reimburse to you or any of your prospective subcontractors, suppliers, or consultants any costs associated with responding to the Solicitation.

3.13 Offshore Performance of Work Prohibited

Any services that are described in the specifications or scope of work that directly serve the State of Arizona or its clients, or any other Participating Entity, and involve access to secure or sensitive data or personal client data shall be performed within the defined territories of the United States. Unless specifically stated otherwise in the specifications, this paragraph does not apply to indirect or 'overhead' services, redundant back-up services or services that are incidental to the performance of the contract. This provision applies to work performed by subcontractors at all tiers. Offerors shall declare all anticipated offshore services in the proposal.

4.0 Submission of Offer

4.1 Required Offer Content

INITIAL SUBMISSION:
Submit all of the Initial Offer content called for in Section 3-B: Offer Forms (Attachments)**.**

BEST and FINAL OFFER
A new round is created in APP for the submission of the Best and Final Offer (BAFO).
The BAFO must contain all of the Attachments indicated in the applicable Procurement Officer request for a Submitted Offer. Make revisions in response to the negotiations / discussions and the Procurement Officer's Request for Best and Final Offer in all applicable documents and pricing grid in the State's e-procurement system.

The new round must be acknowledged and an updated *Offer and Acceptance Form* with the required signature and date must be uploaded.

If you were required to input $1.0 for each line item in the items (F) tab in APP with your original offer, you must also input $1.00 for each line item in the items (F) tab with your BAFO submission.

4.2 Attachment Forms

If an Attachment indicates that a "Form" is being provided for an Attachment, then the Solicitation includes the required form and format for submitting the Attachment. No other form or format will be accepted, and your Offer can be determined to be Not Susceptible for Award if you submit an unofficial form.

If, however, the Solicitation Documents indicate that you are allowed to attach additional documents regarding a particular question or line item, then doing so will be acceptable so long as the filled-out Attachment clearly states **"See Attachment X Supplement (#1 of 2)", etc.,** and the additional document is clearly marked as **"Attachment X Supplement (#1 of 2)," etc.**

NOTE (1): Each Form has a blank space to list your Attachment Supplements.

NOTE (2): You must upload each such "additional" document as an individual file and name the file to match the document title.

NOTE (3): Do not include non-specific marketing materials in an Offer. If something is not specifically called for, then including it will not be helpful during Evaluation, and

might in fact be grounds for down-grading if it does not address your experience and capacity to carry out the work for this Solicitation.

4.3 Pricing

Pricing must be shown in the EXCEL document titled as follows:

Attachment 4 - Pricing Sheet

You must complete at least one (1) Optional Line Item or all Required Line Items in the Items (F) tab in APP in order for your Offer to be considered.

4.4 Submission

Submit each Offer online in The State's e-Procurement System before the "Bid Opening Date" indicated for the "Solicitation No." State will not consider a proposal submitted by any other method other than The State's e-Procurement System, and it will be deemed void upon submission. **By A.A.C. R2-7-C307, State will not consider later offers**. State will give no extension or grace period for delays or incomplete proposals caused by internet connectivity problems, file uploading difficulties, or misunderstanding of the requirements or procedures for online submission in The State's e-Procurement System. If your proposal is not submitted correctly, completely, and in conformance to these Instructions herein, then Procurement Officer may determine it Not Susceptible for Award.

NOTE: Using the State's e-Procurement System requires a certain level of technical competency; select your staff to submit proposals and handle other Solicitation general matters in The State's e-Procurement System carefully, since the State's e-Procurement System Help Desk cannot do any of the required actions for you.

4.5 Solicitation Amendments

Acknowledge each Solicitation Amendment in The State's e-Procurement System. By A.A.C. R2-7-C303(C), you must acknowledge every Solicitation Amendment issued as of the due date and time for an Offer to be Responsive.

Amendments to the Solicitation create new rounds in APP. You must acknowledge each round created by an amendment for your Offer in order for your Offer to be Responsive.

In the event you have submitted an offer prior to a Solicitation amendment, you must acknowledge and upload your offer documents to the new round.

If you have submitted your proposal early, you must be alert for subsequent Solicitation Amendment. If an Amendment is issued after your submission, but before Bid/Offer due date and time, then the Procurement Officer may determine the Offer to be Non-Responsive if you have not acknowledged the Amendment.

4.6 Amending or Withdrawing

You cannot amend or withdraw a submitted proposal after the Bid/Offer due date and time unless expressly permitted under applicable law.

4.7 Confidential Information

If you believe that a portion of your Offer (or a protest or other correspondence) contains a trade secret or other manner of your proprietary information, you must:

1. Indicate on Attachment 5-A [Designation of Confidential Information] that your proposal contains such claimed confidential information; and,
2. Separate the documents you claim to be confidential from the offer documents and upload them separately. Prepare to upload each confidential document as a separate confidential document in your response following the instructions in the Arizona Department of Administration Procurement page under AZ Procurement Portal - APP for Suppliers Tab. Click on the Supplier Reference Guides, scroll

down to How to Add Confidential Documents to a Response. https://spo.az.gov/app/supplier/QRG .

and,

3. Upload each document you claim to be confidential separate from each other and follow the naming convention:

   Section_A_Supplement_Your file Name_Confidential.

Simply indicating that the proposal contains confidential information is not sufficient to claim the protections under A.A.C. R2-7-C317 – Attachment 5 A **must be accompanied** by a detailed explanation as to why each item or category of items in the proposal should be designated confidential information.

Submit Confidential Information/Documentation as a Supplement(s) to Section 5-A, follow the naming convention: *Section_A_Supplement_Your File Name_Confidential*. **DO NOT incorporate information you are requesting to be determined as Confidential in any other section of your response.** If the Confidential information is to be responsive to another Section/Question, simply provide a statement providing the Section 5-A Supplement Title to be reviewed by the Evaluators.

Procurement Officer shall review your claim of confidentiality and provide a written determination; until a written determination has been made, Procurement Officer shall not disclose the claimed information to anyone who does not have a legitimate State interest. If Procurement Officer denies the claim of confidentiality, you may appeal the determination to the State Procurement Administrator within the time specified in the determination.

NOTE: Contract terms and conditions, pricing, and information generally available to the public are not and will not be designated confidential information.

4.8 Public Record

Once submitted and opened by Procurement Officer, your Offer is a public record and must be retained by State for 6 (six) years. All offers will be available for public inspection in the State's e-Procurement System after the resulting contracts have been awarded, except for any portions that were determined to be confidential information.

Procurement Officer shall make the names of Persons who submitted offers available in The State's e-Procurement System promptly after the opening date.

4.9 Offeror Certification

By signing the Offer and Acceptance Form (or other official contract form specified by Procurement Officer), you will be deemed to have certified that:

1. you did not engage in collusion or other anti-competitive practices in connection with the preparation or submission of your Offer; and
2. you do not discriminate against any employee or applicant for employment or person to whom you provide services because of race, color, religion, sex, national origin, or disability, and that you comply with an applicable federal, state, and local laws and executive orders regarding employment.

5.0 Responsibility; Responsiveness and Acceptability

5.1 Responsibility

In accordance with A.R.S. 41-2534(G), A.A.C. R27-C312 and R2-7-C316, the State shall consider the following in determining Offeror's responsibility, as well, as the responsiveness and acceptability of their proposals. The State will consider, but is not limited to, the following in determining an Offeror's responsibility as well as susceptibility to Contract Award:

1. Whether the Offeror has had a contract within the last five (5) years that was terminated for cause due to breach or similar failure to comply with the terms of the contract;
2. Whether the Offeror's record of performance includes factual evidence of failure to satisfy the terms of the Offeror's agreements with any party to a contract. Factual evidence may consist of documented vendor performance reports, customer complaints and/or negative references;
3. Whether the Offeror is legally qualified to contract with the State and the Offeror's financial, business, personnel, or other resources, including subcontractors;
4. Legally qualified includes if the vendor or if key personnel have 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.
5. Whether the Offeror promptly supplied all requested information concerning its responsibility;
6. Whether the Offer was sufficient to permit evaluation by the State, in accordance with the evaluation criteria identified in this Solicitation or other necessary offer components. Necessary offer components include: attachments, documents or forms to be submitted with the offer, an indication of the intent to be bound, reasonable or acceptable approach to perform the Scope of Work, signed Solicitation Amendments, references to include experience verification, adequacy of financial/business/personal or other resources to include a performance bond and stability including subcontractors and any other data specifically requested in the Solicitation;
7. Whether the Offer was in conformance with the requirements contained in the Scope of Work, Terms and Conditions, and Instructions for the Solicitation and its Amendments, including the documents incorporated by reference;
8. Whether the Offer limits the rights of the State;
9. Whether the Offer includes or is subject to unreasonable conditions, to include conditions upon the State or necessary for successful Contract performance. The State shall be the sole determiner as to the reasonableness of a condition;
10. Whether the Offer materially changes the contents set forth in the Solicitation, which includes the Scope of Work, Terms and Conditions, or Instructions; and,
11. Whether the Offeror provides misleading or inaccurate information.

5.2 Responsiveness and Acceptability

Proposals that do not contain information sufficient to evaluate the proposal in accordance with the factors identified in the solicitation or other necessary proposal components may not be considered responsive and/or acceptable. Necessary components include an indication of the Offeror's intent to be bound, price proposal, solicitation amendments, bond and reference data as required.

Proposal Content. The Offeror shall make a firm commitment to provide services as required and proposed.

- The material contained in the Offer shall be relevant to the service requirements stated in the solicitation.
- It is to be submitted in a sequence that reflects the scope of work section of this document.
- It is to include information relevant to the designated evaluation criteria.
- Failure to include the requested information may have a negative impact on the evaluation of the Offeror's proposal.

5.3 Eligibility for Evaluation and Negotiation

If Procurement Officer determines an offeror is Not Responsible, then he or she is not permitted by A.A.C. R2-7-C314 to give further consideration to its offer or include it in any Negotiation or make Evaluation of its offer. If, however, Procurement Officer determines that an offer is Responsive (i.e., there is no applicable determination of Not Susceptible for Award), then he or she is obliged by A.A.C. R2-7-C314 to make Evaluation of it and include the offeror in the immediate round of Negotiation (if there is any Negotiation).

If Procurement Officer determines subsequently that your Revised Offer is Not Susceptible for Award by virtue of comparison to other revised offers per A.A.C. R2-7-C314(A)(3), then he or she will not include you in any further Negotiation. For clarity of intent, the foregoing means that Procurement Officer may reduce the number of offers that are "susceptible for award" with each successive round of Negotiation, since the purpose of Negotiation is to achieve best value for State.

6.0 Evaluation of Offers

6.1 Offer Validity Period

By submitting an Offer, you agree to hold it open for the validity period specified in the Solicitation Summary. If no validity period is specified therein, then you shall hold your Offer open for 180 (one hundred eighty) days. The specified or default validity period (whichever applies) re-starts upon submission of each Revised Offer or a Best and Final Offer.

6.2 Clarifications

Upon receipt and opening of proposals submitted in response to this solicitation, the State may request oral or written clarifications, including demonstrations or questions and answers, for the sole purpose of information gathering or for eliminating minor informalities or correcting nonjudgmental mistakes in proposals. Clarifications shall not otherwise afford Offerors the opportunity to alter or change their proposal.

6.3 Oral Presentations

The State may request oral presentations. If requested, the Offeror shall be available for oral presentations with no more than ten (10) business days advance notice. Participants in the oral presentations should include the Offeror's key persons. Such oral presentations shall not otherwise afford an Offeror the opportunity to alter or change its Offer.

6.4 Cost or Pricing Data

Submit any cost or pricing data promptly that Procurement Officer requests under A.R.S § 41-2543 per A.A.C. R2-7-702(B)(2). Procurement Officer may make the following preconditions for eligibility and award:

1. submission of appropriate cost or pricing data under A.A.C. R2-7-704;
2. determination that the submitted cost or pricing data demonstrates that pricing is fair and reasonable under A.A.C. R2-7-702(A); and,
3. determination that the data is not defective under A.A.C. R2-7-705.

6.5 Evaluation Criteria

In accordance with the Arizona Procurement code A.R.S. § 41-2534, awards shall be made to the responsible Offeror(s) whose proposal is determined in writing to be the most advantageous to the State based upon the evaluation criteria listed below. The evaluation factors are listed in their relative order of importance.

6.5.1 Methodology;

6.5.2 Cost

6.5.3 Capacity of Offeror, Experience

6.6 Negotiations

In accordance with A.R.S. § 41-2534, after the initial receipt of proposals, the Procurement Officer may conduct discussions with those Offerors who submit proposals determined by the State to be reasonably susceptible of being selected for award.

Procurement Officer will request a best and final offer from any offerors with whom negotiation has been conducted, provided that, State may make award made without any Negotiation and therefore every offeror is forewarned to always submit its offer complete and on the most favorable terms initially, and not to assume any opportunity for Negotiation.

6.7 Financial Stability

You must be able to substantiate your financial stability to State's satisfaction as a precondition of any contract award. Procurement Officer may demand documentation such as current and audited financial statements, including income and balance sheets, directly from you or may obtain reports from independent financial rating services. Not providing the evidence will be grounds for Procurement Officer determining your Offer is Not Susceptible for Award.

6.8 Consideration of Exceptions

Procurement Officer may determine that your Offer is Not Susceptible for Award if it is conditioned on an exception to a material aspect of the Solicitation. Even if Procurement Officer determines that an exception is one that does not merit Not Susceptible for Award determination, he or she may down-grade your Offer in Evaluation if the exception is significant.

6.9 Consideration of Deviations

Procurement Officer may down-grade your Offer in Evaluation if it contains deviations that, in his or her determination, materially reduce the value to State of affected Materials or Services across the life-cycle thereof.

6.10 Consideration of Prompt Payment Discount

Procurement Officer may credit any proposed prompt payment discounts for the purpose of evaluating offer prices.

6.11 Consideration of Taxes

Procurement Officer shall not include Arizona Transaction Privilege Tax and other sales/use taxes for the purpose of evaluating offer prices.

6.12 Consideration of Cost

Regardless of the relative order assigned to cost in the Solicitation Summary, cost is an essential consideration in every award State makes; State's intent is always to obtain the best pricing available and it strives to make its evaluations be a straightforward comparison of best value between the responsible and responsive proposals as far as possible to the extent permissible under the Arizona Procurement Code.

6.13 Unit Price Prevails

In the case of discrepancy in your Offer between a unit price or rate and an extension of that unit price or rate, the unit price or rate will prevail.

6.14 Waiver and Rejection

Notwithstanding any other provision of the Solicitation Documents, State reserves the right to waive any minor informality, reject any or all offers or portions thereof or cancel the Solicitation.

7.0 Award of Contract

7.1 Best Advantage to State

Under A.A.C. R2-7-C317, contracts will be awarded to the responsible offeror(s) whose offer(s) is/are determined to be most advantageous to the State based on the stated evaluation criteria.

7.2 Number of Types of Awards

State may make multiple awards or to award contracts by individual line items or alternates, by group of line items or alternates, or to make an aggregate award, or regional awards, whichever is determined to be most advantageous to State.

7.3 Contract Inception

Your Offer does not constitute a contract nor does it confer any right on you to the award of a contract. A contract is not created until your Offer has been accepted for State by Procurement Officer's signature on the Offer and Acceptance Form. Notice of award or of intent to award will not constitute State's acceptance of your Offer.

7.4 Contract Document Consolidation

State may, at its option, consolidate the resulting contract documents after contract award. Examples of such consolidation are reorganizing Solicitation Documents and those components of the Accepted Offer not pertaining to the contract's operation and excluding any components of the Accepted Offer that were not awarded. Contract document consolidation will not, however, include or be construed to include any materially change the Solicitation or the Contract.

7.5 Viewing Awarded Contracts

To view awarded Contracts:

1. Go to app.az.gov
2. Select: State Contracts (Blue tab)
3. Search using "Keywords:" enter name of solicitation Label and click on "Search". A listing of Contracts with the description (name of Contract Set) will appear below.
4. To view a Contract, click on pencil next to Contract number.
5. Contact Help Desk at 602-542-7600 for assistance.

8.0 Solicitation or Award Protests

Any protest must comply with and be resolved according to Arizona Revised Statutes Title 41, Chapter 23, Article 9, and rules adopted thereunder. Protests must be in writing and be filed with both Procurement Officer and the State Procurement Administrator. Protest of the Solicitation must be received before the Bid/Offer due date and time. Protest of a proposed award or of an award must be received within 10 (ten) days after Procurement Officer makes the procurement file available for public inspection. In either case, the protest must include:

1. the name, address, email address and telephone number of the interested party;
2. signature of the interested party or its representative;
3. identification of the purchasing agency and the solicitation or contract number;
4. a detailed statement of the legal and factual grounds of the protest including copies of relevant documents; and
5. the form of relief being requested.

9.0 Comments Welcome

SEPARATELY AND APART FROM THIS SOLICITATION, The State Procurement Office periodically reviews these Instructions to Offerors and welcomes any comments the public may have.

Please submit your comments to:

State Procurement Administrator,
State Procurement Office, 100 North 15th Avenue, Suite 402
Phoenix, Arizona, 85007

End of Section 3-A

Section 3-B: Offer Forms (Attachments)

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Attachment 1

Offer and Acceptance Form

SUBMISSION OF OFFER: Undersigned hereby offers and agrees to provide SOFTWARE VALUE-ADDED RESELLER SERVICES in compliance with the Solicitation indicated above and our Offer indicated by the latest dated version below:

Initial Offer:	**1.** x Date	x initial					
Revised Offers:	**2.** x date #1	x initial	**3.** x date #1	x initial	**4.** x date #1	x initial	
	5. x date #4	x initial	**6.** x date #5	x initial	**7.** x date #6	x initial	
Best and Final Offer:	**8.** x Date	x initial					

x Offeror company name	x Signature of person authorized to sign Offer
x Address	x Printed name and title
x City | State | ZIP	x Contact name and title
x Federal tax identifier (EIN or SSN)	x x Contact Email Address Contact phone number

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

1. 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;
2. 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;
3. complies with A.R.S. § 41-3532 when offering electronics or information technology products, services, or maintenance; and
4. 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 by the latest date and number at the top of this form (the Accepted Offer). 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: _____ **The effective date of the Contract is:** _____ (Date) **Contract awarded** _____ (Date)

Procurement Officer Signature	Procurement Officer Printed Name

Attachment 2-A

Experience and Capacity Questionnaire

STATE MAY DETERMINE YOUR PROPOSAL IS NON-RESPONSIVE IF YOU DO NOT ANSWER ALL QUESTIONS FULLY.

This Attachment is divided into three sections: 1) General Category, 2) Microsoft Category, and 3) Oracle Category. Offerors need only answer questions in the category or categories for which they desire to be considered for a contract award (indicate by checking the box next to the applicable category or categories). In each applicable category, the Offeror shall provide a narrative response to each question that demonstrates their understanding of the Scope of Work requirements and describes your company's overall experience and capacity to provide the services stated in this solicitation. If there is a question that is not applicable to the services required by the Scope of Work, you may mark it N/A.

EXPERIENCE AND CAPACITY QUESTIONS:

☐ 1) GENERAL CATEGORY (check if proposing in this category)

Question 1: Company Profile

The Offeror must include a narrative description of its organization. The narrative must include the following:

1.1 Brief overview of business operations, with an emphasis on experience in regards to the scope of work. Provide an overview of the Offeror's business history, description of current services provided, and a list of current customer base

1.2 Date established;

1.3 Ownership (public, partnership, subsidiary, etc.);

1.4 Location in which the Offeror is incorporated;

1.5 Address of "Main Office" (e.g. Corporate Headquarters and any satellite offices responsible for performance of proposed tasks;

1.6 Offeror's organizational chart relevant to the Contract, specifically identifying the key point of contact for all questions related to the submitted offer;

1.7 Full disclosure of any potential conflict of interest between the Offeror and any State employee who functions or has responsibilities in the review or approval of the undertaking or carrying out of the Contract;

1.8 A Statement of whether, in the last five (5) years, the Offeror has filed (or had filed against it) any bankruptcy or insolvency proceeding, whether voluntary or involuntary, or undergone the appointment of a receiver, trustee, or assignee for the benefit of creditors, and if so, an explanation providing relevant details and current status;

1.9 A Statement of whether there are any pending Securities Exchange Commission investigations involving the Offeror, and if such are pending or in progress, an explanation providing relevant details and an attached opinion of counsel as to whether the pending investigation(s) may impair the Offeror's performance in a Contract under this RFP;

1.10 A Statement documenting all open or pending litigation initiated by Offeror or where Offeror is

a defendant or party in any litigation that may have a material impact on Offeror's ability to deliver the contracted services;

1.11 A Statement documenting all open or pending litigation initiated by Offeror or where Offeror is a defendant or party in any litigation with a Public sector client;

1.12 Full disclosure of any Public Sector contracts terminated for cause or convenience in the past five (5) years; and,

1.13 Full disclosure of any criminal or civil offense.

1.14 Offeror shall provide evidence of any Arizona or federally-required business license to provide these services.

Offeror Response:

Click here to enter your response.

Question 2: Company Experience

A. Based on revenue, what is the percentage breakdown of the market(s) are your current clients are in?

B. What experience do you have serving government clients within the United States of America?

C. What is the size of your current largest public sector clients? What are your potential limitations as far as servicing public sector clients throughout the country? Are there geographic limitations that your company would not be able to support?

D. Provide a description of two (2) recent projects in the areas of Software Advisement and/or Basic License Management, as described in the Scope of Work, that were implemented by your company, including client contact information (contact person, phone number, email). Narrative descriptions should highlight the similarities between the stated experience and this Solicitation. At a minimum, include the following: time-period that the experiences occurred, your company's actions and results, and your company's status as the prime or subcontractor.

E. How long have you provided goods/services to your longest tenured client?

F. Why did your last three former clients cancel their contracts?

G. How does your company stay ahead in areas such as industry knowledge and technological knowledge?

Offeror Response:

Click here to enter your response.

Question 3: Financial/Accounting Information

A. Offeror must provide evidence of financial stability and capability to fund all costs associated with providing the services throughout the term of the Contract. The latest two (2) years audited annual financial statements including Total Revenue, Net Income, and Total Assets must be submitted with the Offeror's proposal. If audited financial data is unavailable, explain in full the reason, and provide the latest non-audited financial information to include Balance Sheet, Income Statement, as well as Statements of Cash flows and Change in Financial Position. Include information to attest to the accuracy of the information provided.

B. Offeror must provide audited financial statements, of the last two years, to the State that demonstrate that an Offeror meets at a minimum Dun and Bradstreet (D&B) credit rating of 3A2 or better, or a recognized equivalent rating. Please provide the respondent's D&B Number and the composite credit rating. The State reserves the right to verify this information. If a branch or

wholly owned subsidiary is bidding on this RFP, please provide the D&B Number and score for the parent company that will be financially responsible for performance of the agreement.

Question 4: Proposed Project Members and Organization

Utilize Attachment 3-B to identify Key Personnel and and Organizational Chart that demonstrates how the Offeror intends to serve different markets/regions throughout the country under a resultant SVAR Contract. At a minimum, Offeror should identify their Key Personnel for three different geographic regions (ex: different states or regions of the United States).

In addition, also state the Key Personnel's related experience with large local, state or federal government agencies.

Offeror Response:

Click here to enter your response.

Question 5: Subcontractors and Partners

Utilize Attachment 3-C to identify Proposed Subcontractors and Partners to be utilized to perform services within a resultant contract.

Question 6: Submit copies of all applicable professional or industry certifications, licenses, memberships in relevant trade organizations or professional associations that support Offeror's ability to provide the related goods/services being proposed. Provide the level of partnerships your company has for all major software publishers (ex: gold, platinum partner etc.)

Offeror Response:

Click here to enter your response.

Question 7: If Offeror is awarded a Master Agreement, they will then be required to individually negotiate Participating Addendums with all states that wish to participate with this contract. Explain how your company will be able to negotiate potentially 20-30 Participating Addendums concurrently to allow all states to expeditiously enter into contracts with your company.

EXPERIENCE REFERENCES:

The State intends to conduct reference checks for account referenced provided by Offerors. It may, at its sole discretion contact additional clients not presented as references.

Offerors shall provide at least three (3) client references for assignments that best demonstrate Offeror providng value-added services to software sales. At least one (1) of the references must be state government related.
All assignments shall be for assignments received and completed within the last five (5) years.

1 Client Company/Address	Contact	Begin Date	End Date
x	x	x	x
Phone Number	**Email Address**		
x	x		
Event Scope and deliverables, include number of resources engaged in project, timeline of project (major milestones) x			
List job positions provided and technologies utilized to supplement services. x			

2 Client Company/Address	Contact	Begin Date	End Date
x	x	x	x
Phone Number	**Email Address**		
x	x		
Event Scope and deliverables, include number of resources engaged in project, timeline of project (major milestones) x			
List job positions provided and technologies utilized to supplement services. x			

3	Client Company/Address	Contact	Begin Date	End Date
x		x	x	x
Phone Number		Email Address		
x		x		
Event Scope and deliverables, include number of resources engaged in project, timeline of project(major milestones) x				
List job positions provided and technologies utilized to supplement services. x				

4	Client Company/Address	Contact	Begin Date	End Date
x		x	x	x
Phone Number		Email Address		
x		x		
Project Scope and deliverables, include number of resources engaged in project, timeline of project(major milestones) x				
List job positions provided and technologies utilized to supplement services. x				

☐ 2) MICROSOFT CATEGORY (check if proposing in this category)

All answers in this section should be customized specifically to Microsoft

Question 1: Company Profile

The Offeror must include a narrative description of its organization. The narrative must include the following:

1.1 Brief overview of business operations, with an emphasis on experience in regards to the scope of work in Category 2 – Microsoft SVAR. Provide an overview of the Offeror's business history, description of current services provided, and a list of current customer base

1.2 Date established;

1.3 Ownership (public, partnership, subsidiary, etc.);

1.4 Location in which the Offeror is incorporated;

1.5 Address of "Main Office" (e.g. Corporate Headquarters and any satellite offices responsible for performance of proposed tasks;

1.6 Offeror's organizational chart relevant to the Contract, specifically identifying the key point of contact for all questions related to the submitted offer;

1.7 Full disclosure of any potential conflict of interest between the Offeror and any State employee who functions or has responsibilities in the review or approval of the undertaking or carrying out of the Contract;

1.8 A Statement of whether, in the last five (5) years, the Offeror has filed (or had filed against it) any bankruptcy or insolvency proceeding, whether voluntary or involuntary, or undergone the appointment of a receiver, trustee, or assignee for the benefit of creditors, and if so, an explanation providing relevant details and current status;

1.9 A Statement of whether there are any pending Securities Exchange Commission investigations involving the Offeror, and if such are pending or in progress, an explanation providing relevant details and an attached opinion of counsel as to whether the pending investigation(s) may impair the Offeror's performance in a Contract under this RFP;

1.10 A Statement documenting all open or pending litigation initiated by Offeror or where Offeror is a defendant or party in any litigation that may have a material impact on Offeror's ability to deliver the contracted services;

1.11 A Statement documenting all open or pending litigation initiated by Offeror or where Offeror is a defendant or party in any litigation with a Public sector client;

1.12 Full disclosure of any Public Sector contracts terminated for cause or convenience in the past five (5) years; and,

1.13 Full disclosure of any criminal or civil offense.

1.14 Offeror shall provide evidence of any Arizona or federally-required business license to provide these services.

Offeror Response:

Click here to enter your response.

Question 2: Company Experience

A. Based on revenue, what is the percentage breakdown of the market(s) are your current clients are in?

B. What experience do you have serving government clients within the United States of America?

C. What is the size of your current largest public sector clients? What are your potential limitations as far as servicing public sector clients throughout the country? Are there geographic limitations that your company would not be able to support?

D. Provide a description of two (2) recent projects in the areas of Software Advisement and/or Basic License Management, as described in the Scope of Work, that were implemented by your company, including client contact information (contact person, phone number, email). Narrative descriptions should highlight the similarities between the stated experience and this Solicitation. At a minimum, include the following: time-period that the experiences occurred, your company's actions and results, and your company's status as the prime or subcontractor.

E. How long have you provided goods/services to your longest tenured client?

F. Why did your last three former clients cancel their contracts?

G. How does your company stay ahead in areas such as industry knowledge and technological knowledge?

Offeror Response:

Click here to enter your response.

Question 3: Financial/Accounting Information

A. Offeror must provide evidence of financial stability and capability to fund all costs associated with providing the services throughout the term of the Contract. The latest two (2) years audited annual financial statements including Total Revenue, Net Income, and Total Assets must be submitted with the Offeror's proposal. If audited financial data is unavailable, explain in full the reason, and provide the latest non-audited financial information to include Balance Sheet, Income Statement, as well as Statements of Cash flows and Change in Financial Position. Include information to attest to the accuracy of the information provided.

B. Offeror must provide audited financial statements, of the last two years, to the Purchasing Entity that demonstrate that an Offeror meets at a minimum Dun and Bradstreet (D&B) credit rating of 3A2 or better, or a recognized equivalent rating. Please provide the respondent's D&B Number and the composite credit rating. The Purchasing Entity reserves the right to verify this information. If a branch or wholly owned subsidiary is bidding on this RFP, please provide the D&B Number and score for the parent company that will be financially responsible for performance of the agreement.

Offeror Response:

Click here to enter your response.

Question 4: Proposed Project Members and Organization

Utilize Attachment 3-B to identify Key Personnel and and Organizational Chart that demonstrates how the Offeror intends to serve different markets/regions throughout the country under a resultant SVAR Contract. At a minimum, Offeror should identify their Key Personnel for three different geographic regions (ex: different states or regions of the United States).

In addition, also state the Key Personnel's related experience with large local, state or federal government agencies.

Offeror Response:

Click here to enter your response.

Question 5: Subcontractors and Partners

Utilize Attachment 3-C to identify Proposed Subcontractors and Partners to be utilized to perform services within a resultant contract.

Offeror Response:

Click here to enter your response.

Question 6: Submit copies of all applicable professional or industry certifications, licenses, memberships in relevant trade organizations or professional associations that support Offeror's ability to provide the related goods/services being proposed in Category 2 – Microsoft SVAR. Provide the level of partnerships your company has for Microsfot (ex: gold, platinum partner etc.)

Offeror Response:

Click here to enter your response.

Question 7: If Offeror is awarded a Master Agreement, they will then be required to individually negotiate Participating Addendums with all states that wish to participate with this contract. Explain how your company will be able to negotiate potentially 20-30 Participating Addendums concurrently to allow all states to expeditiously enter into contracts with your company.

EXPERIENCE REFERENCES:

The State intends to conduct reference checks for account referenced provided by Offerors. It may, at its sole discretion contact additional clients not presented as references.

Offerors shall provide at least three (3) client references for assignments that best demonstrate Offeror providng value-added services to software sales. At least one (1) of the references must be state government related.

All assignments shall be for assignments received and completed within the last five (5) years.

1	Client Company/Address	Contact	Begin Date	End Date
	x	x	x	x
Phone Number		Email Address		
x		x		
Event Scope and deliverables, include number of resources engaged in project, timeline of project (major milestones) x				
List job positions provided and technologies utilized to supplement services. x				

2	Client Company/Address	Contact	Begin Date	End Date
	x	x	x	x
Phone Number		Email Address		
x		x		
Event Scope and deliverables, include number of resources engaged in project, timeline of project (major milestones) x				
List job positions provided and technologies utilized to supplement services. x				

3	Client Company/Address	Contact	Begin Date	End Date
	x	x	x	x
Phone Number		Email Address		
x		x		
Event Scope and deliverables, include number of resources engaged in project, timeline of project(major milestones) x				
List job positions provided and technologies utilized to supplement services. x				

4	Client Company/Address	Contact	Begin Date	End Date
	x	x	x	x
Phone Number		Email Address		
x		x		
Project Scope and deliverables, include number of resources engaged in project, timeline of project(major milestones) x				
List job positions provided and technologies utilized to supplement services. x				

☐ 3) ORACLE CATEGORY (check if proposing in this category)

All answers in this section should be customized specifically to Oracle

Question 1: Company Profile

The Offeror must include a narrative description of its organization. The narrative must include the following:

1.1 Brief overview of business operations, with an emphasis on experience in regards to the scope of work, specifically regarding Category 3 – Oracle SVAR. Provide an overview of the

Offeror's business history, description of current services provided, and a list of current customer base

1.2 Date established;

1.3 Ownership (public, partnership, subsidiary, etc.);

1.4 Location in which the Offeror is incorporated;

1.5 Address of "Main Office" (e.g. Corporate Headquarters and any satellite offices responsible for performance of proposed tasks;

1.6 Offeror's organizational chart relevant to the Contract, specifically identifying the key point of contact for all questions related to the submitted offer;

1.7 Full disclosure of any potential conflict of interest between the Offeror and any Purchasing Entity employee who functions or has responsibilities in the review or approval of the undertaking or carrying out of the Contract;

1.8 A Statement of whether, in the last five (5) years, the Offeror has filed (or had filed against it) any bankruptcy or insolvency proceeding, whether voluntary or involuntary, or undergone the appointment of a receiver, trustee, or assignee for the benefit of creditors, and if so, an explanation providing relevant details and current status;

1.9 A Statement of whether there are any pending Securities Exchange Commission investigations involving the Offeror, and if such are pending or in progress, an explanation providing relevant details and an attached opinion of counsel as to whether the pending investigation(s) may impair the Offeror's performance in a Contract under this RFP;

1.10 A Statement documenting all open or pending litigation initiated by Offeror or where Offeror is a defendant or party in any litigation that may have a material impact on Offeror's ability to deliver the contracted services;

1.11 A Statement documenting all open or pending litigation initiated by Offeror or where Offeror is a defendant or party in any litigation with a Public sector client;

1.12 Full disclosure of any Public Sector contracts terminated for cause or convenience in the past five (5) years; and,

1.13 Full disclosure of any criminal or civil offense.

1.14 Offeror shall provide evidence of any Arizona or federally-required business license to provide these services.

Offeror Response:

Click here to enter your response.

Question 2: Company Experience

A. Based on revenue, what is the percentage breakdown of the market(s) are your current clients are in?

B. What experience do you have serving government clients within the United States of America, preferably related to Oracle products?

C. What is the size of your current largest public sector clients? What are your potential limitations as far as servicing public sector clients throughout the country? Are there geographic limitations that your company would not be able to support?

D. Preferably related to Oracle products, Provide a description of two (2) recent projects in the areas of Software Advisement and/or Basic License Management, as described in the Scope of Work, that were implemented by your company, including client contact information (contact person, phone number, email). Narrative descriptions should highlight the similarities between the stated experience and this Solicitation. At a minimum, include the following: time-period that the experiences occurred, your company's actions and results, and your company's status as the prime or subcontractor.

E. How long have you provided goods/services to your longest tenured client?

F. Why did your last three former clients cancel their contracts?

G. How does your company stay ahead in areas such as industry knowledge and technological knowledge?

Offeror Response:

Click here to enter your response.

Question 3: Financial/Accounting Information

A. Offeror must provide evidence of financial stability and capability to fund all costs associated with providing the services throughout the term of the Contract. The latest two (2) years audited annual financial statements including Total Revenue, Net Income, and Total Assets must be submitted with the Offeror's proposal. If audited financial data is unavailable, explain in full the reason, and provide the latest non-audited financial information to include Balance Sheet, Income Statement, as well as Statements of Cash flows and Change in Financial Position. Include information to attest to the accuracy of the information provided.

B. Offeror must provide audited financial statements, of the last two years, to the Purchasing Entity that demonstrate that an Offeror meets at a minimum Dun and Bradstreet (D&B) credit rating of 3A2 or better, or a recognized equivalent rating. Please provide the respondent's D&B Number and the composite credit rating. The Purchasing Entity reserves the right to verify this information. If a branch or wholly owned subsidiary is bidding on this RFP, please provide the D&B Number and score for the parent company that will be financially responsible for performance of the agreement.

Offeror Response:

Click here to enter your response.

Question 4: Proposed Project Members and Organization

Utilize Attachment 3-B to identify Key Personnel and and Organizational Chart that demonstrates how the Offeror intends to serve different markets/regions throughout the country under a resultant SVAR Contract. At a minimum, Offeror should identify their Key Personnel for three different geographic regions (ex: different states or regions of the United States).

In addition, also state the Key Personnel's related experience with large local, state or federal government agencies.

Offeror Response:

Click here to enter your response.

Question 5: Subcontractors and Partners

Utilize Attachment 3-C to identify Proposed Subcontractors and Partners to be utilized to perform services within a resultant contract.

Offeror Response:

Click here to enter your response.

Question 6: Submit copies of all applicable professional or industry certifications, licenses, memberships in relevant trade organizations or professional associations that support Offeror's ability to provide the related goods/services being proposed in Category 3 – Oracle SVAR. Provide the level of partnerships your company has for Oracle (ex: gold, platinum partner etc.)

Offeror Response:

Click here to enter your response.

Question 7: If Offeror is awarded a Master Agreement, they will then be required to individually negotiate Participating Addendums with all states that wish to participate with this contract. Explain how your company will be able to negotiate potentially 20-30 Participating Addendums concurrently to allow all states to expeditiously enter into contracts with your company.

EXPERIENCE REFERENCES:

The State intends to conduct reference checks for account referenced provided by Offerors. It may, at its sole discretion contact additional clients not presented as references.

Offerors shall provide at least three (3) client references for assignments that best demonstrate Offeror providng value-added services to software sales. At least one (1) of the references must be state government related.

All assignments shall be for assignments received and completed within the last five (5) years.

1	Client Company/Address	Contact	Begin Date	End Date
	x	x	x	x
Phone Number		Email Address		
x		x		
Event Scope and deliverables, include number of resources engaged in project, timeline of project (major milestones) x				
List job positions provided and technologies utilized to supplement services. x				

2	Client Company/Address	Contact	Begin Date	End Date
	x	x	x	x
Phone Number		Email Address		
x		x		
Event Scope and deliverables, include number of resources engaged in project, timeline of project (major milestones) x				
List job positions provided and technologies utilized to supplement services. x				

3	Client Company/Address	Contact	Begin Date	End Date
	x	x	x	x

Phone Number	Email Address
x	x

Event Scope and deliverables, include number of resources engaged in project, timeline of project(major milestones)

x

List job positions provided and technologies utilized to supplement services.

x

4	Client Company/Address	Contact	Begin Date	End Date
	x	x	x	x

Phone Number	Email Address
x	x

Project Scope and deliverables, include number of resources engaged in project, timeline of project(major milestones)

x

List job positions provided and technologies utilized to supplement services.

x

End of Attachment 2-A

Attachment 2-B
Reserved

End of Attachment 2-B

Attachment 3-A

Method Proposal (Method of Approach)

This Attachment is divided into three sections: 1) General Category, 2) Microsoft Category, and 3) Oracle Category. Offerors need only answer questions in the category or categories for which they desire to be considered for a contract award (indicate by checking the box next to the applicable category or categories). In each applicable category, the Offeror shall provide a narrative response to each question that demonstrates their understanding of the Scope of Work requirements and describes your company's overall method of approach for providing the service stated in this solicitation. If there is a question that is not applicable to the services required by the Scope of Work, you may mark it N/A.

☐ **1) GENERAL CATEGORY** (check if proposing in this category)

Question 1: Offeror shall describe its overall approach to providing solicited services. Include how Offeror plans to meet or exceed requirements of the Scope of Work and Terms and Conditions.

Question 2: Per Section 2.5.1 of the Scope of Work, the SVAR shall Develop and Maintain a Portal. Describe the portal to be established for a state. Address that portal's functionalities or special features. You may supplement this response with illustrative screen prints (no more than 10) from one of your company's existing portals. Taking into account the requirements of Section 2.5.1, address at a minimum:

- **Home page appearance and information;**
- **Reseller primary contacts by State;**
- **Links to Master Agreement and Participating Addendum;**
- **Display of Reseller's % mark(down/up) for all Categories;**
- **How website is monitored, kept current and accurate;**

Question 3: Describe your Company's method for tracking software licenses and ensuring that Purchasing Entities receive timely notifications of renewals or are advised of volume agreement opportunities or vulnerabilities, etc. Address at a minimum:

- **The information tracked on behalf of Purchasing Entity**
- **How reminders of significant dates or volume plateaus are triggered. Include how your Company, as a partner with the Purchasing Entity, communicates to ensure no deadlines are missed or opportunities unexplored**

Question 4: Describe your Company's method of ensuring a Purchasing Entity receives documentation of Proof of License that can be provided to requestors (e.g. auditors, in response to FOIA requests, etc.) Describe process for providing Proof of License to a Purchasing Entity. Provide a sample Proof of License. Explain method of retaining back-up copies of Proof of License. Explain the

process for a Purchasing Entity to obtain a duplicate copy. Describe how your Company partners with a Purchasing Entity to demonstrate accuracy of licensing information to a publisher (aka a "True Up").

Question 5: Describe your reporting capabilities which can be provided to a Purchasing Entity, both self-generated and custom reports. Provide sample reports.

Question 6: Describe how your Company works with a Purchasing Entity and Publisher to maximize the Purchasing Entity's value in obtaining products and services under this contract. Description is to address, but is not limited to, the following:

- **Working with a Purchasing Entity and a Publisher to assist the Purchasing Entity in managing their volume or enterprise license agreements.**
- **Working with a Purchasing Entity and Publisher to maximize the leverage created by the total sales volume from a Purchasing Entity and its cooperative partners to ensure best value to all Purchasing Entities.**
- **Working with a publisher to maximize the leverage created by the SVAR's total sales volume overall resulting from this contract.**
- **Working with Purchasing Entity and publisher to obtain the best quote on a high volume purchase.**
- **If, and how, your Company uses historical purchase information to provide targeted assistance to Purchasing Entity.**
- **How maintenance support is to be made available.**
- **Describe how training regarding the installation of products and use of products will be made available and how to obtain best value from it.**

Question 7: A significant aspect of this service is to be Value-Added Services. Describe how your company handles the complexities related to enterprise license agreements. Include how you assist customers (especially first time customers) through this process to ensure they are comfortable moving forward, and are knowledgeable about the agreements once they are complete?

Question 8: Describe how your company handles transitioning a group of customers from an account manager with whom they have built a relationship to an account manager who is new to them? How do you ensure that all of the customers' needs are met? How do you ensure the new account manager is given the resources necessary to be successful in the new role?

Question 9: Explain what Value-Added services your Company will make available under a resultant contract. What unique services can your Company provide at no extra cost?

Question 10: Explain how your Company will:

- **Retain publisher certification levels and improve on them.**
- **Work to reduce costs to obtain publisher products?**

Question 11: How does your Company respond to customer complaints and service issues and what is your Company's escalation process?

Question 12: Problem Resolution Scenario 1

Scenario 1: Describe at least one recent situation where your Company made a major error that resulted in dire consequences for a customer. Detail the error and what changes your Company has made to avoid repeating the error in the future. In this situation, the problem was not solved in time to take care of the customer, and the customer was lost.

Question 13: Problem Resolution Scenario 2

Describe at least one recent situation where your Company made a major error that had potential dire consequences for a customer. Detail the error and what was done to correct the situation. To what lengths did your Company go to take care of the customer? What changes (if any) did your Company make to avoid repeating the error in the future? In this situation, the problem is solved in time to take care of the customer, and the customer is likely not lost.

SECURITY QUESTIONS:

Question 14: Offeror must describe the procedure and controls to meet the requirements in Section 2-C; Special Terms and Conditions, Sec. 13.2 it takes in the performance of its S-VAR obligations including service it provides or is provided by service partners to protect the data, data confidentiality, and user account information. Include a description of the method by which it will hold, protect, and dispose of data and user account information during the performance of and following the completion of any contract services.

Question 15: Offeror must describe security procedures (background checks, foot printing logging, etc.) which are in place regarding Offeror's employees and service partners who have access to sensitive data.

Question 16: Offeror must describe policies and procedures it will follow regarding notification to both the Purchasing Entity and mitigation if a data breach occurs in the performance of its S-VAR obligations including service it provides or is provided by service partners.

Question 17: Offeror must describe its method to assist the Purchasing Entity to obtain SaaS Information and Security information required in Section 2-C Special Terms and Conditions, Section 15.0 from the Publisher including, but not limited to:

- how it will assist a Purchasing Entity obtain this information from the Publisher
- how it will assist a Purchasing Entity to gain answers to questions, and
- how it will assist the Purchasing entity obtain third party attestations, reports, security credentials, standards and certifications related to the Publisher's software.

Question 18: Offeror must describe how it will address Section 2-C Terms and Conditions, Sec. 14.8.2 that requires COTS Software to 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 and mitigate any software the Purchasing Entity has reason to believe has harmful code.

Question 19: (Note: For Category 1 only) Offeror must describe how it will meet the requirements of Section 2-C Special Terms and Conditions, Sec 16.0 (a) to provide guide documents identifying the difference between the Publishers' SaaS Terms and Conditions and the Terms and Conditions in Sec 16.1- 16.18 if requested by the Purchasing Entity.

SERVICE LEVEL AGREEMENTS

Qustion 20: Offeror, as part of its proposal, must provide a sample of Service Level Agreements (SLA) they can offer to enable Participating Entity to measure contract performance. Offeror should also include proposed consequences/remedies for failure to achieve SLAs.

Question 21: In a recent survey of other states, certain model Terms and Conditions have been identified as the most important to be included in agreements (ex: End User License Agreements) with software publishers. Describe your ability and willingness to require Publishers to agree to specific terms and conditions as a prerequisite to selling off this resultant contract. Describe any successes you have had previously in requiring Publishers to accept minimum terms prescribed by an RFP or similar process. Describe your willingness to identify Publishers who aren't willing to accept Model Terms and provide the Purchasing Entity with this information before a purchase is made. Some specific examples identified as important to states include:

- **Governing Law; Jurisdiction and Venue**
- **Protection of Purchasing Entity's Confidential Information**
- **Indemnification for Intellectual Property Infringement**

- **Unacceptability of Click through links – All terms and conditions must be identified in the agreement. Purchasing Entities cannot agree to linked terms that are posted elsewhere and may change.**
- **Unacceptability of auto-renewal of licenses**

☐ **2) MICROSOFT CATEGORY** (check if proposing in this category)

****All answers in this section should be customized specifically to Microsoft**

Question 1: Offeror shall describe its overall approach to providing solicited services. Include how Offeror plans to meet or exceed requirements of the Scope of Work and Terms and Conditions.

Question 2: Per Section 2.5.1 of the Scope of Work, the SVAR shall Develop and Maintain a Portal. Describe the portal to be established for a state. Address that portal's functionalities or special features. You may supplement this response with illustrative screen prints (no more than 10) from one of your company's existing portals. Taking into account the requirements of Section 2.5.1, address at a minimum:

- **Home page appearance and information;**
- **Reseller primary contacts by State;**
- **Links to Master Agreement and Participating Addendum;**
- **Display of Reseller's % mark(down/up) for all Categories;**
- **How website is monitored, kept current and accurate;**

Question 3: Describe your Company's method for tracking software licenses and ensuring that Purchasing Entities receive timely notifications of renewals or are advised of volume agreement opportunities or vulnerabilities, etc. Address at a minimum:

- **The information tracked on behalf of Purchasing Entity**
- **How reminders of significant dates or volume plateaus are triggered. Include how your Company, as a partner with the Purchasing Entity, communicates to ensure no deadlines are missed or opportunities unexplored**

Question 4: Describe your Company's method of ensuring a Purchasing Entity receives documentation of Proof of License that can be provided to requestors (e.g. auditors, in response to FOIA requests, etc.) Describe process for providing Proof of License to a Purchasing Entity. Provide a sample Proof of License. Explain method of retaining back-up copies of Proof of License. Explain the process for a Purchasing Entity to obtain a duplicate copy. Describe how your

Company partners with a Purchasing Entity to demonstrate accuracy of licensing information to a publisher (aka a "True Up").

Question 5: Describe your reporting capabilities which can be provided to a Purchasing Entity, both self-generated and custom reports. Provide sample reports.

Question 6: Describe how your Company works with a Purchasing Entity and Publisher to maximize the Purchasing Entity's value in obtaining products and services under this contract. Description is to address, but is not limited to, the following:

- **Working with a Purchasing Entity and a Publisher to assist the Purchasing Entity in managing their volume or enterprise license agreements.**
- **Working with a Purchasing Entity and Publisher to maximize the leverage created by the total sales volume from a Purchasing Entity and its cooperative partners to ensure best value to all Purchasing Entities.**
- **Working with a publisher to maximize the leverage created by the SVAR's total sales volume overall resulting from this contract.**
- **Working with Purchasing Entity and publisher to obtain the best quote on a high volume purchase.**
- **If, and how, your Company uses historical purchase information to provide targeted assistance to Purchasing Entity.**
- **How maintenance support is to be made available.**
- **Describe how training regarding the installation of products and use of products will be made available and how to obtain best value from it.**

Question 7: A significant aspect of this service is to be Value-Added Services. Describe how your company handles the complexities related to enterprise license agreements. Include how you assist customers (especially first time customers) through this process to ensure they are comfortable moving forward, and are knowledgeable about the agreements once they are complete?

Question 8: Describe how your company handles transitioning a group of customers from an account manager with whom they have built a relationship to an account manager who is new to them? How do you ensure that all of the customers' needs are met? How do you ensure the new account manager is given the resources necessary to be successful in the new role?

Question 9: Explain what Value-Added services your Company will make available under a resultant contract. What unique services can your Company provide at no extra cost?

Question 10: Explain how your Company will:

- **Retain publisher certification levels and improve on them.**
- **Work to reduce costs to obtain publisher products?**

Question 11: How does your Company respond to customer complaints and service issues and what is your Company's escalation process?

Question 12: Problem Resolution Scenario 1

Scenario 1: Describe at least one recent situation where your Company made a major error that resulted in dire consequences for a customer. Detail the error and what changes your Company has made to avoid repeating the error in the future. In this situation, the problem was not solved in time to take care of the customer, and the customer was lost.

Question 13: Problem Resolution Scenario 2

Describe at least one recent situation where your Company made a major error that had potential dire consequences for a customer. Detail the error and what was done to correct the situation. To what lengths did your Company go to take care of the customer? What changes (if any) did your Company make to avoid repeating the error in the future? In this situation, the problem is solved in time to take care of the customer, and the customer is likely not lost.

SECURITY QUESTIONS:

Question 14: Offeror must describe the procedure and controls to meet the requirements in Section 2-C; Special Terms and Conditions, Sec. 13.2 it takes in the performance of its S-VAR obligations including service it provides or is provided by service partners to protect the data, data confidentiality, and user account information. Include a description of the method by which it will hold, protect, and dispose of data and user account information during the performance of and following the completion of any contract services.

Question 15: Offeror must describe security procedures (background checks, foot printing logging, etc.) which are in place regarding Offeror's employees and service partners who have access to sensitive data.

Question 16: Offeror must describe policies and procedures it will follow regarding notification to both the Purchasing Entity and mitigation if a data breach occurs in the

performance of its S-VAR obligations including service it provides or is provided by service partners.

Question 17: Offeror must describe its method to assist the Purchasing Entity to obtain SaaS Information and Security information required in Section 2-C Special Terms and Conditions, Section 15.0 from the Publisher including, but not limited to:

- how it will assist a Purchasing Entity obtain this information from the Publisher
- how it will assist a Purchasing Entity to gain answers to questions, and
- how it will assist the Purchasing entity obtain third party attestations, reports, security credentials, standards and certifications related to the Publisher's software.

Question 18: Offeror must describe how it will address Section 2-C Terms and Conditions, Sec. 14.8.2 that requires COTS Software to 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 and mitigate any software the Purchasing Entity has reason to believe has harmful code.

SERVICE LEVEL AGREEMENTS

Question 19: Offeror, as part of its proposal, must provide a sample of Service Level Agreements (SLA) they can offer to enable Participating Entity to measure contract performance. Offeror should also include proposed consequences/remedies for failure to achieve SLAs.

Question 20: In a recent survey of other states, certain model Terms and Conditions have been identified as the most important to be included in agreements (ex: End User License Agreements) with software publishers. Describe your ability and willingness to require Publishers to agree to specific terms and conditions as a prerequisite to selling off this resultant contract. Describe any successes you have had previously in requiring Publishers to accept minimum terms prescribed by an RFP or similar process. Describe your willingness to identify Publishers who aren't willing to accept Model Terms and provide the Purchasing Entity with this information before a purchase is made. Some specific examples identified as important to states include:

- **Governing Law; Jurisdiction and Venue**
- **Protection of Purchasing Entity's Confidential Information**
- **Indemnification for Intellectual Property Infringement**
- **Unacceptability of Click through links – All terms and conditions must be identified in the agreement. Purchasing Entities cannot agree to linked terms that are posted elsewhere and may change.**
- **Unacceptability of auto-renewal of licenses**

☐ **3) ORACLE CATEGORY** (check if proposing in this category)

****All answers in this section should be customized specifically to Oracle**

Question 1: Offeror shall describe its overall approach to providing solicited services. Include how Offeror plans to meet or exceed requirements of the Scope of Work and Terms and Conditions.

Question 2: Per Section 2.5.1 of the Scope of Work, the SVAR shall Develop and Maintain a Portal. Describe the portal to be established for a state. Address that portal's functionalities or special features. You may supplement this response with illustrative screen prints (no more than 10) from one of your company's existing portals. Taking into account the requirements of Section 2.5.1, address at a minimum:

- **Home page appearance and information;**
- **Reseller primary contacts by State;**
- **Links to Master Agreement and Participating Addendum;**
- **Display of Reseller's % mark(down/up) for all Categories;**
- **How website is monitored, kept current and accurate;**

Question 3: Describe your Company's method for tracking software licenses and ensuring that Purchasing Entities receive timely notifications of renewals or are advised of volume agreement opportunities or vulnerabilities, etc. Address at a minimum:

- **The information tracked on behalf of Purchasing Entity**
- **How reminders of significant dates or volume plateaus are triggered. Include how your Company, as a partner with the Purchasing Entity, communicates to ensure no deadlines are missed or opportunities unexplored**

Question 4: Describe your Company's method of ensuring a Purchasing Entity receives documentation of Proof of License that can be provided to requestors (e.g. auditors, in response to FOIA requests, etc.) Describe process for providing Proof of License to a Purchasing Entity. Provide a sample Proof of License. Explain method of retaining back-up copies of Proof of License. Explain the process for a Purchasing Entity to obtain a duplicate copy. Describe how your Company partners with a Purchasing Entity to demonstrate accuracy of licensing information to a publisher (aka a "True Up").

Question 5: Describe your reporting capabilities which can be provided to a Purchasing Entity, both self-generated and custom reports. Provide sample reports.

Question 6: Describe how your Company works with a Purchasing Entity and Publisher to maximize the Purchasing Entity's value in obtaining products and services

under this contract. Description is to address, but is not limited to, the following:

- **Working with a Purchasing Entity and a Publisher to assist the Purchasing Entity in managing their volume or enterprise license agreements.**
- **Working with a Purchasing Entity and Publisher to maximize the leverage created by the total sales volume from a Purchasing Entity and its cooperative partners to ensure best value to all Purchasing Entities.**
- **Working with a publisher to maximize the leverage created by the SVAR's total sales volume overall resulting from this contract.**
- **Working with Purchasing Entity and publisher to obtain the best quote on a high volume purchase.**
- **If, and how, your Company uses historical purchase information to provide targeted assistance to Purchasing Entity.**
- **How maintenance support is to be made available.**
- **Describe how training regarding the installation of products and use of products will be made available and how to obtain best value from it.**

Question 7: A significant aspect of this service is to be Value-Added Services. Describe how your company handles the complexities related to enterprise license agreements. Include how you assist customers (especially first time customers) through this process to ensure they are comfortable moving forward, and are knowledgeable about the agreements once they are complete?

Question 8: Describe how your company handles transitioning a group of customers from an account manager with whom they have built a relationship to an account manager who is new to them? How do you ensure that all of the customers' needs are met? How do you ensure the new account manager is given the resources necessary to be successful in the new role?

Question 9: Explain what Value-Added services your Company will make available under a resultant contract. What unique services can your Company provide at no extra cost?

Question 10: Explain how your Company will:

- **Retain publisher certification levels and improve on them.**
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Question 11: How does your Company respond to customer complaints and service issues and what is your Company's escalation process?

Question 12: Problem Resolution Scenario 1

Scenario 1: Describe at least one recent situation where your Company made a major error that

resulted in dire consequences for a customer. Detail the error and what changes your Company has made to avoid repeating the error in the future. In this situation, the problem was not solved in time to take care of the customer, and the customer was lost.

Question 13: Problem Resolution Scenario 2

Describe at least one recent situation where your Company made a major error that had potential dire consequences for a customer. Detail the error and what was done to correct the situation. To what lengths did your Company go to take care of the customer? What changes (if any) did your Company make to avoid repeating the error in the future? In this situation, the problem is solved in time to take care of the customer, and the customer is likely not lost.

SECURITY QUESTIONS:

Question 14: Offeror must describe the procedure and controls to meet the requirements in Section 2-C; Special Terms and Conditions, Sec. 13.2 it takes in the performance of its S-VAR obligations including service it provides or is provided by service partners to protect the data, data confidentiality, and user account information. Include a description of the method by which it will hold, protect, and dispose of data and user account information during the performance of and following the completion of any contract services.

Question 15: Offeror must describe security procedures (background checks, foot printing logging, etc.) which are in place regarding Offeror's employees and service partners who have access to sensitive data.

Question 16: Offeror must describe policies and procedures it will follow regarding notification to both the Purchasing Entity and mitigation if a data breach occurs in the performance of its S-VAR obligations including service it provides or is provided by service partners.

Question 17: Offeror must describe its method to assist the Purchasing Entity to obtain SaaS Information and Security information required in Section 2-C Special Terms and Conditions, Section 15.0 from the Publisher including, but not limited to:

- how it will assist a Purchasing Entity obtain this information from the Publisher

- how it will assist a Purchasing Entity to gain answers to questions, and
- how it will assist the Purchasing entity obtain third party attestations, reports, security credentials, standards and certifications related to the Publisher's software.

Question 18: Offeror must describe how it will address Section 2-C Terms and Conditions, Sec. 14.8.2 that requires COTS Software to 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 and mitigate any software the Purchasing Entity has reason to believe has harmful code.

SERVICE LEVEL AGREEMENTS

Qustion 19: Offeror, as part of its proposal, must provide a sample of Service Level Agreements (SLA) they can offer to enable Participating Entity to measure contract performance. Offeror should also include proposed consequences/remedies for failure to achieve SLAs.

Question 20: In a recent survey of other states, certain model Terms and Conditions have been identified as the most important to be included in agreements (ex: End User License Agreements) with software publishers. Describe your ability and willingness to require Publishers to agree to specific terms and conditions as a prerequisite to selling off this resultant contract. Describe any successes you have had previously in requiring Publishers to accept minimum terms prescribed by an RFP or similar process. Describe your willingness to identify Publishers who aren't willing to accept Model Terms and provide the Purchasing Entity with this information before a purchase is made. Some specific examples identified as important to states include:

- **Governing Law; Jurisdiction and Venue**
- **Protection of Purchasing Entity's Confidential Information**
- **Indemnification for Intellectual Property Infringement**
- **Unacceptability of Click through links – All terms and conditions must be identified in the agreement. Purchasing Entities cannot agree to linked terms that are posted elsewhere and may change.**
- **Unacceptability of auto-renewal of licenses**

End of Attachment 3-A

Attachment 3-B

Key Personnel Proposal

Answer all questions thoroughly in the spaces provided. **Complete this form in full for each one of the key personnel proposed to be involved in carrying out the Work**. Insert or attach a separate resume if desired, but any attached resumes are supplemental to this form and do not substitute for this form. If there are more than three (3) Key Personnel, please utilize the same form for each additional Personnel.

1	**Name:**	x	How long with company?	x years
	Current position in company:	x	How long in position?	x years
	Position for the Services:	x	How much of time will be dedicated to the Services?	x %
	What primary functions will be assigned?	x		
	Describe person's experience in performing services like those that are to be assigned:	x		
	List person's job-related training and education:	x		
	Resume:	filename		

2	**Name:**	x	How long with company?	x years
	Current position in company:	x	How long in position?	x years
	Position for the Services:	x	How much of time will be dedicated to the Services?	x %
	What primary functions will be assigned?	x		
	Describe person's experience in performing services like those that are to be assigned:	x		
	List person's job-related training and education:	x		
	Resume:	filename		

3	**Name:**	x	How long with company?	x years
	Current position in company:	x	How long in position?	x years
	Position for the Services:	x	How much of time will be dedicated to the Services?	x %
	What primary functions will be assigned?	x		
	Describe person's experience in performing services like those that are to be assigned:	x		
	List person's job-related training and education:	x		
	Resume:	filename		

End of Attachment 3-B

Attachment 3-C

Proposed Subcontractors and Partners

Check “NO” if you WILL NOT subcontract any portion of the Work and will therefore be carrying out all of the Work with your own personnel.

◯	NO, the Offeror will not subcontract any portion of the Work.

If you WILL subcontract any portion of the Work, check “YES” below and list name of persons or companies you propose to use as subcontractors.

1. Fill in the information for every significant subcontractor – indicate the type of work the subcontractor will perform under the Contract, and their approximate percentage of the total Contract work.
2. Provide copies of relevant certifications each one possesses in the Attachment Supplements section.
3. Provide description of quality assurance methods and quality control measures that you will use to ensure that Subcontractor work meets the Contract requirements.
4. State may demand additional information about proposed subcontractors as a precondition of award.

◯	YES, the Offeror will use the Subcontractors listed below:

	Name and contact information	Small Business	Work to be performed	%
1.	Name	select		
1.	Name	select		
2.	Name	select		
3.	Name	select		
4.	Name	select		
5.	Name	select		
6.	Name	select		
7.	Name	select		
8.	Name	select		
9.	Name	select		

End of Attachment 3-C

Attachment 3-D

Boycott of Israel Disclosure

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

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

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

Under A.R.S. §35-393:

1. "Boycott" means engaging in a refusal to deal, terminating business activities or performing other actions that are intended to limit commercial relations with entities doing business in Israel or in territories controlled by Israel, if those actions are taken either:

   (a) Based in part on the fact that the entity does business in Israel or in territories controlled by Israel.
   (b) In a manner that discriminates on the basis of nationality, national origin or religion and that is not based on a valid business reason.

2. "Company" means an organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company or other entity or business association, including a wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate, that engages in for-profit activity and that has ten or more full-time employees.

...

5. "Public entity" means this State, a political subdivision of this State or an agency, board, commission or department of this State or a political subdivision of this State.

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

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

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

☐ The Company submitting this Offer **<u>does</u>** participate in a boycott of Israel as described in A.R.S. §§35-393 *et seq*.

☐ **Exempt Solicitation, Contract, or Contractor.**

Indicate which of the following statements applies to this Contract:

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

Company Name			Signature of Person Authorized to Sign
Address			Printed Name
City	State	Zip	Title

End of Attachment 3-D

Attachment 4

Pricing Sheet

Pricing must be shown in the EXCEL sheet(s) titled as shown below:

1. The following EXCEL document(s) has/have been provided for Offeror's completion and submission - titled as follows:

ATTACHMENT 4 PRICING SHEET

INSTRUCTIONS:

Please carefully read the Instructions provided in cell C3 of each tab in the file **Attachment 4 Pricing Sheet**.

You must complete at least one (1) Optional Line Item or all Required Line Items in the Items (F) tab in APP in order for your Offer to be considered.

End of Attachment 4

Attachment 5-A

Confidential Information Designation

All materials submitted as part of a response to a solicitation are subject to Arizona public records law and will be disclosed if there is an appropriate public records request at the time of or after the award of the contract. Recognizing there may be materials included in a solicitation response that are proprietary or a trade secret, a process is set out in A.A.C. R2-7-103 (copy attached) that will allow qualifying materials to be designated as confidential and excluded from disclosure. For purposes of this process the definition of "trade secret" will be the same as that set out in A.A.C. R2-7-101(52).

Complete this form return it with your Offer **along with the appropriate supporting information** to assist State in making its determination as to whether any of the materials submitted as part of your Offer should be designated confidential because the material is proprietary or a trade secret and therefore not subject to disclosure.

STATE WILL NOT CONSIDER ANY MATERIAL IN YOUR OFFER "CONFIDENTIAL" UNLESS DESIGNATED ON THIS FORM.

Check one of the following – if neither is checked, State will assume that as equivalent to "DOES NOT":

○	This response DOES NOT contain proprietary or trade secret information. I understand that my entire response will become public record in accordance with A.A.C. R2-7-C317.
○	This response DOES contain trade secret information because it contains information that: 1. Is a formula, pattern, compilation, program, device, method, technique or process, AND 2. Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; AND 3. Is the subject of efforts by myself or my organization that are reasonable under the circumstances to maintain its secrecy.

NOTE: Failure to attach an explanation may result in a determination that the information does not meet the statutory trade secret definition. All information that does not meet the definition of trade secret as defined by A.A.C. R2-7-101(52) will become public in accordance with A.A.C. R2-7-C317. State may make its own determination on materials in accordance with A.A.C. R2-7-103.

If State agrees with Offeror's designation of trade secret or confidentiality and the determination is challenged, the undersigned hereby agrees to cooperate and support the defense of the determination with all interested parties, including legal counsel or other necessary assistance.

By submitting this response, Offeror agrees that the entire Offer, including confidential, trade secret and proprietary information may be shared with an evaluation committee and technical advisors during the evaluation process. Offeror agrees to indemnify and hold State, its agents and employees, harmless from any claims or causes of action relating to State's withholding of information based upon reliance on the above representations, including the payment of all costs and attorney fees incurred by State in defending such an action.

x Offeror Company Name	Signature of Authorized Person
x Address	x Printed Name
x City State Zip	x Title

End of Attachment 5-A

Copy of A.A.C. R2-7-103 [Confidential Information] as was current at time of Solicitation issuance

PROVIDED FOR REFERENCE ONLY

A. If a person wants to assert that a person's offer, specification, or protest contains a trade secret or other proprietary information, a person shall include with the submission a statement supporting this assertion. A person shall clearly designate any trade secret and other proprietary information, using the term "confidential". Contract terms and conditions, pricing, and information generally available to the public are not considered confidential information under this Section.

B. Until a final determination is made under subsection (C), an agency chief procurement officer shall not disclose information designated as confidential under subsection (A) except to those individuals deemed by an agency chief procurement officer to have a legitimate state interest.

C. Upon receipt of a submission, an agency chief procurement officer shall make one of the following written determinations:

1. The designated information is confidential and the agency chief procurement officer shall not disclose the information except to those individuals deemed by the agency chief procurement officer to have a legitimate state interest;

2. The designated information is not confidential; or

3. Additional information is required before a final confidentiality determination can be made.

D. If an agency chief procurement officer determines that information submitted is not confidential, a person who made the submission shall be notified in writing. The notice shall include a time period for requesting a review of the determination by the state procurement administrator.

E. An agency chief procurement officer may release information designated as confidential under subsection (A) if:

1. A request for review is not received by the state procurement administrator within the time period specified in the notice; or

2. The state procurement administrator, after review, makes a written determination that the designated information is not confidential.

- - -

Attachment 5-B

Conformance Statements

(When taking exceptions, Attachment 5-B and supplements must be uploaded as a separate word doc. file titled "Attachment 5-B".)

STATE WILL NOT CONSIDER ANY EXCEPTIONS UNLESS DESIGNATED ON THIS FORM.

READ PARAGRAPH 6.8 OF THE INSTRUCTIONS TO OFFERORS BEFORE TAKING ANY EXCEPTIONS – TAKING EXCEPTIONS CAN BE GROUNDS FOR STATE REJECTING OR DOWN-GRADING YOUR OFFER IN EVALUATION.

CONFORMANCE TO THE INSTRUCTIONS:
(PART 3 OF THE SOLICITATION)

Check one of the following – if neither is checked, State will assume that as equivalent to "YES":

○ YES – Offeror acknowledges that it has read and understands the Instructions to Offerors in Section 3-A of the Solicitation Documents and attests that its Offer complies.

○ NO – Offeror acknowledges that it has read and understands the Instructions to Offerors in Section 3-A of the Solicitation Documents, and attests that its Offer complies with both EXCEPT FOR the exceptions listed in **Attachment 5-B Supplement 1**.

CONFORMANCE TO THE SCOPE AND PRICING DOCUMENTS:
(PART 2 OF THE SOLICITATION)

Check one of the following – if neither is checked, State will assume that as equivalent to "YES":

○ YES – Offeror acknowledges that it has read and understands the Scope Document and the Pricing Document in Part 2 of the Solicitation Documents and attests that its Offer complies with both.

○ NO – Offeror acknowledges that it has read and understands the Scope Document and the Pricing Document in Part 2 of the Solicitation Documents and attests that its Offer complies with both EXCEPT FOR the exceptions listed in **Attachment 5-B Supplement 2**.

CONFORMANCE TO THE CONTRACT TERMS AND CONDITIONS:
(PART 2 OF THE SOLICITATION)

Check one of the following – if neither is checked, State will assume that as equivalent to "YES":

○ YES – Offeror acknowledges that it has read and understands the Special Terms and Conditions and the Uniform Terms and Conditions, along with their respective Exhibits and Appendices, in Part 2 of the Solicitation Documents and attests that its Offer complies with both.

○ NO – Offeror acknowledges that it has read and understand the Special Terms and Conditions and the Uniform Terms and Conditions, along with their respective Exhibits and Appendices in Part 2 of the Solicitation Documents and attests that its Offer complies with both EXCEPT FOR the exceptions listed in **Attachment 5-B Supplement 3**.

ATTACHMENT 5-B Supplement No. 1:

Exceptions to Instructions

Article / Paragraph or Exhibit Reference	Proposed Changes / Alternate Language	RFP Language (Copy and Paste from Solicitation)
Section 3-A: Instructions to Offerors		
x	X Exception: X Rationale:	x
x	X Exception: X Rationale:	x
x	X Exception: X Rationale:	x

Company Name	Signature of Person Authorized to Sign

ATTACHMENT 5-B Supplement No. 2:

Exceptions to Scope of Work and Pricing

Article / Paragraph or Exhibit Reference	Proposed Changes / Alternate Language	RFP Language (Copy and Paste from Solicitation)
Section 2-A: Scope of Work		
x	X Exception: X Rationale:	x
x	X Exception: X Rationale:	x
x	X Exception: X Rationale:	x
Section 2-B: Pricing Document		
x	X Exception: X Rationale:	x
x	X Exception: X Rationale:	x

Company Name	Signature of Person Authorized to Sign

ATTACHMENT 5-B Supplement No. 3:

Exceptions to Contract Terms & Conditions

Article/ Paragraph or Exhibit Reference	Proposed Changes / Alternate Language	RFP Language (Copy and Paste from Solicitation)
Section 2-C: Special Terms & Conditions		
x	X Exception: X Rationale:	x
x	X Exception: X Rationale:	x
x	X Exception: X Rationale:	x
Article/ Paragraph or Appendix Reference	**Proposed Changes / Alternate Language**	**RFP Language (Copy and Paste from Solicitation)**
Section 2-D: Uniform Terms & Conditions		
x	X Exception: Rationale:	x
x	X Exception: X Rationale:	x

Company Name	Signature of Person Authorized to Sign

End of Attachment 5-B

Attachment 5-C

Letter of Insurability

The Offeror shall provide a Letter of Insurability from your Insurance company as a proof that the Offeror currently possesses the required insurance as stated in the Section 6.2 of Special Terms and Conditions or the Offeror is able to obtain the required Minimum Scope and Limits of Insurance should a contract be awarded to them.

The Letter of Insurability (and any additional letters) should be clearly marked as

Attachment 5 –C Supplement Insurance

NOTE: If Awarded a Contract, The Offeror shall provide a Certificate of Insurance (e.g. ACORD forms) and associated policy endorsement(s) prior to beginning service(s) under the Contract.

End of Attachment 5-C

Attachment 5-D

RESERVED

End of Attachment 5-D

Attachment 5-E

Offer Checklist

STATE MAY DETERMINE YOUR PROPOSAL IS NON-RESPONSIVE IF YOU DO NOT SUBMIT ALL ATTACHMENTS.

	DOCUMENT	SUBMITTED
1.	Attachment 1: Offer and Acceptance Form	☐ YES ☐ no
2.	Attachment 2-A: Experience and Capacity Questionnaire	☐ YES ☐ no
3.	Attachment 2-B: Reserved	☐ YES ☐ no
4.	Attachment 3-A: Method Proposal	☐ YES ☐ no
5.	Attachment 3-B: Key Personnel Proposal	☐ YES ☐ no
6.	Attachment 3-C: Proposed Subcontractors	☐ YES ☐ no
7.	Attachment 3-E: Israel Boycott Disclosure	☐ YES ☐ no
8.	Attachment 4: Pricing Sheets	☐ YES ☐ no
9.	Attachment 5-A: Confidential Information Designation	☐ YES ☐ no
10.	Attachment 5-B: Conformance Statements	☐ YES ☐ no
11.	Attachment 5-C: Letter of Insurability	☐ YES ☐ no
12.	Attachment 5-D: Reserved	☐ YES ☐ no
13.	Attachment 5-E: Offer Checklist	☐ YES ☐ no

End of Attachment 5-E

End of Part 3

Intent to Participate Report

2020 Software VAR

State	Self-reported Estimated Volume*	Approximate FY2020 Spend**
ALABAMA		
ALASKA	$19,000,000	$18,950,000
ARIZONA	$109,231,280	$109,230,000
ARKANSAS		
CALIFORNIA	Not reported	$30,310,000
COLORADO	$65,000,000	$88,890,000
CONNECTICUT	$18,440,703	$7,660,000
DELAWARE		
DISTRICT OF COLUMBIA		
FLORIDA	$35,080,336	$36,560,000
GEORGIA		
HAWAII	$27,858,471	$28,560,000
IDAHO		
ILLINOIS	Not reported	$1,120,000
INDIANA		
IOWA		
KANSAS		
KENTUCKY		
LOUISIANA	$28,360,022	$28,390,000
MAINE	$1,704,042	$7,300,000
MARYLAND	$20,000,000	$340,000
MASSACHUSETTS		
MICHIGAN		
MINNESOTA	$44,200,000	$44,190,000
MISSISSIPPI	$4,844,574	$5,340,000
MISSOURI		
MONTANA	$8,100,000	$8,110,000
NEBRASKA	Not reported	$11,040,000
NEVADA		
NEW HAMPSHIRE		
NEW JERSEY		
NEW MEXICO	$63,735,750	$19,550,000
NEW YORK		
NORTH CAROLINA		
NORTH DAKOTA	$503,906	$1,000,000
OHIO		
OKLAHOMA	$14,118,300	$17,700,000
OREGON	$37,000,000	$44,040,000
PENNSYLVANIA		
RHODE ISLAND		
SOUTH CAROLINA		
SOUTH DAKOTA	$1,500,000	$480,000
TENNESSEE	$19,844,909	$24,300,000
TEXAS		
UTAH	$23,238,814	$24,410,000
VERMONT	$13,605,000	$0
VIRGINIA		
WASHINGTON	$96,983,643	$96,380,000
WEST VIRGINIA		
WISCONSIN		
WYOMING	$14,000,000	$3,580,000
AMERICAN SAMOA		
NORTHERN MARIANA ISLANDS		
GUAM		
PUERTO RICO		
VIRGIN ISLANDS		
TOTALS	**$666,349,749.18**	**$657,430,000.00**

*These figures represent a state's self-reported annual estimated volume of spend for this commodity, including potential political subdivision usage if available. **This information is being shared as an informational courtesy only and should not be relied on or interpreted as a guarantee of any amount of future spend.**

These figures are rounded approximations of reported sales from July 2019 through June 2020. **This information is being shared as an informational courtesy only and should not be relied on or interpreted as a guarantee of any amount of future spend.

EXHIBIT 2 – SAMPLE OF PARTICIPATING STATES' TERMS AND CONDITIONS

CALIFORNIA

Terms and conditions listed below will be incorporated and made a part of California Participating Addenda. The state of California reserves the right to add additional terms and/or use the latest versions of the terms below for individual Participating Addenda.

A. Terms

1) General Provisions – Information Technology (GSPD-401IT) effective 9/5/2014. This document can be viewed on the DGS Procurement Division website (https://www.dgs.ca.gov/PD/Resources/Page-Content/Procurement- Division-Resources-List-Folder/Model-Contract-Language).

2) Cloud Computing Software as a Service (SaaS) General Provisions effective 6/7/2019. This document can be viewed on the DGS Procurement Division website (https://www.dgs.ca.gov/PD/Resources/Page-Content/Procurement- Division-Resources-List-Folder/Model-Contract-Language).

3) Cloud Computing Special Provisions for Software as a Service (SaaS) effective 03/15/18. This document can be viewed on the DGS Procurement Division website (https://www.dgs.ca.gov/PD/Resources/Page- Content/Procurement-Division-Resources-List-Folder/Model-Contract- Language).

B. Administrative Fee

Contractor shall submit a check, payable to the State of California, remitted to the Cooperative Agreement Unit for the calculated amount equal to 1.25% of the sales for the quarterly period.

Contractor must include the Participating Addendum Number on the check. Those checks submitted to the State without the Participating Addendum Number will be returned to Contractor for additional identifying information.

Administrative fee checks shall be submitted to: State

of California
Department of General Services, Procurement Division
Attention: Cooperative Agreement Payment Processing 707 3rd Street, 2nd Floor, MS 2-202
West Sacramento, CA 95605

The administrative fee shall not be included as an adjustment to Contractor's NASPO ValuePoint Master Agreement pricing.

The administrative fee shall not be invoiced or charged to the ordering agency.

Payment of the administrative fee is due irrespective of payment status on orders or service contracts from a purchasing entity.

Administrative fee checks are due for each quarter as follows:

Reporting Period	Due Date
January 1 to March 31	April 30
April 1 to June 30	July 31
July 1 to September 30	October 31
October 1 to December 31	January 31

Failure to meet administrative fee requirements and submit fees on a timely basis shall constitute grounds for suspension of the Participating Addendum.

HAWAII

GENERAL CONDITIONS

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GENERAL CONDITIONS

1. Coordination of Services by the STATE. The head of the purchasing agency ("HOPA") (which term includes the designee of the HOPA) shall coordinate the services to be provided by the CONTRACTOR in order to complete the performance required in the Contract. The CONTRACTOR shall maintain communications with HOPA at all stages of the CONTRACTOR'S work, and submit to HOPA for resolution any questions which may arise as to the performance of this Contract. "Purchasing agency" as used in these General Conditions means and includes any governmental body which is authorized under chapter 103D, HRS, or its implementing rules and procedures, or by way of delegation, to enter into contracts for the procurement of goods or services or both.

2. Relationship of Parties: Independent Contractor Status and Responsibilities, Including Tax Responsibilities.

   a. In the performance of services required under this Contract, the CONTRACTOR is an "independent contractor," with the authority and responsibility to control and direct the performance and details of the work and services required under this Contract; however, the STATE shall have a general right to inspect work in progress to determine whether, in the STATE'S opinion, the services are being performed by the CONTRACTOR in compliance with this Contract. Unless otherwise provided by special condition, it is understood that the STATE does not agree to use the CONTRACTOR exclusively, and that the CONTRACTOR is free to contract to provide services to other individuals or entities while under contract with the STATE.

   b. The CONTRACTOR and the CONTRACTOR'S employees and agents are not by reason of this Contract, agents or employees of the State for any purpose, and the CONTRACTOR and the CONTRACTOR'S employees and agents shall not be entitled to claim or receive from the State any vacation, sick leave, retirement, workers' compensation, unemployment insurance, or other benefits provided to state employees.

   c. The CONTRACTOR shall be responsible for the accuracy, completeness, and adequacy of the CONTRACTOR'S performance under this Contract. Furthermore, the CONTRACTOR intentionally, voluntarily, and knowingly assumes the sole and entire liability to the CONTRACTOR'S employees and agents, and to any individual not a party to this Contract, for all loss, damage, or injury caused by the CONTRACTOR, or the CONTRACTOR'S employees or agents in the course of their employment.

   d. The CONTRACTOR shall be responsible for payment of all applicable federal, state, and county taxes and fees which may become due and owing by the CONTRACTOR by reason of this Contract, including but not limited to (i) income taxes, (ii) employment related fees, assessments, and taxes, and (iii) general excise taxes. The CONTRACTOR also is responsible for obtaining all licenses, permits, and certificates that may be required in order to perform this Contract.

   e. The CONTRACTOR shall obtain a general excise tax license from the Department of Taxation, State of Hawaii, in accordance with section 237-9, HRS, and shall comply with all requirements thereof. The CONTRACTOR shall obtain a tax clearance certificate from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of the Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid and submit the same to the STATE prior to commencing any performance under this Contract. The CONTRACTOR shall also be solely responsible for meeting all requirements necessary to obtain the tax clearance certificate required for final payment under sections 103-53 and 103D-328, HRS, and paragraph 17 of these General Conditions.

f. The CONTRACTOR is responsible for securing all employee-related insurance coverage for the CONTRACTOR and the CONTRACTOR'S employees and agents that is or may be required by law, and for payment of all premiums, costs, and other liabilities associated with securing the insurance coverage.

g. The CONTRACTOR shall obtain a certificate of compliance issued by the Department of Labor and Industrial Relations, State of Hawaii, in accordance with section103D-310, HRS, and section 3-122- 112, HAR, that is current within six months of the date of issuance.

h. The CONTRACTOR shall obtain a certificate of good standing issued by the Department of Commerce and Consumer Affairs, State of Hawaii, in accordance with section 103D-310, HRS, and section 3-122-112, HAR, that is current within six months of the date of issuance.

i. In lieu of the above certificates from the Department of Taxation, Labor and Industrial Relations, and Commerce and Consumer Affairs, the CONTRACTOR may submit proof of compliance through the State Procurement Office's designated certification process.

3. Personnel Requirements.

a. The CONTRACTOR shall secure, at the CONTRACTOR'S own expense, all personnel required to perform this Contract.

b. The CONTRACTOR shall ensure that the CONTRACTOR'S employees or agents are experienced and fully qualified to engage in the activities and perform the services required under this Contract, and that all applicable licensing and operating requirements imposed or required under federal, state, or county law, and all applicable accreditation and other standards of quality generally accepted in the field of the activities of such employees and agents are complied with and satisfied.

4. Nondiscrimination. No person performing work under this Contract, including any subcontractor, employee, or agent of the CONTRACTOR, shall engage in any discrimination that is prohibited by any applicable federal, state, or county law.

5. Conflicts of Interest. The CONTRACTOR represents that neither the CONTRACTOR, nor any employee or agent of the CONTRACTOR, presently has any interest, and promises that no such interest, direct or indirect, shall be acquired, that would or might conflict in any manner or degree with the CONTRACTOR'S performance under this Contract.

6. Subcontracts and Assignments. The CONTRACTOR shall not assign or subcontract any of the CONTRACTOR'S duties, obligations, or interests under this Contract and no such assignment or subcontract shall be effective unless (i) the CONTRACTOR obtains the prior written consent of the STATE, and (ii) the CONTRACTOR'S assignee or subcontractor submits to the STATE a tax clearance certificate from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR'S assignee or subcontractor have been paid. Additionally, no assignment by the CONTRACTOR of the CONTRACTOR'S right to compensation under this Contract shall be effective unless and until the assignment is approved by the Comptroller of the State of Hawaii, as provided in section 40-58, HRS.

a. Recognition of a successor in interest. When in the best interest of the State, a successor in interest may be recognized in an assignment contract in which the STATE, the CONTRACTOR and the assignee or transferee (hereinafter referred to as the "Assignee") agree that:

(1) The Assignee assumes all of the CONTRACTOR'S obligations;

(2) The CONTRACTOR remains liable for all obligations under this Contract but

waives all rights under this Contract as against the STATE; and

(3) The CONTRACTOR shall continue to furnish, and the Assignee shall also furnish, all required bonds.

b. Change of name. When the CONTRACTOR asks to change the name in which it holds this Contract with the STATE, the procurement officer of the purchasing agency (hereinafter referred to as the "Agency procurement officer") shall, upon receipt of a document acceptable or satisfactory to the

Agency procurement officer indicating such change of name (for example, an amendment to the CONTRACTOR'S articles of incorporation), enter into an amendment to this Contract with the CONTRACTOR to effect such a change of name. The amendment to this Contract changing the CONTRACTOR'S name shall specifically indicate that no other terms and conditions of this Contract are thereby changed.

c. Reports. All assignment contracts and amendments to this Contract effecting changes of the CONTRACTOR'S name or novations hereunder shall be reported to the chief procurement officer (CPO) as defined in section 103D-203(a), HRS, within thirty days of the date that the assignment contract or amendment becomes effective.

d. Actions affecting more than one purchasing agency. Notwithstanding the provisions of subparagraphs 6a through 6c herein, when the CONTRACTOR holds contracts with more than one purchasing agency of the State, the assignment contracts and the novation and change of name amendments herein authorized shall be processed only through the CPO's office.

7. Indemnification and Defense. The CONTRACTOR shall defend, indemnify, and hold harmless the State of Hawaii, the contracting agency, and their officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefore, arising out of or resulting from the acts or omissions of the CONTRACTOR or the CONTRACTOR'S employees, officers, agents, or subcontractors under this Contract. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Contract.

8. Cost of Litigation. In case the STATE shall, without any fault on its part, be made a party to any litigation commenced by or against the CONTRACTOR in connection with this Contract, the CONTRACTOR shall pay all costs and expenses incurred by or imposed on the STATE, including attorneys' fees.

9. Liquidated Damages. When the CONTRACTOR is given notice of delay or nonperformance as specified in paragraph 13 (Termination for Default) and fails to cure in the time specified, it is agreed the CONTRACTOR shall pay to the STATE the amount, if any, set forth in this Contract per calendar day from the date set for cure until either (i) the STATE reasonably obtains similar goods or services, or both, if the CONTRACTOR is terminated for default, or (ii) until the CONTRACTOR provides the goods or services, or both, if the CONTRACTOR is not terminated for default. To the extent that the CONTRACTOR'S delay or nonperformance is excused under paragraph 13d (Excuse for Nonperformance or Delay Performance), liquidated damages shall not be assessable against the CONTRACTOR. The CONTRACTOR remains liable for damages caused other than by delay.

10. STATE'S Right of Offset. The STATE may offset against any monies or other obligations the STATE owes to the CONTRACTOR under this Contract, any amounts owed to the State of Hawaii by the CONTRACTOR under this Contract or any other contracts, or pursuant to any law or other obligation owed to the State of Hawaii by the CONTRACTOR, including, without limitation, the payment of any taxes or levies of any kind or nature. The STATE will notify the CONTRACTOR in writing of any offset and the nature of such offset. For purposes of this paragraph, amounts owed

to the State of Hawaii shall not include debts or obligations which have been liquidated, agreed to by the CONTRACTOR, and are covered by an installment payment or other settlement plan approved by the State of Hawaii, provided, however, that the CONTRACTOR shall be entitled to such exclusion only to the extent that the CONTRACTOR is current with, and not delinquent on, any payments or obligations owed to the State of Hawaii under such payment or other settlement plan.

11. Disputes. Disputes shall be resolved in accordance with section 103D-703, HRS, and chapter 3-126, Hawaii Administrative Rules ("HAR"), as the same may be amended from time to time.

12. Suspension of Contract. The STATE reserves the right at any time and for any reason to suspend this Contract for any reasonable period, upon written notice to the CONTRACTOR in accordance with the provisions herein.

a. Order to stop performance. The Agency procurement officer may, by written order to the CONTRACTOR, at any time, and without notice to any surety, require the CONTRACTOR to stop all or any part of the performance called for by this Contract. This order shall be for a specified

period not exceeding sixty (60) days after the order is delivered to the CONTRACTOR, unless the parties agree to any further period. Any such order shall be identified specifically as a stop performance order issued pursuant to this section. Stop performance orders shall include, as appropriate: (1) A clear description of the work to be suspended; (2) Instructions as to the issuance of further orders by the CONTRACTOR for material or services; (3) Guidance as to action to be taken on subcontracts; and (4) Other instructions and suggestions to the CONTRACTOR for minimizing costs. Upon receipt of such an order, the CONTRACTOR shall forthwith comply with its terms and suspend all performance under this Contract at the time stated, provided, however, the CONTRACTOR shall take all reasonable steps to minimize the occurrence of costs allocable to the performance covered by the order during the period of performance stoppage. Before the stop performance order expires, or within any further period to which the parties shall have agreed, the Agency procurement officer shall either:

(1) Cancel the stop performance order; or

(2) Terminate the performance covered by such order as provided in the termination for default provision or the termination for convenience provision of this Contract.

b. Cancellation or expiration of the order. If a stop performance order issued under this section is cancelled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the CONTRACTOR shall have the right to resume performance. An appropriate adjustment shall be made in the delivery schedule or contract price, or both, and the Contract shall be modified in writing accordingly, if:

(1) The stop performance order results in an increase in the time required for, or in the CONTRACTOR'S cost properly allocable to, the performance of any part of this Contract; and

(2) The CONTRACTOR asserts a claim for such an adjustment within thirty (30) days after the end of the period of performance stoppage; provided that, if the Agency procurement officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this Contract.

c. Termination of stopped performance. If a stop performance order is not cancelled and the performance covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop performance order shall be allowable by

adjustment or otherwise.

d. Adjustment of price. Any adjustment in contract price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.

13. Termination for Default.

a. Default. If the CONTRACTOR refuses or fails to perform any of the provisions of this Contract with such diligence as will ensure its completion within the time specified in this Contract, or any extension thereof, otherwise fails to timely satisfy the Contract provisions, or commits any other substantial breach of this Contract, the Agency procurement officer may notify the CONTRACTOR in writing of the delay or non-performance and if not cured in ten (10) days or any longer time specified in writing by the Agency procurement officer, such officer may terminate the CONTRACTOR'S right to proceed with the Contract or such part of the Contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part, the Agency procurement officer may procure similar goods or services in a manner and upon the terms deemed appropriate by the Agency procurement officer. The CONTRACTOR shall continue performance of the Contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.

b. CONTRACTOR'S duties. Notwithstanding termination of the Contract and subject to any directions from the Agency procurement officer, the CONTRACTOR shall take timely, reasonable, and

necessary action to protect and preserve property in the possession of the CONTRACTOR in which the STATE has an interest.

c. Compensation. Payment for completed goods and services delivered and accepted by the STATE shall be at the price set forth in the Contract. Payment for the protection and preservation of property shall be in an amount agreed upon by the CONTRACTOR and the Agency procurement officer. If the parties fail to agree, the Agency procurement officer shall set an amount subject to the CONTRACTOR'S rights under chapter 3-126, HAR. The STATE may withhold from amounts due the CONTRACTOR such sums as the Agency procurement officer deems to be necessary to protect the STATE against loss because of outstanding liens or claims and to reimburse the STATE for the excess costs expected to be incurred by the STATE in procuring similar goods and services.

d. Excuse for nonperformance or delayed performance. The CONTRACTOR shall not be in default by reason of any failure in performance of this Contract in accordance with its terms, including any failure by the CONTRACTOR to make progress in the prosecution of the performance hereunder which endangers such performance, if the CONTRACTOR has notified the Agency procurement officer within fifteen (15) days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of a public enemy; acts of the State and any other governmental body in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, the CONTRACTOR shall not be deemed to be in default, unless the goods and services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit the CONTRACTOR to meet the requirements of the Contract. Upon request of the CONTRACTOR, the Agency procurement officer shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the CONTRACTOR'S progress and performance would have met the terms of the Contract, the delivery schedule shall be revised accordingly, subject to the rights of the STATE under this Contract. As used in this paragraph, the term "subcontractor" means subcontractor at any tier.

e. Erroneous termination for default. If, after notice of termination of the CONTRACTOR'S right to proceed under this paragraph, it is determined for any reason that the CONTRACTOR was not in default under this paragraph, or that the delay was excusable under the provisions of subparagraph 13d, "Excuse for nonperformance or delayed performance," the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to paragraph 14.

f. Additional rights and remedies. The rights and remedies provided in this paragraph are in addition to any other rights and remedies provided by law or under this Contract.

14. Termination for Convenience.

a. Termination. The Agency procurement officer may, when the interests of the STATE so require, terminate this Contract in whole or in part, for the convenience of the STATE. The Agency procurement officer shall give written notice of the termination to the CONTRACTOR specifying the part of the Contract terminated and when termination becomes effective.

b. CONTRACTOR'S obligations. The CONTRACTOR shall incur no further obligations in connection with the terminated performance and on the date(s) set in the notice of termination the CONTRACTOR will stop performance to the extent specified. The CONTRACTOR shall also terminate outstanding orders and subcontracts as they relate to the terminated performance. The CONTRACTOR shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated performance subject to the STATE'S approval. The Agency procurement officer may direct the CONTRACTOR to assign the CONTRACTOR'S right, title, and interest under terminated orders or subcontracts to the STATE. The CONTRACTOR must still complete the performance not terminated by the notice of termination and may incur obligations as necessary to do so.

c. Right to goods and work product. The Agency procurement officer may require the CONTRACTOR to transfer title and deliver to the STATE in the manner and to the extent directed by the Agency procurement officer:

(1) Any completed goods or work product; and

(2) The partially completed goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing material") as the CONTRACTOR has specifically produced or specially acquired for the performance of the terminated part of this Contract.

The CONTRACTOR shall, upon direction of the Agency procurement officer, protect and preserve property in the possession of the CONTRACTOR in which the STATE has an interest. If the Agency procurement officer does not exercise this right, the CONTRACTOR shall use best efforts to sell such goods and manufacturing materials. Use of this paragraph in no way implies that the STATE has breached the Contract by exercise of the termination for convenience provision.

d. Compensation.

(1) The CONTRACTOR shall submit a termination claim specifying the amounts due because of the termination for convenience together with the cost or pricing data, submitted to the extent required by chapter 3-122, HAR, bearing on such claim. If the CONTRACTOR fails to file a termination claim within one year from the effective date of termination, the Agency procurement officer may pay the CONTRACTOR, if at all, an amount set in accordance with subparagraph 14d(3) below.

(2) The Agency procurement officer and the CONTRACTOR may agree to a settlement provided the CONTRACTOR has filed a termination claim supported by

cost or pricing data submitted as required and that the settlement does not exceed the total Contract price plus settlement costs reduced by payments previously made by the STATE, the proceeds of any sales of goods and manufacturing materials under subparagraph 14c, and the Contract price of the performance not terminated.

(3) Absent complete agreement under subparagraph 14d(2) the Agency procurement officer shall pay the CONTRACTOR the following amounts, provided payments agreed to under subparagraph 14d(2) shall not duplicate payments under this subparagraph for the following:

(A) Contract prices for goods or services accepted under the Contract;

(B) Costs incurred in preparing to perform and performing the terminated portion of the performance plus a fair and reasonable profit on such portion of the performance, such profit shall not include anticipatory profit or consequential damages, less amounts paid or to be paid for accepted goods or services; provided, however, that if it appears that the CONTRACTOR would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;

(C) Costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to subparagraph 14b. These costs must not include costs paid in accordance with subparagraph 14d(3)(B);

(D) The reasonable settlement costs of the CONTRACTOR, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the Contract and for the termination of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the terminated portion of this Contract. The total sum to be paid the CONTRACTOR under this subparagraph shall not exceed the

total Contract price plus the reasonable settlement costs of the CONTRACTOR reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under subparagraph 14d(2), and the contract price of performance not terminated.

(4) Costs claimed, agreed to, or established under subparagraphs 14d(2) and 14d(3) shall be in accordance with Chapter 3-123 (Cost Principles) of the Procurement Rules.

15. Claims Based on the Agency Procurement Officer's Actions or Omissions.

a. Changes in scope. If any action or omission on the part of the Agency procurement officer (which term includes the designee of such officer for purposes of this paragraph 15) requiring performance changes within the scope of the Contract constitutes the basis for a claim by the CONTRACTOR for additional compensation, damages, or an extension of time for completion, the CONTRACTOR shall continue with performance of the Contract in compliance with the directions or orders of such officials, but by so doing, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, damages, or an extension of time for completion; provided:

(1) Written notice required. The CONTRACTOR shall give written notice to the Agency procurement officer:

(A) Prior to the commencement of the performance involved, if at that time the CONTRACTOR knows of the occurrence of such action or omission;

(B) Within thirty (30) days after the CONTRACTOR knows of the occurrence of such action or omission, if the CONTRACTOR did not have such knowledge prior to the commencement of the performance; or

(C) Within such further time as may be allowed by the Agency procurement officer in writing.

(2) Notice content. This notice shall state that the CONTRACTOR regards the act or omission as a reason which may entitle the CONTRACTOR to additional compensation, damages, or an extension of time. The Agency procurement officer, upon receipt of such notice, may rescind such action, remedy such omission, or take such other steps as may be deemed advisable in the discretion of the Agency procurement officer;

(3) Basis must be explained. The notice required by subparagraph 15a(1) describes as clearly as practicable at the time the reasons why the CONTRACTOR believes that additional compensation, damages, or an extension of time may be remedies to which the CONTRACTOR is entitled; and

(4) Claim must be justified. The CONTRACTOR must maintain and, upon request, make available to the Agency procurement officer within a reasonable time, detailed records to the extent practicable, and other documentation and evidence satisfactory to the STATE, justifying the claimed additional costs or an extension of time in connection with such changes.

b. CONTRACTOR not excused. Nothing herein contained, however, shall excuse the CONTRACTOR from compliance with any rules or laws precluding any state officers and CONTRACTOR from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the Contract.

c. Price adjustment. Any adjustment in the price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.

16. Costs and Expenses. Any reimbursement due the CONTRACTOR for per diem and transportation expenses under this Contract shall be subject to chapter 3-123 (Cost Principles), HAR, and the following guidelines:

a. Reimbursement for air transportation shall be for actual cost or coach class air fare, whichever is less.

b. Reimbursement for ground transportation costs shall not exceed the actual cost of renting an intermediate-sized vehicle.

c. Unless prior written approval of the HOPA is obtained, reimbursement for subsistence allowance (i.e., hotel and meals, etc.) shall not exceed the applicable daily authorized rates for inter-island or out-of-state travel that are set forth in the current Governor's Executive Order authorizing adjustments in salaries and benefits for state officers and employees in the executive branch who are excluded from collective bargaining coverage.

17. Payment Procedures; Final Payment; Tax Clearance.

a. Original invoices required. All payments under this Contract shall be made only upon submission by the CONTRACTOR of original invoices specifying the amount due and certifying that services requested under the Contract have been performed by the CONTRACTOR according to the Contract.

b. Subject to available funds. Such payments are subject to availability of funds and allotment by the Director of Finance in accordance with chapter 37, HRS. Further, all payments shall be made in accordance with and subject to chapter 40, HRS.

c. Prompt payment.

(1) Any money, other than retainage, paid to the CONTRACTOR shall be disbursed to subcontractors within ten (10) days after receipt of the money in accordance with the terms of the subcontract; provided that the subcontractor has met all the terms and conditions of the subcontract and there are no bona fide disputes; and

(2) Upon final payment to the CONTRACTOR, full payment to the subcontractor, including retainage, shall be made within ten (10) days after receipt of the money; provided that there are no bona fide disputes over the subcontractor's performance under the subcontract.

d. Final payment. Final payment under this Contract shall be subject to sections 103-53 and 103D-328, HRS, which require a tax clearance from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid. Further, in accordance with section 3-122-112, HAR, CONTRACTOR shall provide a certificate affirming that the CONTRACTOR has remained in compliance with all applicable laws as required by this section.

18. Federal Funds. If this Contract is payable in whole or in part from federal funds, CONTRACTOR agrees that, as to the portion of the compensation under this Contract to be payable from federal funds, the CONTRACTOR shall be paid only from such funds received from the federal government, and shall not be paid from any other funds. Failure of the STATE to receive anticipated federal funds shall not be considered a breach by the STATE or an excuse for nonperformance by the CONTRACTOR.

19. Modifications of Contract.

a. In writing. Any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract permitted by this Contract shall be made by written amendment to this Contract, signed by the CONTRACTOR and the STATE, provided that change orders shall be made in accordance with paragraph 20 herein.

b. No oral modification. No oral modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract shall be permitted.

c. Agency procurement officer. By written order, at any time, and without notice to any surety, the Agency procurement officer may unilaterally order of the CONTRACTOR:

(A) Changes in the work within the scope of the Contract; and

(B) Changes in the time of performance of the Contract that do not alter the scope of the Contract work.

d. Adjustments of price or time for performance. If any modification increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, an adjustment shall be made and this Contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined, where applicable, in accordance with the price adjustment clause of this Contract or as negotiated.

e. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if written modification of the Contract is not made prior to final payment under this Contract.

f. Claims not barred. In the absence of a written contract modification, nothing in this clause shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under this Contract or for a breach of contract.

g. Head of the purchasing agency approval. If this is a professional services contract awarded pursuant to section 103D-303 or 103D-304, HRS, any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract which increases the amount payable to the CONTRACTOR by at least $25,000.00 and ten per cent (10%) or more of the initial contract price, must receive the prior approval of the head of the purchasing agency.

h. Tax clearance. The STATE may, at its discretion, require the CONTRACTOR to submit to the STATE, prior to the STATE'S approval of any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract, a tax clearance from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid.

i. Sole source contracts. Amendments to sole source contracts that would change the original scope of the Contract may only be made with the approval of the CPO. Annual renewal of a sole source contract for services should not be submitted as an amendment.

20. Change Order. The Agency procurement officer may, by a written order signed only by the STATE, at any time, and without notice to any surety, and subject to all appropriate adjustments, make changes within the general scope of this Contract in any one or more of the following:

(1) Drawings, designs, or specifications, if the goods or services to be furnished are to be specially provided to the STATE in accordance therewith;

(2) Method of delivery; or

(3) Place of delivery.

a. Adjustments of price or time for performance. If any change order increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, whether or not changed by the order, an adjustment shall be made and the Contract modified in writing accordingly. Any adjustment in the Contract price made pursuant to this provision shall be determined in accordance with the price adjustment provision of this Contract. Failure of the parties to agree to an adjustment shall not excuse the CONTRACTOR from proceeding with the Contract as changed, provided that the Agency procurement officer promptly and duly makes the provisional adjustments in payment or time for performance as may be reasonable. By

proceeding with the work, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, or any extension of time for completion.

b. Time period for claim. Within ten (10) days after receipt of a written change order under subparagraph 20a, unless the period is extended by the Agency procurement officer in writing, the CONTRACTOR shall respond with a claim for an adjustment. The requirement for a timely written response by CONTRACTOR cannot be waived and shall be a condition precedent to the assertion of a claim.

c. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment

hereunder shall be allowed if a written response is not given prior to final payment under this Contract.

d. Other claims not barred. In the absence of a change order, nothing in this paragraph 20 shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under the Contract or for breach of contract.

21. Price Adjustment.

a. Price adjustment. Any adjustment in the contract price pursuant to a provision in this Contract shall be made in one or more of the following ways:

(1) By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;

(2) By unit prices specified in the Contract or subsequently agreed upon;

(3) By the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as specified in the Contract or subsequently agreed upon;

(4) In such other manner as the parties may mutually agree; or

(5) In the absence of agreement between the parties, by a unilateral determination by the Agency procurement officer of the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as computed by the Agency procurement officer in accordance with generally accepted accounting principles and applicable sections of chapters 3-123 and 3-126, HAR.

b. Submission of cost or pricing data. The CONTRACTOR shall provide cost or pricing data for any price adjustments subject to the provisions of chapter 3-122, HAR.

22. Variation in Quantity for Definite Quantity Contracts. Upon the agreement of the STATE and the CONTRACTOR, the quantity of goods or services, or both, if a definite quantity is specified in this Contract, may be increased by a maximum of ten per cent (10%); provided the unit prices will remain the same except for any price adjustments otherwise applicable; and the Agency procurement officer makes a written determination that such an increase will either be more economical than awarding another contract or that it would not be practical to award another contract.

23. Changes in Cost-Reimbursement Contract. If this Contract is a cost-reimbursement contract, the following provisions shall apply:

a. The Agency procurement officer may at any time by written order, and without notice to the sureties, if any, make changes within the general scope of the Contract in any one or more of the following:

(1) Description of performance (Attachment 1);

(2) Time of performance (i.e., hours of the day, days of the week, etc.);

(3) Place of performance of services;

(4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the STATE in accordance with the drawings, designs, or specifications;

(5) Method of shipment or packing of supplies; or

(6) Place of delivery.

b. If any change causes an increase or decrease in the estimated cost of, or the time required for performance of, any part of the performance under this Contract, whether or not changed by the order, or otherwise affects any other terms and conditions of this Contract, the Agency procurement officer shall make an equitable adjustment in the (1) estimated cost, delivery or completion schedule, or both; (2) amount of any fixed fee; and (3) other affected terms and shall modify the Contract accordingly.

c. The CONTRACTOR must assert the CONTRACTOR'S rights to an adjustment under this provision within thirty (30) days from the day of receipt of the written order. However, if the Agency procurement officer decides that the facts justify it, the Agency procurement officer may receive and act upon a proposal submitted before final payment under the Contract.

d. Failure to agree to any adjustment shall be a dispute under paragraph 11 of this Contract. However, nothing in this provision shall excuse the CONTRACTOR from proceeding with the Contract as changed.

e. Notwithstanding the terms and conditions of subparagraphs 23a and 23b, the estimated cost of this Contract and, if this Contract is incrementally funded, the funds allotted for the performance of this Contract, shall not be increased or considered to be increased except by specific written modification of the Contract indicating the new contract estimated cost and, if this contract is incrementally funded, the new amount allotted to the contract.

24. Confidentiality of Material.

a. All material given to or made available to the CONTRACTOR by virtue of this Contract, which is identified as proprietary or confidential information, will be safeguarded by the CONTRACTOR and shall not be disclosed to any individual or organization without the prior written approval of the STATE.

b. All information, data, or other material provided by the CONTRACTOR to the STATE shall be subject to the Uniform Information Practices Act, chapter 92F, HRS.

25. Publicity. The CONTRACTOR shall not refer to the STATE, or any office, agency, or officer thereof, or any state employee, including the HOPA, the CPO, the Agency procurement officer, or to the services or goods, or both, provided under this Contract, in any of the CONTRACTOR'S brochures, advertisements, or other publicity of the CONTRACTOR. All media contacts with the CONTRACTOR about the subject matter of this Contract shall be referred to the Agency procurement officer.

26. Ownership Rights and Copyright. The STATE shall have complete ownership of all material, both finished and unfinished, which is developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract, and all such material shall be considered "works made for hire." All such material shall be delivered to the STATE upon expiration or termination of this Contract. The STATE, in its sole discretion, shall have the exclusive right to copyright any product, concept, or material developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract.

27. Liens and Warranties. Goods provided under this Contract shall be provided free of all liens and provided together with all applicable warranties, or with the warranties described in the Contract documents, whichever are greater.

28. Audit of Books and Records of the CONTRACTOR. The STATE may, at reasonable times and places, audit the books and records of the CONTRACTOR, prospective contractor, subcontractor, or prospective subcontractor which are related to:

a. The cost or pricing data, and

b. A state contract, including subcontracts, other than a firm fixed-price contract.

29. Cost or Pricing Data. Cost or pricing data must be submitted to the Agency procurement officer and timely certified as accurate for contracts over $100,000 unless the contract is for a multiple-term or as otherwise specified by the Agency procurement officer. Unless otherwise required by the Agency procurement officer, cost or pricing data submission is not required for contracts awarded pursuant to competitive sealed bid procedures.

If certified cost or pricing data are subsequently found to have been inaccurate, incomplete, or noncurrent as of the date stated in the certificate, the STATE is entitled to an adjustment of the contract price, including profit or fee, to exclude any significant sum by which the price, including profit or fee, was increased because of the defective data. It is presumed that overstated cost or pricing data increased the contract price in the amount of the defect plus related overhead and profit or fee. Therefore, unless there is a clear indication that the defective data was not used or relied upon, the price will be reduced in such amount.

30. Audit of Cost or Pricing Data. When cost or pricing principles are applicable, the STATE may require an audit of cost or pricing data.

31. Records Retention.

(1) Upon any termination of this Contract or as otherwise required by applicable law, CONTRACTOR shall, pursuant to chapter 487R, HRS, destroy all copies (paper or electronic form) of personal information received from the STATE.

(2) The CONTRACTOR and any subcontractors shall maintain the files, books, and records that relate to the Contract, including any personal information created or received by the CONTRACTOR on behalf of the STATE, and any cost or pricing data, for at least three (3) years after the date of final payment under the Contract. The personal information shall continue to be confidential and shall only be disclosed as permitted or required by law. After the three (3) year, or longer retention period as required by law has ended, the files, books, and records that contain personal information shall be destroyed pursuant to chapter 487R, HRS or returned to the STATE at the request of the STATE.

32. Antitrust Claims. The STATE and the CONTRACTOR recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the purchaser. Therefore, the CONTRACTOR hereby assigns to STATE any and all claims for overcharges as to goods and materials purchased in connection with this Contract, except as to overcharges which result from violations commencing after the price is established under this Contract and which are not passed on to the STATE under an escalation clause.

33. Patented Articles. The CONTRACTOR shall defend, indemnify, and hold harmless the STATE, and its officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys fees, and all claims, suits, and demands arising out of or resulting from any claims, demands, or actions by the patent holder for infringement or other improper or unauthorized use of any patented article, patented process, or patented appliance in connection with this Contract. The CONTRACTOR shall be solely responsible for correcting or curing to the satisfaction of the STATE any such infringement or improper or unauthorized use, including, without limitation: (a) furnishing at no cost to the STATE a substitute article, process, or appliance acceptable to the STATE, (b) paying royalties or other required payments to the patent holder, (c) obtaining proper authorizations or releases from the patent holder, and (d) furnishing such security to or making such arrangements with the patent holder as may be necessary to correct or cure any such infringement or improper or unauthorized use.

34. Governing Law. The validity of this Contract and any of its terms or provisions, as well as the rights and duties of the parties to this Contract, shall be governed by the laws of the State of Hawaii. Any action at law or in equity to enforce or interpret the provisions of this Contract shall be brought in a state court of competent jurisdiction in Honolulu, Hawaii.

35. Compliance with Laws. The CONTRACTOR shall comply with all federal, state, and county laws, ordinances, codes, rules, and regulations, as the same may be amended from time to time, that in any way affect the CONTRACTOR'S performance of this Contract.

36. Conflict Between General Conditions and Procurement Rules. In the event of a conflict between the General Conditions and the procurement rules, the procurement rules in effect on the date this Contract became effective shall control and are hereby incorporated by reference.

37. Entire Contract. This Contract sets forth all of the agreements, conditions, understandings, promises, warranties, and representations between the STATE and the CONTRACTOR relative to this Contract. This Contract supersedes all prior agreements, conditions, understandings, promises, warranties, and representations, which shall have no further force or effect. There are no agreements, conditions, understandings, promises, warranties, or representations, oral or written, express or implied, between the STATE and the CONTRACTOR other than as set forth or as referred to herein.

38. Severability. In the event that any provision of this Contract is declared invalid or unenforceable by a court, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining terms of this Contract.

39. Waiver. The failure of the STATE to insist upon the strict compliance with any term, provision, or condition of this Contract shall not constitute or be deemed to constitute a waiver or relinquishment of the STATE'S right to enforce the same in accordance with this Contract. The fact that the STATE specifically refers to one provision of the procurement rules or one section of the Hawaii Revised Statutes, and does not include other provisions or statutory sections in this Contract shall not constitute a waiver or relinquishment of the STATE'S rights or the CONTRACTOR'S obligations under the procurement rules or statutes.

40. Pollution Control. If during the performance of this Contract, the CONTRACTOR encounters a "release" or a "threatened release" of a reportable quantity of a "hazardous

substance," "pollutant," or "contaminant" as those terms are defined in section 128D-1, HRS, the CONTRACTOR shall immediately notify the STATE and all other appropriate state, county, or federal agencies as required by law. The Contractor shall take all necessary actions, including stopping work, to avoid causing, contributing to, or making worse a release of a hazardous substance, pollutant, or contaminant, and shall promptly obey any orders the Environmental Protection Agency or the state Department of Health issues in response to the release. In the event there is an ensuing cease-work period, and the STATE determines that this Contract requires an adjustment of the time for performance, the Contract shall be modified in writing accordingly.

41. Campaign Contributions. The CONTRACTOR is hereby notified of the applicability of 11-355, HRS, which states that campaign contributions are prohibited from specified state or county government contractors during the terms of their contracts if the contractors are paid with funds appropriated by a legislative body.

42. Confidentiality of Personal Information.

a. Definitions.

"Personal information" means an individual's first name or first initial and last name in combination with any one or more of the following data elements, when either name or data elements are not encrypted:

(1) Social security number;

(2) Driver's license number or Hawaii identification card number; or

(3) Account number, credit or debit card number, access code, or password that would permit access to an individual's financial information.

Personal information does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.

"Technological safeguards" means the technology and the policy and procedures for use of the technology to protect and control access to personal information.

b. Confidentiality of Material.

(1) All material given to or made available to the CONTRACTOR by the STATE by virtue of this Contract which is identified as personal information, shall be safeguarded by the CONTRACTOR and shall not be disclosed without the prior written approval of the STATE.

(2) CONTRACTOR agrees not to retain, use, or disclose personal information for any purpose other than as permitted or required by this Contract.

(3) CONTRACTOR agrees to implement appropriate "technological safeguards" that are acceptable to the STATE to reduce the risk of unauthorized access to personal information.

(4) CONTRACTOR shall report to the STATE in a prompt and complete manner any security breaches involving personal information.

(5) CONTRACTOR agrees to mitigate, to the extent practicable, any harmful effect that is known to CONTRACTOR because of a use or disclosure of personal information by CONTRACTOR in violation of the requirements of this paragraph.

(6) CONTRACTOR shall complete and retain a log of all disclosures made of personal information received from the STATE, or personal information created or received by CONTRACTOR on behalf of the STATE.

c. Security Awareness Training and Confidentiality Agreements.

(1) CONTRACTOR certifies that all of its employees who will have access to the personal information have completed training on security awareness topics relating to protecting personal information.

(2) CONTRACTOR certifies that confidentiality agreements have been signed by all of its employees who will have access to the personal information acknowledging that:

(A) The personal information collected, used, or maintained by the CONTRACTOR will be treated as confidential;

(B) Access to the personal information will be allowed only as necessary to perform the Contract; and

(C) Use of the personal information will be restricted to uses consistent with the services subject to this Contract.

d. Termination for Cause. In addition to any other remedies provided for by this Contract, if the STATE learns of a material breach by CONTRACTOR of this paragraph by CONTRACTOR, the STATE may at its sole discretion:

(1) Provide an opportunity for the CONTRACTOR to cure the breach or end the violation; or

(2) Immediately terminate this Contract.

In either instance, the CONTRACTOR and the STATE shall follow chapter 487N, HRS, with respect to notification of a security breach of personal information.

e. Records Retention.

(1) Upon any termination of this Contract or as otherwise required by applicable law, CONTRACTOR shall, pursuant to chapter 487R, HRS, destroy all copies (paper or electronic form) of personal information received from the STATE.

(2) The CONTRACTOR and any subcontractors shall maintain the files, books, and records that relate to the Contract, including any personal information created or received by the CONTRACTOR on behalf of the STATE, and any cost or pricing data, for at least three (3) years after the date of final payment under the Contract. The personal information shall continue to be confidential and shall only be disclosed as permitted or required by law. After the three (3) year, or longer retention period as required by law has ended, the files, books, and records that contain personal information shall be destroyed pursuant to chapter 487R, HRS or returned to the STATE at the request of the STATE.

ILLINOIS

STATE OF ILLINOIS

NASPO
ValuePoint
Software VAR
Specific Terms
and Conditions

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1. Participating Addendum executed by the State of Illinois will be designated as available to governmental units in Illinois. “Governmental unit” means State of Illinois, any State agency as defined in Section 1-15.100 of the Illinois Procurement Code (30 ILCS 500/), officers of the State of Illinois, any public authority which has the power to tax, or any other public entity created by statute. 30ILCS 525/.
2. In no event will the total term of any Participating Addendum, including the initial term and any extensions or amendments, exceed ten (10) years.
3. This contract and all related public records maintained by, provided to, or required to be provided to the State are subject to the Illinois Freedom of Information Act notwithstanding any provision to the contrary that may be found in this contract. 5 ILCS 140.
4. Any Participating Addendum executed by the State of Illinois is contingent upon and

subject to the availability of funds. The State of Illinois, at its sole option, may terminate or suspend any Participating Addendum, in whole or in part, without penalty or further payment being required, if (1) the Illinois General Assembly or the Federal funding source fails to make an appropriation sufficient to pay such obligation, or if funds needed are insufficient for any reason (30 ILCS 500/20-60), (2) the Governor of Illinois decreases the Agency's funding by reserving some or all of the Agency's appropriation(s) pursuant to power delegated to the Governor by the Illinois General Assembly, that a reduction is necessary or advisable based upon actual or projected budgetary considerations. Vendor will be notified in writing of the failure of appropriation or of a reduction or decrease.

5. Any claim against any State of Illinois, any State of Illinois agency as defined in Section 1-15.100 of the Illinois Procurement Code (30 ILCS 500/), or officers of the State of Illinois arising out of any Participating Addendum must be filed exclusively with the Illinois Court of Claims. 705 ILCS 505/1. Payments, including late payment charges, will be paid in accordance with the State Prompt Payment Act and rules when applicable. 30 ILCS 540; 74 Ill. Adm. Code 900. This shall be Vendor's sole remedy for late payments by the State of Illinois. Payment terms contained in Vendor's invoices shall have no force or effect. The State of Illinois shall not enter into binding arbitration to resolve any dispute arising out of any Participating Addendum. The State of Illinois does not waive sovereign immunity.

6. Illinois may further evaluate the lead state's awarded contracts to make best value determinations.

7. Registration in the Illinois Procurement Gateway is required before a Participating Addendum with the State of Illinois may be executed. For information on registration, please visit www.ipg.vendorreg.com.

8. Registration in BidBuy is required before a contract with the State of Illinois can be executed. For information on registration, please see the BidBuy Vendor Registration Manual.

MONTANA

Federal Terms and Conditions
(Non-Construction)

1. NONDISCRIMINATION

The Contractor agrees that no person shall be denied benefits of, or otherwise be subjected to discrimination in connection with the Contractor's performance under this contract, on the ground of race, religion, color, national origin, sex or handicap. Accordingly, and to the extent applicable, the Contractor agrees to comply with the following:

a. On the basis of race, color or national origin, in Title VI of the Civil Rights Act of 1964 (42 U.S.C. Section 2000d et seq.) as implemented by DoD regulations at 32 CFR part 195.

b. On the basis of race, color, religion, sex, or national origin, in Executive Order 11246 {3 CFR, 1964-1965 Comp. pg. 339}, as implemented by Department of Labor regulations at 41 CFR part 60.

c. On the basis of sex or blindness, in Title IX of the Education Amendments of 1972 (20 U.S.C. 1681, et seq.), as implemented by DoD regulations at 32 CFR part 196.

d. On the basis of age, in The Age Discrimination Act of 1975 (42 U.S.C. Section 6101 et seq.), as implemented by Department of Health and Human Services regulations at 45 CFR part 90.

e. On the basis of handicap, in Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as implemented by Department of Justice regulations at 28 CFR part 41 and DoD regulations at 32 CFR part 56.

2.LOBBYING

a. The Contractor agrees that it will not expend any funds appropriated by Congress to pay any person for influencing or attempting to influence an officer or employee of any agency, or a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; and, the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. The Final Rule, New Restrictions on Lobbying, issued by the Office of Management and Budget and the Department of Defense (32 CFR Part 28) to implement the provisions of Section 319 of Public Law 101-121 (31 U.S.C. Section 1352) is incorporated by reference and the State agrees to comply with all the provisions thereof, including any amendments to the Interim Final Rule that may hereafter be issued.

Page Break

3. DRUGFREE WORK PLACE

The Contractor agrees to comply with the requirements regarding drug-free workplace requirements in Subpart B of 32 CFR part 26, which implements sec. 5151-5160 of the Drug-Free Workplace Act of 1988 (Public Law 100-690, Title V, Subtitle D; 41 U.S.C. 701, et seq.).

4. ENVIRONMENTAL PROTECTION

a. The Contractor agrees that its performance under this contract shall comply with:

1. The requirements of Section 114 of the Clean Air Act (42 U.S.C. Section 7414);
2. Section 308 of the Federal Water Pollution Control Act (33 U.S.C. Section 1318), that relates generally to inspection, monitoring, entry reports, and information, and with all regulations and guidelines issued thereunder;
3. The Resources Conservation and Recovery Act (RCRA);
4. The Comprehensive Environmental Response, Compensation and Liabilities Act (CERCLA);
5. The National Environmental Policy Act (NEPA);

6. The Solid Waste Disposal Act (SWDA);

7. The applicable provisions of the Clean Air Act (42 U.S.C. 7401, et seq.) and Clean Water Act (33 U.S.C. 1251, et seq.), as implemented by Executive Order 11738 and Environmental Protection Agency (EPA) rules at 40 CFR Part 31;

8. To identify any impact this contract may have on the quality of the human environment and provide help as needed to comply with the National Environmental Policy Act (NEPA, at 42 U.S.C. 4321, et seq.) and any applicable federal, state or local environmental regulation.

b. In accordance with the EPA rules, the parties further agree that the Contractor shall also identify to the state any impact this contract may have on:

1. The quality of the human environment, and provide help the agency may need to comply with the National Environmental Policy Act (NEPA, at 42 U.S.C 4321, et seq.) and to prepare Environment Impact Statements or other required environmental documentation. In such cases, the recipient agrees to take no action that will have an adverse environmental impact (e.g., physical disturbance of a site such as breaking of ground) until the agency provides written notification of compliance with the environmental impact analysis process.

2. Flood-prone areas, and provide help the agency may need to comply with the National Flood Insurance Act of 1968 and Flood Disaster Protection Act of 1973 (42 U.S.C. 4001, et seq.), which require flood insurance, when available, for federally assisted construction or acquisition in flood-prone areas.

3. Coastal zones, and provide help the agency may need to comply with the Coastal Zone Management Act of 1972 (16 U.S.C. 1451, et seq.), concerning protection of U.S. coastal resources.

4. Coastal barriers, and provide help the agency may need to comply with the Coastal Barriers Resource Act (16 U.S.C. 3501 et seq.), concerning preservation of barrier resources.

5. Any existing or proposed component of the National Wild and Scenic Rivers System, and provide help the agency may need to comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 et seq.).

Underground sources of drinking water in areas that have an aquifer that is the sole or principal drinking water source, and provide help the agency may need to comply with the Safe Drinking Water Act (42 U.S.C 300H-3).

6. Underground sources of drinking water in areas that have an aquifer that is the sole or principal drinking work source, and provide help the agency may need to comply with the Safe Drinking Water Act (42 U.S.C 300H-3)

5.USE OF UNITED STATES FLAG VESSELS

a. The Contactor agrees that travel under this contract shall use U.S.-flag air carriers (air carriers holding certificates under 49 U.S.C. 41102) for international air transportation of people and property to the extent that such service is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) and the inter-operative guidelines issued by the Comptroller General of the United States in the March 31, 1981, amendment to Comptroller General Decision B138942.

b. The Contactor agrees that it will comply with the Cargo Preference Act of 1954 (46 U.S.C. 1241), as implemented by Department of Transportation regulation at 46 CFR 381.7, and 46 CFR 381.7(b).

6.DEBARMENT AND SUSPENSION

a. The Contractor shall not make any award or permit any award (sub-contract or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension.

b. The Contractor agrees to comply with the requirements regarding debarment and suspension in Subpart C of the OMB guidance in 2 CFR part 180, as implemented by the DoD in 2 CFR part 1125. The Contractor shall comply with 2 CFR Part 1125 by checking the Excluded Parties List System (EPLS) at www.sam.gov to verify Contractor eligibility to receive contracts and subcontracts resulting from this Agreement. The Contractor shall not solicit offers from, nor award contracts to Contractors listed in EPLS. This verification shall be documented in the Contractor's contract files, and shall be subject to audit by federal/State audit agencies

The Contractor agrees to communicate the requirement to comply with Subpart C to persons at the next lower tier with whom the Contractor enters into transactions that are "covered transactions" under Subpart B of 2 CFR part 180 and the DoD implementation in 2 CFR part 1125.

7. BUY AMERICAN ACT

The Contractor agrees that it will not expend any funds appropriated by Congress without complying with The Buy American Act (41 U.S.C. 10a et seq). The Buy American Act gives preference to domestic end products and domestic construction material. In addition, the Memorandum of Understanding between the United States of America and the European Economic Community on Government Procurement, and the North American Free Trade Agreement (NAFTA), provide that EEC and NAFTA end products and construction materials are exempted from application of the Buy American Act.

8.UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY POLICES

The Contractor agrees that it will comply with CFR 49 part 24, which implements the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601 et seq.) and provides for fair and equitable treatment of persons displaced by federally assisted programs or persons whose property is acquired as a result of such programs.

9. COPELAND "ANTI-KICKBACK" ACT

The Contractor agrees that it will comply with the Copeland "AntiKickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3). As applied to this contract, the Copeland "AntiKickback" Act makes it unlawful to induce, by force, intimidation, threat or procuring dismissal from employment, or otherwise, any person employed in the construction or repair of public buildings or public works, financed in whole or in part by the United States, to give up any part of the compensation to which that person is entitled under a contract of employment.

10.CONTRACT WORK HOURS AND SAFETY STANDARDS

The Contractor agrees that it will comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act.(40 U.S.C. 327330) as supplemented by Department of Labor regulations (29 CFR Part 5). As applied to this agreement, the Contract Work Hours and Safety Standards Act specifies that no laborer or mechanic doing any part of the work contemplated by this agreement shall be required or permitted to work more than 40 hours in any workweek unless paid for all additional hours at not less than 1 1/2 times the basic rate of pay.

11. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT

Any discovery or invention that arises during the course of the contract shall be reported to the non-Federal entity. Contractor must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

12. CLEAN AIR ACT (42 U.S.C. 7401-7671Q.) AND THE FEDERAL WATER POLLUTION CONTROL ACT (33 U.S.C. 1251-1387), AS AMENDED

Any Contract or subcontract in excess of $150,000 must comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the State who in turn will report to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

13. BYRD ANTI-LOBBYING AMENDMENT (31 U.S.C. 1352)

Contractors that bid for an award exceeding $100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

14. PROCUREMENT OF RECOVERED MATERIALS

Contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired during the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

STANDARD TERMS AND CONDITIONS - RFP

ACCEPTANCE OF CONTRACT

a. By submitting a response to this RFP, offeror accepts the contract included in Prerequisites. Much of the language included in the contract reflects the requirements of Montana law.

b. Offerors requesting additions or exceptions to the contract terms, shall submit them to the Q & A board by the date and time specified for questions submission. A request must be accompanied by an explanation why the exception is being sought and what specific effect it will have on the offeror's ability to respond to the RFP or perform the contract. The State reserves the right to address nonmaterial requests for exceptions to the contract language with the highest scoring offeror during contract negotiation.

c. The State shall identify any revisions to the contract language either in the Q & A Board or in an addendum to this RFP. The addendum will apply to all offerors submitting a response to this RFP. The State will determine any changes to the contract.

ACCEPTANCE/REJECTION OF PROPOSALS

The State reserves the right to accept or reject any or all proposals, wholly or in part, and to make awards in any manner deemed in the best interest of the State.

ALTERATION OF SOLICITATION DOCUMENT

In the event of inconsistencies or contradictions between language contained in the State's solicitation document and a vendor's response, the language contained in the State's original solicitation document will prevail. Intentional manipulation and/or alteration of solicitation document language will result in the vendor's disqualification and possible debarment.

AUTHORITY

The RFP is issued under 18-4-304, Montana Code Annotated (MCA) and Administrative Rules Montana (ARM) 2.5.602. The RFP process is a procurement option allowing the award to be based on stated evaluation criteria. The RFP states the relative importance of all evaluation criteria. The State shall use only the evaluation criteria outlined in this RFP.

CLASSIFICATION AND EVALUATION OF PROPOSALS:

a. Initial Classification of Proposals as Responsive or Nonresponsive. The State shall initially classify all proposals as either "responsive" or "non-responsive" (ARM 2.5.602). The State may deem a proposal nonresponsive if: (1) any of the required information is not provided; (2) the submitted price is found to be excessive or inadequate as measured by the RFP criteria; or (3) the proposal does not meet RFP requirements and specifications. The State may find any proposal to be nonresponsive at any time during the procurement process. If the State deems a proposal nonresponsive, it will not be considered further.

b. Determination of Responsibility. The procurement officer shall determine whether an offeror has met the standards of responsibility consistent with ARM 2.5.407. An offeror may be determined non-responsible at any time during the procurement process if information surfaces that supports a non-responsible determination. If an offeror is found non-responsible, the procurement officer will notify the offeror by mail. The determination will be included within the procurement file.

c. Evaluation of Proposals. An evaluator/evaluation committee shall evaluate all responsive proposals based on stated criteria and recommend an award to the highest scoring offeror. After receipt of proposals and prior to the recommendation of award, the procurement officer may initiate discussions with one or more offerors should clarification be necessary. In scoring against stated criteria, the evaluator/evaluation committee may consider such factors as accepted industry standards and a comparative evaluation of other proposals in terms of differing price and quality. These scores will be used to determine the most advantageous offering to the State. If an evaluation committee meets to deliberate and evaluate the proposals, the public may attend and observe the evaluation committee deliberations.

d. Completeness of Proposals. Selection and award will be based on the offeror's proposal and other items outlined in this RFP. Proposals may not include references to information such as Internet websites, unless specifically requested. Information or materials presented by offerors outside the formal response or subsequent discussion, negotiation, or best and final offer, if requested, will not be considered, will have no bearing on any award, and may result in the offeror being disqualified from further consideration.

e. Best and Final Offer. Under Montana law, the procurement officer may request a best and final offer if additional information is required to make a final decision. The State reserves the right to request a best and final offer based on price/cost alone. Please note that the State rarely requests a best and final offer on cost alone.

f. Evaluator/Evaluation Committee Recommendation for Contract Award. The evaluator/evaluation committee shall provide a written recommendation for contract award to the procurement officer that contains the scores, justification, and rationale for the decision. The procurement officer shall review the recommendation to ensure its compliance with the RFP process and criteria before concurring with the evaluator's/evaluation committee's recommendation.

g. Request for Documents Notice. Upon concurrence with the evaluator's/evaluation committee's recommendation, the procurement officer shall request from the highest scoring offeror the required documents and information, such as insurance documents, contract performance security, an electronic copy of any requested material (e.g., proposal, response to clarification questions, and/or best and final offer), and any other necessary documents. Receipt of this request does not constitute a contract and no work may begin until a contract signed by all parties is in place. The procurement officer shall notify all other offerors of the State's selection.

h. Contract Execution. Upon receipt of all required materials, a contract incorporating the highest scoring offeror's proposal will be provided to the highest scoring offeror for signature. The highest scoring offeror shall accept and agree to all material requirements contained in contract included with this RFP. If the highest scoring offeror does not accept all material

requirements, the State may move to the next highest scoring offeror or cancel the RFP. Work under the contract may begin when the contract is signed by all parties.

CONTRACT PERIOD

The contract period is stated in the contract included with this RFP. The parties may mutually agree to a renewal of this contract in any interval that is advantageous to the State. Renewal is solely the State's option.

DEBARMENT

Contractor certifies, by submitting this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract) by any governmental department or Agency. If Contractor cannot certify this statement, attach a written explanation for review by the State.

FAILURE TO COMPLY WITH INSTRUCTIONS

Offerors failing to comply with the instructions for Submitting a Proposal may be subject to point deductions. Further, the State may deem a proposal nonresponsive or disqualify it from further consideration if it does not follow the response format, is difficult to read or understand, or is missing requested information.

FAILURE TO HONOR PROPOSAL

If an offeror to whom a contract is awarded refuses to accept the award (PO/contract) or fails to deliver in accordance with the contract terms and conditions, the department may, in its discretion, suspend the offeror for a period of time from entering into any contracts with the State of Montana.

OFFER IN EFFECT FOR 120 CALENDAR DAYS

Offeror agrees that it may not modify, withdraw, or cancel its proposal for a 120-day period following the RFP closing date or receipt of best and final offer, if required.

OFFEROR COMPETITION

The State encourages free and open competition to obtain quality, cost-effective services and supplies. The State designs specifications, proposal requests, and conditions to accomplish this objective.

OFFEROR'S REPRESENTATIONS – SIGNATORY AUTHORITY, AND NO COLLUSION

Offeror represents that the person submitting the response to this RFP is authorized to legally bind the offeror to the proposal. The offeror may not withdraw the proposal for lack of authority. Offeror shall provide proof of authority of the person signing the RFP to bind the offeror upon State's request. The offeror further represents that the proposal has been made without collusion.

OWNERSHIP OF TIMELY SUBMITTED MATERIALS

The State owns all materials submitted in response to this RFP.

PERSONAL PROPERTY TAX

All personal property taxes will be paid by the vendor.

QUESTION-AND-ANSWER BOARD

Offerors having questions or requiring clarification or interpretation of any section within this RFP must submit their questions to the Q & A board by the date specified for questions submission. Offerors shall submit questions on the Q & A Board. Questions received after the deadline may not be considered.

RECEIPT OF PROPOSALS AND PUBLIC INSPECTION:

a. Public Information. Subject to exceptions provided by Montana law, all information received in response to this RFP, including copyrighted material, is public information. Proposals will be made available for public viewing and copying shortly after the proposal due date and time. The exceptions to this requirement are: (1) bona fide trade secrets meeting the requirements of the Uniform Trade Secrets Act, Title 30, chapter 14, part 4, MCA, that have been properly marked, separated, and documented; (2) matters involving individual safety as determined by the State; and (3) other constitutional protections. See 18-4-304, MCA.

b. Procurement Officer Review of Proposals. Upon opening the proposals in response to this RFP, the procurement officer will review the proposals for information that meets the exceptions referenced above, providing the following conditions have been met:

c. Confidential information (including any provided in electronic media) is clearly marked and separated from the rest of the proposal. The proposal does not contain confidential material in the cost or price section.

d. An affidavit from the offeror's legal counsel attesting to and explaining the validity of the trade secret claim as set out in Title 30, chapter 14, part 4, MCA, is attached to each proposal containing trade secrets. Counsel must use the State of Montana "Affidavit for Trade Secret Confidentiality" form in requesting the trade secret claim. This affidavit form is available on the State's website or by calling (406) 444-2575.

e. Information separated out under this process will be available for review only by the procurement officer, the evaluator/evaluation committee members, and limited other designees. Offerors shall pay all of its legal costs and related fees and expenses associated with defending a claim for confidentiality should another party submit a "right to know" (open records) request.

RECIPROCAL PREFERENCE

The State of Montana applies a reciprocal preference against a vendor submitting a bid from a state or country that grants a residency preference to its resident businesses. A reciprocal preference is only applied to an invitation for bid for supplies or an invitation for bid for non-construction services for public works as defined in section 18-2-401(9), MCA, and then only if federal funds are not involved. For a list of states that grant resident preference, go to the State Procurement website.

RESULTING CONTRACT

This RFP and any addenda, the offeror's RFP response, including any amendments, a best and final offer (if any), and any clarification question responses shall be incorporated by reference in any resulting contract.

REVIEW RFP

Offerors shall carefully review the entire RFP terms and conditions. Offerors shall promptly notify the procurement officer of any ambiguity, inconsistency, unduly restrictive specifications, or error that they discover. In this notice, the offeror shall include any terms or requirements within the RFP that preclude the offeror from responding or add unnecessary cost. Offerors shall provide an explanation with suggested modifications. The notice must be received by the deadline for questions set forth in the RFP. The State will determine any changes to the RFP.

STATE NOT RESPONSIBLE FOR PREPARATION COSTS

Offeror is solely responsible for all costs it incurs prior to contract execution.

STATE'S RIGHT TO INVESTIGATE AND REJECT

The State may make such investigations as deemed necessary to determine the offeror's ability to provide the supplies and/or perform the services specified. The State reserves the right to reject a proposal if the information submitted by, or investigation of, the offeror fails to satisfy the State's determination that the offeror is properly qualified to perform the obligations of the contract. This includes the State's ability to reject the proposal based on negative references.

STATE'S RIGHTS RESERVED

While the State has every intention to award a contract resulting from this RFP, issuance of the RFP in no way constitutes a commitment by the State to award and execute a contract. Upon a determination such actions would be in its best interest, the State, in its sole discretion, reserves the right to:

- Cancel or terminate this RFP (18-4-307, MCA);
- Reject any or all proposals received in response to this RFP (ARM 2.5.602);
- Waive any undesirable, inconsequential, or inconsistent provisions of this RFP that would not have significant impact on any proposal (ARM 2.5.505);

- ●Not award a contract, if it is in the State's best interest not to proceed with contract execution (ARM 2.5.602); or
- ●If awarded, terminate any contract if the State determines adequate state funds are not available (18-4-313, MCA).

UNDERSTANDING OF SPECIFICATIONS AND REQUIREMENTS

By submitting a response to this RFP, offeror acknowledges it understands and shall comply with the RFP specifications and requirements.

LIMITATION OF LIABILITY

Contractor's liability for Contract damages is limited to direct damages and further to no more than twice the Contract amount. Contractor shall not be liable for special, incidental, consequential, punitive, or indirect damages. Damages caused by injury to persons or tangible property, or related to intellectual property indemnification, are not subject to a cap on the amount or type of damages.

TECHNOLOGY ACCESS FOR BLIND OR VISUALLY IMPAIRED

Contractor acknowledges that no state funds may be expended for the purchase of information technology equipment and software for use by employees, program participants, or members of the public unless it provides blind or visually impaired individuals with access, including interactive use of the equipment and services, that is equivalent to that provided to individuals who are not blind or visually impaired. (18-5-603, MCA) Contact the State Procurement Bureau at (406) 444-2575 for more information concerning nonvisual access standards.

INTELLECTUAL PROPERTY/OWNERSHIP

Mutual Use. Contractor shall make available to State, on a royalty-free, non-exclusive basis, all patent and other legal rights in or to inventions first conceived and reduced to practice or created in whole or in part under this Contract, if such availability is necessary for State to receive the benefits of this Contract. Unless otherwise specified in a statement of work, both parties shall have a royalty-free, nonexclusive, and irrevocable right to reproduce, publish, or otherwise use copyrightable property created under this Contract. This mutual right includes (i) all deliverables and other materials, products, modifications that Contractor has developed or prepared for State under this Contract; (ii) any program code, or site-related program code that Contractor has created, developed, or prepared under or primarily in support of the performance of its specific obligations under this Contract; and (iii) manuals, training materials, and documentation. All information described in (i), (ii), and (iii) is collectively called the "Work Product".

Title and Ownership Rights. State retains title to and all ownership rights in all data and content, including but not limited to multimedia or images (graphics, audio, and video), text, and the like provided by State (the "Content"), but grants Contractor the right to access and use Content for the purpose of complying with its obligations under this Contract and any applicable statement of work.

Ownership of Work Product. Contractor shall execute any documents or take any other actions as may reasonably be necessary, or as State may reasonably request, to perfect State's ownership of any Work Product.

Copy of Work Product. Contractor shall, at no cost to State, deliver to State, upon State's request during the term of this Contract or at its expiration or termination, a current copy of all

Work Product in the form and on the media in use as of the date of State's request, or such expiration or termination.
Ownership of Contractor Pre-Existing Materials. Contractor retains ownership of all literary or other works of authorship (such as software programs and code, documentation, reports, and similar works), information, data, intellectual property, techniques, subroutines, algorithms, methods or related rights and derivatives that Contractor owns at the time this Contract is executed or otherwise developed or acquired independent of this Contract and employed by Contractor in connection with the services provided to State (the "Contractor Pre-existing Materials"). Contractor Pre-existing Materials are not Work Product. Contractor shall provide full disclosure of any Contractor Pre-Existing Materials to State before its use and to prove its ownership. If, however, Contractor fails to disclose to State such Contractor Pre-Existing Materials, Contractor shall grant State a nonexclusive, worldwide, paid-up license to use any Contractor Pre-Existing Materials embedded in the Work Product to the extent such Contractor Pre-Existing Materials are necessary for State to receive the intended benefit under this Contract. Such license shall remain in effect for so long as such Pre-Existing Materials remain embedded in the Work Product. Except as otherwise provided for in Section 22.3, Ownership of Work Product, or as may be expressly agreed in any statement of work, Contractor shall retain title to and ownership of any hardware it provides under this Contract.

PATENT AND COPYRIGHT PROTECTION
Third-Party Claim. If a third party makes a claim against State that the products furnished under this Contract infringe upon or violate any patent or copyright, State shall promptly notify Contractor. Contractor shall defend such claim in State's name or its own name, as appropriate, but at Contractor's expense. Contractor shall indemnify State against all costs, damages, attorney fees, and all other costs and expenses of litigation that accrue as a result of such claim. If State reasonably concludes that its interests are not being properly protected, or if principles of governmental or public law are involved, it may enter any action.
Product Subject of Claim. If any product furnished is likely to or does become the subject of a claim of infringement of a patent or copyright, then Contractor may, at its option, procure for State the right to continue using the alleged infringing product, or modify the product so that it becomes non-infringing. If none of the above options can be accomplished, or if the use of such product by State shall be prevented by injunction, State will determine whether the Contract has been breached.

CONTRACT OVERSIGHT
CIO Oversight. The Chief Information Officer (CIO) for the State of Montana, or designee, may perform contract oversight activities. Such activities may include the identification, analysis, resolution, and prevention of deficiencies that may occur within the performance of contract obligations. The CIO may require the issuance of a right to assurance or may issue a stop work order.
Right to Assurance. If State, in good faith, has reason to believe that Contractor does not intend to, is unable to, or has refused to perform or continue performing all material obligations under this Contract, State may demand in writing that Contractor give a written assurance of intent to perform. Contractor’s failure to provide written assurance within the number of days specified in the demand (in no event less than five business days may, at State's option, be the basis for terminating this Contract and pursuing the rights and remedies available under this Contract or law.
Stop Work Order. State may, at any time, by written order to Contractor require Contractor to stop any or all parts of the work required by this Contract for the period of days indicated by State after the order is delivered to Contractor. The order must be specifically identified as a stop work order issued under this clause. Upon receipt of the order, Contractor shall immediately comply with its

terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. If a stop work order issued under this clause is canceled or the period of the order or any extension expires, Contractor shall resume work. The State Project Manager shall make the necessary adjustment in the delivery schedule or contract price, or both, and this Contract shall be amended in writing accordingly.

System Security. Contractor shall ensure systems delivered under this Agreement are adequately secure. For purposes of this Agreement, adequate security is defined to require compliance with federal and State of Montana security requirements and to ensure freedom from those conditions that may impair the State's use of its data and information technology or permit unauthorized access to the State's data or information technology. The State of Montana has established control standards and policies that align with the NIST Cybersecurity Framework. The latest revision of NIST SP 800-53 is used for control adherence evaluation established after developing a security categorization utilizing FIPS PUB 199. Thus, Contractor shall provide reasonable proof, through independent audit reports, that the system specified under this Agreement meets or exceeds federal and State of Montana security requirements to ensure adequate security and privacy, confidentiality, integrity, and availability of the State's data and information technology. Annual assurance statements shall be delivered to the Contract Liaison. Annual assurance statements must contain a detailed accounting of the security controls provided and must be in the form of a NIST Security Assessment Report or FedRAMP Security Assessment Report.

Physical Access. Contractor represents and warrants that it has established and during the Term it will at all times enforce:

(a) Physical protection mechanisms for all information assets and information technology to ensure such assets and technology are stored and protected in appropriate data centers;

(b) Appropriate facility entry controls limiting physical access to systems that store or process data;

(c) Processes to ensure access to facilities is monitored and is restricted on a “need to know” basis;

(d) Controls to physically secure all Confidential Information and to properly destroy such information when it is no longer needed.

Prohibited Activities and Spoofing. Licensor and its officers, employees, agents, subcontractors, and affiliated users, shall not violate or attempt to violate the security of the State’s network or interfere or attempt to interfere with the State’s systems, networks, authentication measures, servers or equipment, or with the use of or access to the State’s network by any other user. Such prohibited activity includes (i) accessing or logging into a server where access is not authorized; (ii) unauthorized probing, scanning, or testing the security or vulnerability of the State’s network or other systems; and (iii) attempting to portray itself as the State or an affiliate of the State or otherwise attempting to gain access, without authorization, via the State’s network or systems to any account or information technology resource not belonging to Licensor or its officers, employees, agents, subcontractors, and affiliated users (“Spoofing”). Licensor shall not perform unauthorized Spoofing or scanning of any kind, including user account identity. Systems shall not Spoof the mt.gov domain or engage in Email Spoofing. Email Spoofing is the creation of email messages with a forged sender address. For example, Email Spoofing includes creating or sending emails using the State’s domain.

CONTRACT TERMINATION

Noncompliance with Department of Administration Requirements. The Department of Administration, under the provisions of 2-17-514, MCA, retains the right to cancel or modify any contract, project, or activity that is not in compliance with the Department's Plan for Information Technology, State Strategic Plan for Information Technology, or any Statewide IT policy or standard in effect as of the date of contract execution. In the event of such termination, State will

pay for products and services delivered to date and any applicable termination fee specified in the statement of work or work order. Any modifications to this Contract must be mutually agreed to by the parties.

NEW MEXICO

1. **Taxes:**

The Contractor shall be reimbursed by the Procuring Agency for applicable New Mexico gross receipts taxes, excluding interest or penalties assessed on the Contractor by any authority. **PLEASE NOTE NO PROPERTY TAX WILL BE PAID TO THE CONTRACTOR BY THE STATE.** The payment of taxes for any money received under this Agreement shall be the Contractor's sole responsibility and should be reported under the Contractor's Federal and State tax identification number(s).

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

D. Retainage.
Reserved

E. Performance Bond.
Reserved

2. **Term:**

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED IN WRITING BY THE STATE PURCHASING AGENT. This Agreement shall begin on date approved by the State Purchasing Agent, if the State Purchasing Agent has signed this Agreement, and end on DATE. The agency reserves the right to renew the contract on an annual basis by mutual Agreement not exceed a total of 8 years in accordance with NMSA 1978 §13-1-150.

3. **Termination:**

A. Grounds. The Procuring Agency may terminate this Agreement for convenience or cause. The Contractor may only terminate this Agreement based upon the Procuring Agency's uncured, material breach of this Agreement.

B. Notice; Procuring Agency Opportunity to Cure.

1. Except as otherwise provided in sub-paragraph A of this Clause and the Appropriations Clause of this Agreement, the Procuring Agency shall give Contractor written notice of termination at least thirty (30) days prior to the intended date of termination.

2. Contractor shall give Procuring Agency written notice of termination at least thirty (30) days prior to the intended date of termination, which notice shall (i) identify all the Procuring Agency's material breaches of this Agreement upon which the termination is based and (ii) state what the Procuring Agency must do to cure such material breaches. Contractor's notice of termination shall only be effective (i) if the Procuring Agency does not cure all material breaches within the thirty (30) day notice period or (ii) in the case of material breaches that cannot be cured within thirty (30) days, the Procuring Agency does

not, within the thirty (30) day notice period, notify the Contractor of its intent to cure and begin with due diligence to cure the material breach.

3. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor (i) if the Contractor becomes unable to perform the services contracted for, as determined by the Procuring Agency; (ii) if, during the term of this Agreement, the Contractor is suspended or debarred by the State Purchasing Agent; or (iii) the Agreement is terminated pursuant to the Appropriations Clause of this Agreement.

C. Liability. Except as otherwise expressly allowed or provided under this Agreement, the Procuring Agency's sole liability upon termination shall be to pay for acceptable work performed prior to the Contractor's receipt or issuance of a notice of termination; provided, however, that a notice of termination shall not nullify or otherwise affect either party's liability for pre-termination defaults under or breaches of this Agreement. The Contractor shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination. *THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE PROCURING AGENCY'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.*

4. Appropriations:

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, this Agreement shall terminate immediately upon written notice being given by the Procuring Agency to the Contractor. The Procuring Agency's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If the Procuring Agency proposes an amendment to the Agreement to unilaterally reduce funding, the Contractor shall have the option to terminate the Agreement or to agree to the reduced funding, within thirty (30) days of receipt of the proposed amendment.

5. Status of Contractor:

The Contractor and its agents and employees are independent contractors performing professional or general services for the Procuring Agency and are not employees of the State of New Mexico. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the State of New Mexico as a result of this Agreement. The Contractor acknowledges that all sums received hereunder are reportable by the Contractor for tax purposes, including without limitation, self-employment and business income tax. The Contractor agrees not to purport to bind the State of New Mexico unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

6. Conflict of Interest; Governmental Conduct Act:

A. The Contractor represents and warrants that it presently has no interest and, during the term of this Agreement, shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement.

B. The Contractor further represents and warrants that it has complied with, and, during the term of this Agreement, will continue to comply with, and that this Agreement complies with all applicable provisions of the Governmental Conduct Act, Chapter 10, Article 16 NMSA 1978. Without in any way limiting the generality of the foregoing, the Contractor specifically represents and warrants that:

1) in accordance with NMSA 1978, § 10-16-4.3, the Contractor does not employ, has not employed, and will not employ during the term of this Agreement any Procuring Agency employee

while such employee was or is employed by the Procuring Agency and participating directly or indirectly in the Procuring Agency's contracting process;

2) this Agreement complies with NMSA 1978, § 10-16-7(A) because (i) the Contractor is not a public officer or employee of the State; (ii) the Contractor is not a member of the family of a public officer or employee of the State; (iii) the Contractor is not a business in which a public officer or employee or the family of a public officer or employee has a substantial interest; or (iv) if the Contractor is a public officer or employee of the State, a member of the family of a public officer or employee of the State, or a business in which a public officer or employee of the State or the family of a public officer or employee of the State has a substantial interest, public notice was given as required by NMSA 1978, § 10-16-7(A) and this Agreement was awarded pursuant to a competitive process;

3) in accordance with NMSA 1978, § 10-16-8(A), (i) the Contractor is not, and has not been represented by, a person who has been a public officer or employee of the State within the preceding year and whose official act directly resulted in this Agreement and (ii) the Contractor is not, and has not been assisted in any way regarding this transaction by, a former public officer or employee of the State whose official act, while in State employment, directly resulted in the Procuring Agency's making this Agreement;

4) this Agreement complies with NMSA 1978, § 10-16-9(A)because (i) the Contractor is not a legislator; (ii) the Contractor is not a member of a legislator's family; (iii) the Contractor is not a business in which a legislator or a legislator's family has a substantial interest; or (iv) if the Contractor is a legislator, a member of a legislator's family, or a business in which a legislator or a legislator's family has a substantial interest, disclosure has been made as required by NMSA 1978, § 10-16-7(A), this Agreement is not a sole source or small purchase contract, and this Agreement was awarded in accordance with the provisions of the Procurement Code;

5) in accordance with NMSA 1978, § 10-16-13, the Contractor has not directly participated in the preparation of specifications, qualifications or evaluation criteria for this Agreement or any procurement related to this Agreement; and

6) in accordance with NMSA 1978, § 10-16-3 and § 10-16-13.3, the Contractor has not contributed, and during the term of this Agreement shall not contribute, anything of value to a public officer or employee of the Procuring Agency.

C. Contractor's representations and warranties in paragraphs A and B of this Clause are material representations of fact upon which the Procuring Agency relied when this Agreement was entered into by the parties. Contractor shall provide immediate written notice to the Procuring Agency if, at any time during the term of this Agreement, Contractor learns that Contractor's representations and warranties in paragraphs A and B of this Clause were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances. If it is later determined that Contractor's representations and warranties in paragraphs A and B of this Clause were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances, in addition to other remedies available to the Procuring Agency and notwithstanding anything in the Agreement to the contrary, the Procuring Agency may immediately terminate the Agreement.

D. All terms defined in the Governmental Conduct Act have the same meaning in this Agreement.

7.

Amendment:

A. This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto and all other required signatories.

B. If the Procuring Agency proposes an amendment to the Agreement to unilaterally reduce funding due to budget or other considerations, the Contractor shall, within thirty (30) days of receipt of the proposed Amendment, have the option to terminate the Agreement, pursuant to the termination provisions as set forth in the Terminations Clause of this Agreement, or to agree to the reduced funding.

8. Merger:

This Agreement incorporates all the Agreements, covenants and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, Agreements and understandings have been merged into this written Agreement. No prior Agreement or understanding, oral or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

9. Penalties for violation of law:

The Procurement Code, NMSA 1978 §§ 13-1-28 through 13-1-199, imposes civil and criminal penalties for violation of the statute. In addition, the New Mexico criminal statutes impose felony penalties for illegal acts, including bribes, gratuities and kickbacks.

10. Equal Opportunity Compliance:

The Contractor agrees to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws of the State of New Mexico, the Contractor assures that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If Contractor is found not to be in compliance with these requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.

11. Workers Compensation:

The Contractor agrees to comply with state laws and rules applicable to workers compensation benefits for its employees. If the Contractor fails to comply with the Workers Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the Procuring Agency.

12. Applicable Law:

The laws of the State of New Mexico shall govern this Agreement, without giving effect to its choice of law provisions. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with NMSA 1978, § 38-3-1 (G). By execution of this Agreement, Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this Agreement.

13. Records and Financial Audit:

The Contractor shall maintain detailed time and expenditure records that indicate the date, time, nature and cost of services rendered during the Agreement's term and effect and retain them for a period of three (3) years from the date of final payment under this Agreement. The records shall be subject to inspection by the Procuring Agency, the Department of Finance and Administration and the State Auditor. The Procuring Agency shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the Procuring Agency to recover excessive or illegal payments.

14. Invalid Term or Condition:

If any term or condition of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected and shall be valid and enforceable.

15. **Enforcement of Agreement:**

A party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this Agreement shall be effective unless express and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

16. **Non-Collusion:**

In signing this Agreement, the Contractor certifies the Contractor has not, either directly or indirectly, entered into action in restraint of free competitive bidding in connection with this offer submitted to the State Purchasing Agent or agency or entity.

17. **Notices:**

Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

To the Procuring Agency:

Mark Hayden, State Purchasing Agent
State Purchasing Division
1100 St. Francis Dr., Room 2016
Santa Fe, NM87505

To the Contractor:

XXXXXXXXXXXXXXXXXXXXX

18. **Succession:**

This Agreement shall extend to and be binding upon the successors and assigns of the parties.

19. Headings:

Any and all headings herein are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Agreement. Numbered or lettered provisions, sections and subsections contained herein, refer only to provisions, sections and subsections of this Agreement unless otherwise expressly stated.

20. Default/Breach:

In case of Default and/or Breach by the Contractor, for any reason whatsoever, the Procuring Agency and the State of New Mexico may procure the goods or Services from another source and hold the Contractor responsible for any resulting excess costs and/or damages, including but not limited to, direct damages, indirect damages, consequential damages, special damages and the Procuring Agency and the State of New Mexico may also seek all other remedies under the terms of this Agreement and under law or equity.

21. Equitable Remedies:

Contractor acknowledges that its failure to comply with any provision of this Agreement will cause the Procuring Agency irrevocable harm and that a remedy at law for such a failure would be an inadequate remedy for the Procuring Agency, and the Contractor consents to the Procuring Agency's obtaining from a court of competent jurisdiction, specific performance, or injunction, or any other equitable relief in order to enforce such compliance. Procuring Agency's rights to obtain equitable relief pursuant to this Agreement shall be in addition to, and not in lieu of, any other remedy that Procuring Agency may have under applicable law, including, but not limited to, monetary damages.

22. New Mexico Employees Health Coverage:

A. If Contractor has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of this Agreement, Contractor certifies, by signing this agreement, to have in place, and agree to maintain for the term of the Agreement, health insurance for those employees and offer that health insurance to those employees if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed $250,000 dollars.

B. Contractor agrees to maintain a record of the number of employees who have (a) accepted health insurance; (b) declined health insurance due to other health insurance coverage already in place; or (c)

declined health insurance for other reasons. These records are subject to review and audit by a representative of the state.

C. Contractor agrees to advise all employees of the availability of State publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information: http://bewellnm.com.

23. Indemnification:

The Contractor shall defend, indemnify and hold harmless the Procuring Agency and the State of New Mexico from all actions, proceeding, claims, demands, costs, damages, attorneys' fees and all other liabilities and expenses of any kind from any source which may arise out of the performance of this Agreement, caused by the negligent act or failure to act of the Contractor, its officers, employees, servants, subcontractors or agents, resulting in injury or damage to persons or property during the time when the Contractor or any officer, agent, employee, servant or subcontractor thereof has or is performing services pursuant to this Agreement. In the event that any action, suit or proceeding related to the services performed by the Contractor or any officer, agent, employee, servant or subcontractor under this Agreement is brought against the Contractor, the Contractor shall, as soon as practicable but no later than two (2) days after it receives notice thereof, notify the legal counsel of the Procuring Agency and the Risk Management Division of the New Mexico General Services Department by certified mail.

24. Default and Force Majeure:

The State reserves the right to cancel all or any part of any orders placed under this Agreement without cost to the State, if the Contractor fails to meet the provisions of this Agreement and, except as otherwise provided herein, to hold the Contractor liable for any excess cost occasioned by the State due to the Contractor's default. The Contractor shall not be liable for any excess costs if failure to perform the order arises out of causes beyond the control and without the fault or negligence of the Contractor; such causes include, but are not restricted to, acts of God or the public enemy, acts of the State or Federal Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather and defaults of subcontractors due to any of the above, unless the State shall determine that the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery scheduled. The rights and remedies of the State provided in this Clause shall not be exclusive and are in addition to any other rights now being provided by law or under this Agreement.

25. Assignment:

The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of the Procuring Agency.

26. Subcontracting:

The Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the Procuring Agency. No such subcontract shall relieve the primary Contractor from its obligations and liabilities under this Agreement, nor shall any subcontract obligate direct payment from the Procuring Agency.

27. **Inspection of Plant:**

The State Purchasing Agent or agency or entity that is a party to this Agreement may inspect, at any reasonable time during Contractor's regular business hours and upon prior written notice, the Contractor's plant or place of business, or any subcontractor's plant or place of business, which is related to the performance of this Agreement.

28. **Commercial Warranty:**

The Contractor agrees that the tangible personal property or services furnished under this Agreement shall be covered by the most favorable commercial warranties the Contractor gives to any customer for such tangible personal property or services, and that the rights and remedies provided herein shall extend to the

State and are in addition to and do not limit any rights afforded to the State by any other Clause of this Agreement or order. Contractor agrees not to disclaim warranties of fitness for a particular purpose or merchantability.

29. **Condition of Proposed Items:**

Where tangible personal property is a part of this Agreement, all proposed items are to be NEW and of most current production, unless otherwise specified.

30. Release:

Final payment of the amounts due under this Agreement shall operate as a release of the Procuring Agency, its officers and employees, and the State of New Mexico from all liabilities, claims and obligations whatsoever arising from or under this Agreement.

31. Confidentiality:

Any Confidential Information provided to the Contractor by the Procuring Agency or, developed by the Contractor based on information provided by the Procuring Agency in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the Procuring Agency. Upon termination of this Agreement, Contractor shall deliver all Confidential Information in its possession to the Procuring Agency within thirty (30) Business Days of such termination. Contractor acknowledges that failure to deliver such Confidential Information to the Procuring Agency will result in direct, special and incidental damages.

32. Contractor Personnel:

A. Key Personnel. Contractor's key personnel shall not be diverted from this Agreement without the prior written approval of the Procuring Agency. Key personnel are those individuals considered by the Procuring Agency to be mandatory to the work to be performed under this Agreement. Key personnel shall be:

[Insert Contractor Staff Name(s)]

B. Personnel Changes. Replacement of any personnel shall be made with personnel of equal ability, experience, and qualification and shall be approved by the Procuring Agency. For all personnel, the Procuring Agency reserves the right to require submission of their resumes prior to approval. If the number of Contractor's personnel assigned to the Project is reduced for any reason, Contractor shall, within ten (10) Business Days of the reduction, replace with the same or greater number of personnel with equal ability, experience, and qualifications, subject to Procuring Agency approval. The Procuring Agency, in its sole discretion, may approve additional time beyond the ten (10) Business Days for replacement of personnel. The Contractor shall include status reports of its efforts and progress in finding replacements and the effect of the absence of the personnel on the progress of the Project. The Contractor shall also make interim arrangements to assure that the Project progress is not affected by the loss of personnel. The Procuring Agency reserves the right to require a change in Contractor's personnel if the assigned personnel are not, in the sole opinion of the Procuring Agency, meeting the Procuring Agency's expectations.

33. **Incorporation by Reference and Precedence:**

If this Agreement has been procured pursuant to a request for proposals, this Agreement is derived from (1) the request for proposal, (including any written clarifications to the request for proposals and any agency response to questions); (2) the Contractor's best and final offer; and (3) the Contractor's response to the request for proposals.

In the event of a dispute under this Agreement, applicable documents will be referred to for the purpose of clarification or for additional detail in the following order of precedence: (1) amendments to the Agreement in reverse chronological order; (2) the Agreement, including the scope of work and all terms and conditions thereof; (3) the request for proposals, including attachments thereto and written responses

to questions and written clarifications; (4) the Contractor's best and final offer if such has been made and accepted by the SPA or Procuring Agency or entity; and (5) the Contractor's response to the request for proposals.

34. Inspection:

If this Agreement is for the purchase of tangible personal property (goods), final inspection and acceptance shall be made at Destination. Tangible personal property rejected at Destination for non-conformance to specifications shall be removed at Contractor's risk and expense promptly after notice of rejection and shall not be allowable as billable items for payment.

35. Inspection of Services:

If this Agreement is for the purchase of services, the following terms shall apply.

A. Services, as used in this Clause, include services performed, workmanship, and material furnished or utilized in the performance of services.

B. The Contractor shall provide and maintain an inspection system acceptable to the

State Purchasing Agent or other party to this Agreement covering the services under this Agreement. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the State Purchasing Agent or other party to this Agreement during the term of performance of this Agreement and for as long thereafter as the Agreement requires.

C. The State Purchasing Agent or other party to this Agreement has the right to inspect and test all services contemplated under this Agreement to the extent practicable at all times and places during the term of the Agreement. The State Purchasing Agent or other party to this Agreement shall perform inspections and tests in a manner that will not unduly delay or interfere with Contractor's performance.

D. If the State Purchasing Agent or other party to this Agreement performs inspections or tests on the premises of the Contractor or a subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, at no increase in Agreement price, all reasonable facilities and assistance for the safe and convenient performance of such inspections or tests.

E. If any part of the services do not conform with the requirements of this Agreement, the State Purchasing Agent or other party to this Agreement may require the Contractor to re-perform the services in conformity with the requirements of this Agreement at no increase in Agreement amount. When the defects in services cannot be corrected by re-performance, the State Purchasing Agent or other party to this Agreement may:

(1) require the Contractor to take necessary action(s) to ensure that future performance conforms to the requirements of this Agreement; and

(2) reduce the Agreement price to reflect the reduced value of the services performed.

F. If the Contractor fails to promptly re-perform the services or to take the necessary action(s) to ensure future performance in conformity with the requirements of this Agreement, the State Purchasing Agent or other party to this Agreement may:

(1) by Agreement or otherwise, perform the services and charge to the Contractor any cost incurred by the State Purchasing Agent or other party to this Agreement that is directly related to the performance of such service; or

(2) terminate the Agreement for default.

THE PROVISIONS OF THIS CLAUSE ARE NOT EXCLUSIVE AND DO NOT WAIVE THE STATE PARTIES' TO THIS AGREEMENT OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.

36. Insurance:

If the services contemplated under this Agreement will be performed on or in State facilities or property, Contractor shall maintain in force during the entire term of this Agreement, the following insurance coverage(s), naming the State of New Mexico, General Services Department or other party to this Agreement as additional insured.

A. Workers Compensation (including accident and disease coverage) at the statutory limit.

Employers liability: $100,000.

B. Comprehensive general liability (including endorsements providing broad form property damage, personal injury coverage and contractual assumption of liability for all liability the Contractor has assumed under this Agreement). Limits shall not be less than the following:

   a. Bodily injury: $1,000,000 per person /$1,000,000 per occurrence.

   b. Property damage or combined single limit coverage: $1,000,000.

   c. Automobile liability (including non-owned automobile coverage): $1,000,000.

   d. Umbrella: $1,000,000.

C. Contractor shall maintain the above insurance for the term of this Agreement and name the State of New Mexico, General Services Department or other party to this Agreement as an additional insured and provide for 30 days cancellation notice on any Certificate of Insurance form furnished by Contractor. Such certificate shall also specifically state the coverage provided under the policy is primary over any other valid and collectible insurance and provide a waiver of subrogation.

37. **Arbitration:**

Any controversy or claim arising between the parties shall be settled by arbitration pursuant to NMSA 1978 § 44-7A-1 *et seq.*

38. **New Mexico Administration Reporting and Fees:**

All contracts and Purchase Orders arising out of this agreement shall be deemed to include an Administrative Fee assessment at the rate of **percent (1.00 %)** for the gross total sales and other revenues (including commissions and fees charged). This assessment shall apply to all New Mexico state agencies and local public bodies. "**Gross total sales"** means any invoiced amount less any applicable state and local taxes.

For reporting purposes: list payments received for the issued invoice during the applicable quarter by state agency, local public body and invoice number. The Quarters are as follows:

Quarter:	Period End:	Report Due:
First	September 30	October 31
Second	December 31	January 31
Third	March 31	April 30
Fourth	June 30	July 31

Even if contractor experiences zero sales during the quarter, a report is still required. This will also apply if the contract starts partial within a Quarter. Reports and Administrative Fee shall be due no later than thirty (30) days following the end of the quarter. Only submit one payment and one report for each quarter,

do not combine payments or reports.

Payment shall be made by check payable to the "*State Purchasing Division."* This contract number **##-00000-##-#####** must be included on all payments and Quarterly Sales Reports.

Remit Checks to: State Purchasing Division
1100 St. Francis Drive, Room 2016
PO Box 6850
Santa Fe, NM 87505
Attn: Compliance Officer

Sample Reports can be found at:
http://www.generalservices.state.nm.us/statepurchasing/resourcesandinformation.aspx#Vendors

Email completed reports to: GSD.QuarterlyUsageR@state.nm.us

For questions regarding the Administrative Fees and Quarterly Sales Reports contact the Compliance Officer at (505) 827-0472.

UTAH

ATTACHMENT A: STATE OF UTAH STANDARD INFORMATION TECHNOLOGY TERMS AND CONDITIONS

STATE OF UTAH COOPERATIVE INFORMATION TECHNOLOGY CONTRACT

This is a State Cooperative Contract for information technology products and services. DTS policies referenced by number in this Attachment are only applicable to the Executive Branch and are available at https://dts.utah.gov/policies. All other policies and codes of conduct are available upon request.

1. DEFINITIONS:

a. "Access to Secure State Facilities, Data, or Technology" means Contractor will (a) enter upon secure premises controlled, held, leased, or occupied by State of Utah or Eligible User; (b) maintain, develop, or have access to any deployed hardware, software, firmware, or any other technology, that is in use by State of Utah or Eligible User; or (c) have access to or receive any State Data or Confidential Information.

b. "Authorized Persons" means the Contractor's employees, officers, partners, Subcontractors, or agents of Contractor who need Access to Secure State Facilities, Data, or Technology to enable the Contractor to perform its responsibilities under this Contract.

c. "Background IP" means intellectual property (IP) owned or controlled prior to the effective date of this Contract or that IP developed or acquired from activities independent of the services performed under this Contract, including but not limited to (a) methodologies, processes, technologies, algorithms, software, or development tools used in performing the Services, and (b) processes and reusable reports, designs, charts, plans, specifications, documentation, forms, templates, or output which are supplied or otherwise used by or on behalf of Contractor in the course of performing the Services or creating the Custom Deliverables, other than portions that specifically incorporate proprietary or Confidential Information or Custom Deliverables of Eligible User.

d. "Contract" means the Contract Signature Page(s), including all referenced attachments and documents incorporated by reference.

e. "Contract Period" means the term of this Contract, as set forth in the Contract Signature Page(s).

f. "Contract Signature Page(s)" means the cover page that the Division and Contractor sign.

g. “Contractor” means the individual or entity identified on the Contract Signature Page(s). “Contractor” includes Contractor’s agents, officers, employees, partners, contractors, and Subcontractors at any level.

h. “Custom Deliverables” means the product that Contractor is required to design, develop, or customize and deliver to the Eligible User as specifically described under this Contract or an associated statement of work for which all interest and title shall be transferred to and owned by the Eligible User. This includes every invention, design, development, customization, improvement, process, software program, work of authorship, documentation, formula, datum, technique, know how, or intellectual property right whatsoever or any interest therein (whether patentable or not patentable or registerable under copyright or similar statutes or subject to analogous protection) that is specifically made, conceived, discovered, or reduced to practice by Contractor pursuant to this Contract.

i. “Data Breach” means the unauthorized access or acquisition of State Data that compromises the security, confidentiality, or integrity of State Data.

j. “Division” means the State of Utah Division of Purchasing.

k. “DTS” means the Utah Department of Technology Services.

l. “Eligible User(s)” means the State of Utah’s government departments, institutions, agencies, political subdivisions (i.e., colleges, school districts, counties, cities, etc.), and, as applicable, nonprofit organizations, agencies of the federal government, or any other entity authorized by the laws of the State of Utah to participate in State Cooperative Contracts.

m. “Federal Criminal Background Check” means a fingerprint-based, nationwide background check conducted and processed by the FBI.

n. “Good” means any deliverable not classified as a Custom Deliverable or Service.

o. “Intellectual Property Rights” means all rights to patents, utility models, mask works, copyrights, trademarks, trade secrets, and other protection afforded by law to inventions, models, designs, technical information, and applications.

p. “Non-Public Data” means records or data that are not subject to distribution to the public. Access is restricted because it includes information that is protected by state or federal law. Non-Public Data includes, but is not limited to, a person’s name; government-issued identification numbers (e.g., Social Security, driver’s license, passport); financial account information; or Protected Health Information.

q. “Protected Health Information” (PHI) is as defined in the Health Insurance Portability and Accountability Act of 1996 (HIPAA), as amended, and its implementing regulations.

r. “Response” means the Contractor’s bid, proposals, quote, or any other document used by the Contractor to respond to the State Entity’s Solicitation.

s. “Security Incident” means the attempted unauthorized access to State Data that may result in the use, disclosure, or theft of State Data.

t. “Services” means the furnishing of labor, time, or effort by Contractor, and may include installation, configuration, implementation, technical support, warranty maintenance, and other support services.

u. “Solicitation” means an invitation for bids, request for proposals, notice of sole source procurement, request for statement of qualifications, request for information, or any document used to obtain bids, proposals, pricing, qualifications, or information for the purpose of entering into this Contract.

v. “State Data” means all Confidential Information and Non-Public Data that is created, controlled, maintained, owned, or in any way originating with the State of Utah or Eligible User regardless of where such data or output is stored or maintained.

w. “State of Utah” means the State of Utah, in its entirety, including its institutions, agencies, departments, divisions, authorities and instrumentalities, boards, commissions, elected or appointed officers, employees, agents, and authorized volunteers.

x. “Subcontractors” includes contractors, manufacturers, distributors, suppliers, or consultants, at any tier, that are under the direct or indirect control or responsibility of Contractor, including a person or entity that is, or will be, providing goods or performing services pursuant to this Contract.

2. ESSENTIAL PROVISIONS:

a. **CONTRACT JURISDICTION, CHOICE OF LAW, AND VENUE:** This Contract shall be governed solely by the laws of the State of Utah. Any action or proceeding arising from this Contract shall be brought in a court

of competent jurisdiction in the State of Utah. Exclusive venue shall be in Salt Lake City, in the Third Judicial District Court for Salt Lake County.

b. **LAWS:** Contractor and all Goods and Services delivered under this Contract will comply with all applicable federal and state of Utah laws, including applicable licensure and certification requirements.

c. **SOVEREIGN IMMUNITY:** The Division and the State of Utah do not waive any protection, right, defense or immunity under the Governmental Immunity Act of Utah, Utah Code §§ 63G-7-101 to 904, as amended, the Eleventh Amendment to the Constitution of the United States, or otherwise, from any claim or from the jurisdiction of any court.

d. **PUBLIC INFORMATION:** This Contract and any purchase orders, invoices, pricing lists, and the Response are public records available for disclosure in accordance with the State of Utah's Government Records Access and Management Act (GRAMA, Utah Code 63G-2-101 et seq.), except to the extent classified as protected in accordance with UCA 63G-2-309. GRAMA takes precedence over any statements of confidentiality or similar notations. Neither the Division, the Eligible User nor the State of Utah will inform Contractor of any request for a copy of this Contract, including any purchase orders, invoices, pricing lists, or the Response.

e. **CREDITING THE DIVISION IN PUBLICITY:** Any publicity given to this Contract shall identify the Division as the managing agency and shall not be released without prior written approval from the Division.

f. **SALES TAX EXEMPTION:** Goods, Custom Deliverables, and Services purchased by some Eligible Users are being paid from that Eligible User's funds and used in the exercise of that Eligible User's essential functions as a State of Utah governmental entity. Any such Eligible Users will provide Contractor with a copy of its sales tax exemption number upon request.

g. **SEVERABILITY:** A declaration or order by any court that any provision of this Contract is illegal and void shall not affect the legality and enforceability of any other provision of this Contract, unless the provisions are mutually dependent.

h. **AMENDMENTS:** This Contract may only be amended by the mutual written agreement of the parties, provided that the amendment is within the Scope of Work of this Contract, is within the scope/purpose of the Solicitation, and is attached and made part of this Contract. Automatic renewals are prohibited and are deemed void even if listed elsewhere in this Contract.

i. **DEBARMENT:** Contractor certifies that it is not presently nor has ever been debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any government department or agency, whether international, national, state, or local. Contractor must notify the Division within thirty (30) days if debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in any contract by any governmental entity.

j. **NONAPPROPRIATION OF FUNDS, REDUCTION OF FUNDS, OR CHANGES IN LAW:** This Contract may be terminated in whole or in part at the sole discretion of the Division or Eligible User upon thirty days written notice, if the Division or Eligible User determines that (a) a change in Federal or State legislation or applicable laws materially affects the ability of either party to perform under the terms of this Contract; or (b) that a change in available funds affects the Division or Eligible User's ability to pay under this Contract. A change of available funds includes, but is not limited to, a change in Federal or State funding, whether as a result of a legislative act or an order of the President, the Governor, or Executive Director.

   The Division or Eligible User, as applicable, will reimburse Contractor for the Goods or Services properly ordered and delivered until the effective date of said notice. The Division and Eligible User are not liable for any performance, commitments, penalties, or liquidated damages that accrue after the effective date of the notice.

k. **ENTIRE AGREEMENT:** This Contract is the entire agreement between the parties, and supersedes any prior and contemporaneous agreements and understandings between the parties, whether oral or written.

l. **WAIVER:** The waiver by either party of any provision, term, covenant, or condition of this Contract shall not be deemed to be a waiver of any other provision, term, covenant, or condition of this Contract nor any subsequent breach of the same or any other provision, term, covenant, or condition of this Contract. The Eligible User's approval, acceptance, or payment for any Goods or Services required under this Contract shall not be construed to operate as a waiver by the Eligible User of any right under this Contract or of any cause of action arising out of the performance or nonperformance of this Contract.

m. **CHANGES IN SCOPE:** Any changes in the scope of work to be performed under this Contract shall be in the form of a written amendment to this Contract, mutually agreed to and signed by both parties, specifying any such changes, fee adjustments, any adjustment in time of performance, or any other significant factors arising from the changes in the scope of work.

n. **TRAVEL COSTS:** Unless otherwise agreed to in the contract, all travel costs associated with the delivery of Services will be paid in accordance with the Utah Administrative Code R25-7. Invoices containing travel costs outside of these rates will be returned to the Contractor for correction.

3. **RECORDS ADMINISTRATION:** Contractor shall maintain or supervise the maintenance of all records necessary to properly account for Contractor's performance and the payments made by an Eligible User to Contractor. These records shall be retained by Contractor for at least six (6) years after final payment (per Utah Administrative Code R33-12-605 and Utah Code 78B-2-309), or until all audits initiated within the six (6) years have been completed, whichever is later. Contractor shall allow, at no additional cost, State of Utah auditors, federal auditors, Eligible Users or any firm identified by the Division, access to all such records. Contractor must refund to the Division any overcharges brought to Contractor's attention by the Division or the Division's auditor and Contractor is not permitted to offset identified overcharges by alleged undercharges to Eligible Users.

4. **CERTIFY REGISTRATION AND USE OF EMPLOYMENT "STATUS VERIFICATION SYSTEM":** This Status Verification System, also referred to as "E-verify", requirement only applies to contracts issued through a Request for Proposal process and to sole sources that are included within a Request for Proposal.

    1) Contractor certifies as to its own entity, under penalty of perjury, that Contractor has registered and is participating in the Status Verification System to verify the work eligibility status of Contractor's new employees that are employed in the State of Utah in accordance with applicable immigration laws including Section 63G-12-302, Utah Code, as amended.

    2) Contractor shall require that the following provision be placed in each subcontract at every tier: "The subcontractor shall certify to the main (prime or general) Contractor by affidavit that the subcontractor has verified through the Status Verification System the employment status of each new employee of the respective subcontractor, all in accordance with applicable immigration laws including Section 63G-12-302, Utah Code, as amended, and to comply with all applicable employee status verification laws. Such affidavit must be provided prior to the notice to proceed for the subcontractor to perform the work."

    3) Contractor's failure to comply with this section will be considered a material breach of this Contract.

    4) Contractor shall protect, indemnify, and hold harmless the Division, the Eligible Users, and the State of Utah, and anyone that the State of Utah may be liable for, against any claim, damages, or liability arising out of or resulting from violations of the above Status Verification System Section whether violated by employees, agents, or contractors of the following: (a) Contractor; (b) Subcontractor at any tier; and/or (c) any entity or person for whom the Contractor or Subcontractor may be liable.

5. **CONFLICT OF INTEREST:** Contractor represents that none of its officers or employees are officers or employees of the State of Utah, unless written disclosure has been made to the Division.

6. **INDEPENDENT CONTRACTOR:** Contractor is an independent contractor, and not an employee or agent of the Division, the Eligible Users, or the State of Utah, and therefore is not entitled to any of the benefits associated with such employment. Contractor has no authorization, express or implied, to bind the Division, the Eligible Users, or the State of Utah to any agreements, settlements, liabilities, or understandings, and shall not perform any acts as an agent for the Division, the Eligible users, or the State of Utah. Contractor is responsible for all applicable federal, state, and local taxes and FICA contributions.

7. **CRIMINAL BACKGROUND SCREENING:** Depending on the Eligible User's policy, each employee of Contractor and Subcontractor may be required to successfully complete a Federal Criminal Background Check, prior to being granted Access to Secure State Facilities, State Data, or Technology. Contractor or the applicable employee shall provide Eligible Users with sufficient personal information (at Contractor's expense) so that a Federal Criminal Background Check may be completed by the Eligible User, at Eligible User's expense. The Eligible User will provide Contractor with forms which must be filled out by Contractor and returned to the Eligible User. Each employee of Contractor or a Subcontractor who will have Access to Secure State Facilities, State Data, or Technology must be fingerprinted by the Eligible User or local law enforcement a minimum of one week prior to needing access. At the time of fingerprinting, said employee shall disclose all felony or misdemeanor convictions. Eligible Users may conduct a Federal Criminal Background Check based upon the fingerprints and personal information provided and use this same information to complete a Name Check in the Utah Criminal Justice Information System (UCJIS) at least every two years. Eligible Users may revoke Access to Secure State Facilities, Data, and Technology granted in the event of any negative results. Contractor and the employee or subcontractor shall immediately notify Eligible Users if an arrest or conviction for a felony or misdemeanor of any person that has Access to Secure State Facilities, State Data or Technology occurs during the Contract Period. Eligible Users will determine in its discretion if such person's Access to Secure State Facilities, State Data, or Technology shall remain in effect. Felony and misdemeanor are defined by the laws of the State of Utah, regardless of where the

conviction occurred. (DTS Policy 2000-0014 Background Investigations)

8. **DRUG-FREE WORKPLACE:** Contractor shall abide by the Eligible User's drug-free workplace policies while on the Eligible User's or the State of Utah's premises.

9. **CODE OF CONDUCT:** If Contractor is working at facilities controlled or owned by the State of Utah, Contractor shall follow and enforce the agency applicable code of conduct. Contractor will ensure that each employee receives a copy of the policies and applicable codes of conduct. (DTS Policy 2000-0001 Code of Conduct, DTS Policy 1000-0003 Acceptable Use of Information Technology Resources)

10. **INDEMNITY AND LIABILITY**

    a. **Indemnity Clause:** Contractor shall fully indemnify, defend, and save harmless the Division, Eligible Users, and the State of Utah from all claims, losses, suits, actions, damages, and costs of every name and description arising out of Contractor's performance of this Contract caused by any intentional act, omission or negligence of Contractor, its agents, employees, officers, partners, and Subcontractors, without limitation; provided, however, that the Contractor shall not indemnify for that portion of any claim, loss, or damage due to the fault of the Division, the Eligible User, or the State of Utah. Any limitations of the Contractor's liability will not apply to injuries to persons, including death, or to damages to property.

    b. **Governmental Immunity Act:** In accordance with the Constitution of the State of Utah and the Governmental Immunity Act of Utah ("the Act", Utah Code §§63G-7-101 to 904, as amended), the Division and the State of Utah have no liability for the operations, acts, or omissions of the Contractor or any third party. Any indemnity obligations of the Division, Eligible Users, or the State of Utah are subject to the Constitution of the State of Utah and the Act and limited to claims that arise from and to the extent caused by the negligent acts or omissions of the Division or the Eligible Users in the performance of the Division's or the Eligible User's obligations under this Contract.

    c. **Intellectual Property Indemnification:** Contractor warrants and represents it has full ownership and clear title free of all liens and encumbrances to any Good delivered under this contract. Contractor also warrants that any Good, Custom Deliverable, or Service furnished by Contractor under this Contract, including its use by the Eligible Users in unaltered form, will not infringe any copyrights, patents, trade secrets, or other proprietary rights.

    Contractor will release, indemnify, and hold the Division, the Eligible Users, and the State of Utah harmless from liability or damages of any kind or nature, including Contractor's use of any copyrighted or un-copyrighted composition, secret process, patented or un-patented invention, article, or appliance furnished or used in Contractor's performance of this Contract. Additionally, if such a claim or liability is based upon an allegation that a Good, Custom Deliverable, or Service furnished by Contractor infringes on any right protected by any patent, copyright, trademark, trade secret, and/or proprietary right, Contractor shall indemnify and hold harmless the Division, the Eligible Users, and the State of Utah for any judgments, settlements, costs, and reasonable attorneys' fees resulting from such a claim or liability. Contractor shall defend all actions brought upon such matters to be indemnified hereunder and pay all costs and expenses incidental thereto; however, the Eligible Users shall have the right, at its option, to participate in the defense of any such action at its own expense without relieving Contractor of any obligation hereunder. If there are any limitations of liability in this Contract, such limitations will not apply to this section.

11. **HARDWARE WARRANTY: THE STATE OF UTAH DOES NOT ACCEPT ANY PROCUREMENT ITEM "AS-IS".** CONTRACTOR WARRANTS ALL HARDWARE PORTIONS OF ANY GOOD OR CUSTOM DELIVERABLE THAT IT DIRECTLY OR INDIRECTLY PROVIDES FOR A PERIOD OF **ONE YEAR**. ALL WARRANTIES GRANTED TO THE DIVISION AND ELIGIBLE USERS BY THE UNIFORM COMMERCIAL CODE OF THE STATE OF UTAH APPLY TO THIS CONTRACT. PRODUCT LIABILITY DISCLAIMERS AND/OR WARRANTY DISCLAIMERS FROM CONTRACTOR OR ITS SUPPLIERS ARE REJECTED. CONTRACTOR WARRANTS THAT THE HARDWARE: (A) WILL PERFORM AS SPECIFIED IN THE RESPONSE; (B) WILL LIVE UP TO ALL SPECIFIC CLAIMS LISTED IN THE RESPONSE; (C) WILL BE SUITABLE FOR THE ORDINARY PURPOSES FOR WHICH THE HARDWARE IS USED; (D) WILL BE SUITABLE FOR ANY SPECIAL PURPOSES THAT THE DIVISION HAS RELIED ON CONTRACTOR'S SKILL OR JUDGMENT TO CONSIDER WHEN IT ADVISED THE DIVISION ABOUT THE HARDWARE IN THE RESPONSE; (E) THE HARDWARE HAS BEEN PROPERLY DESIGNED AND MANUFACTURED; AND (F) IS FREE OF SIGNIFICANT DEFECTS.

12. **SOFTWARE WARRANTY: THE STATE OF UTAH DOES NOT ACCEPT ANY PROCUREMENT ITEM "AS-IS".** CONTRACTOR WARRANTS FOR A PERIOD OF **NINETY DAYS** FROM THE DATE OF ACCEPTANCE THAT THE SOFTWARE PORTIONS OF THE GOODS AND CUSTOM DELIVERABLES THAT CONTRACTOR DIRECTLY OR INDIRECTLY PROVIDES WILL: (A) PERFORM IN ACCORDANCE WITH THE SPECIFIC CLAIMS PROVIDED IN THE RESPONSE; (B) BE SUITABLE FOR THE ORDINARY PURPOSES FOR WHICH

SUCH GOODS AND CUSTOM DELIVERABLES ARE USED; (C) BE SUITABLE FOR ANY SPECIAL PURPOSES THAT THE ELIGIBLE USER HAS RELIED ON CONTRACTOR'S SKILL OR JUDGMENT TO CONSIDER WHEN IT ADVISED THE STATE ABOUT THE GOODS OR CUSTOM DELIVERABLES; (D) HAVE BEEN PROPERLY DESIGNED AND MANUFACTURED; AND (E) BE FREE OF SIGNIFICANT DEFECTS. CONTRACTOR SHALL PROVIDE THE ELIGIBLE USER WITH BUG FIXES, INCLUDING INFORMING THE ELIGIBLE USERS OF ANY KNOWN SOFTWARE BUGS OR SOFTWARE DEFECTS THAT MAY AFFECT THE STATE'S USE OF THE SOFTWARE.

13. **WARRANTY REMEDIES:** Upon breach of warranty, Contractor will repair or replace (at no charge to the Eligible User) the nonconforming Goods or Custom Deliverables. If the repaired and/or replaced products are inadequate, Contractor will refund the full amount of any payments that have been made for the failed products. These remedies are in addition to any other remedies provided by law or equity.

14. **UPDATES AND UPGRADES:** Contractor grants to the Eligible User a non-exclusive, non-transferable license to use upgrades and updates provided by Contractor during the Contract Period. Upgrades and updates are subject to the terms of this Contract. The Eligible User reserves the right to accept updates and upgrades at its discretion and to determine if such updates comply with the requirements in the Contract scope of work.

15. **BUG FIXING AND REMOTE DIAGNOSTICS:** Contractor shall use commercially reasonable efforts to provide work-around solutions or patches to reported software problems. With the Eligible User's prior written authorization, Contractor may perform remote diagnostics to work on reported problems. If the Eligible User declines remote diagnostics, Contractor and the Eligible User may agree to on-site technical support, subject to the terms of the Contract.

16. **TECHNICAL SUPPORT AND MAINTENANCE:** If technical support and maintenance is required by the Contract, Contractor will use commercially reasonable efforts to respond to the Eligible User in a reasonable time, and in all events, in accordance with the specific timeframes detailed in the Contract, when the Eligible User makes technical support or maintenance requests.

17. **PHYSICAL DELIVERY:** All non-electronic deliveries will be F.O.B. destination with all transportation and handling charges paid by Contractor. Contractor is responsible for including any freight charges due by the Eligible User to Contractor when providing quotes to the Eligible User. Invoices listing freight charges that were not identified in the quote will be returned to the Contractor to remove such costs. Responsibility and liability for loss or damage will remain with Contractor until final inspection and acceptance, when responsibility will pass to the Eligible User except as to latent defects, fraud, and Contractor's warranty obligations.

18. **ELECTRONIC DELIVERY:** Contractor may electronically deliver any Good or Custom Deliverable to the Eligible User or provide any Good and Custom Deliverable for download from the Internet, if pre-approved in writing by the Eligible User. Contractor shall ensure the confidentiality of electronic deliveries in transit. Contractor warrants that all electronic deliveries will be free of known malware, bugs, Trojan horses, etc.

19. **ACCEPTANCE PERIOD:** A Good, Custom Deliverable, or Service furnished under this Contract shall function in accordance with the specifications identified in this Contract and Solicitation. If the Goods and Custom Deliverables delivered do not conform to the specifications identified in this Contract and Solicitation ("Defects"), the Eligible User shall within thirty (30) calendar days of the delivery date ("Acceptance Period") notify Contractor in writing of the Defects. Upon receiving notice, Contractor shall use reasonable efforts to correct the Defects within fourteen (14) calendar days ("Cure Period"). The Eligible User's acceptance of a Good, Custom Deliverable, or Services occurs at the end of the Acceptance Period or Cure Period, whichever is later.

    If after the Cure Period, a Good, Custom Deliverable, or Service still has Defects, then the Eligible User may, at its option: (a) declare Contractor to be in breach and terminate this Contract; (b) demand replacement conforming Goods, Custom Deliverables, or Services from Contractor at no additional cost to the Eligible User; or (c) continue the Cure Period for an additional time period agreed upon by the Eligible User and Contractor in writing. Contractor shall pay all costs related to the preparation and shipping of the replacement products. No products shall be deemed accepted and no invoices shall be paid until acceptance. The warranty period will begin upon the end of the Acceptance Period.

20. **SECURE PROTECTION AND HANDLING OF STATE DATA:** If Contractor is given access to State Data, the protection of State Data shall be an integral part of the business activities of Contractor, and Contractor shall ensure that there is no inappropriate or unauthorized use of State Data. Contractor shall safeguard the confidentiality, integrity, and availability of the State Data and comply with the conditions outlined below. The Eligible User reserves the right to verify Contractor's adherence to the following conditions to ensure they are met:
    a. **Network Security**: Contractor shall maintain network security that, at a minimum, includes: network firewall provisioning, intrusion detection, and regular third-party penetration testing. Contractor shall maintain network security and ensure that Contractor network security policies conform to one of the following:

1) Those standards the State of Utah applies to its own network, found outlined in *DTS Policy 5000-0002 Enterprise Information Security Policy*;
2) Current standards set forth and maintained by the National Institute of Standards and Technology, includes those at: http://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800-53r4.pdf; or
3) Any generally recognized comparable standard that Contractor then applies to its own network and pre-approved by the Eligible User in writing.

b. **State Data Security:** Contractor shall protect and maintain the security of State Data with protection that is at least as good as or better than that maintained by the State of Utah which will be provided by an Eligible User upon Contractor's request (*DTS Policy 5000-0002*). These security measures included but are not limited to maintaining secure environments that are patched and up to date with all appropriate security updates as designated (ex. Microsoft Notification). The Eligible User reserves the right to determine if Contractor's level of protection meets the Eligible User's security requirements.

c. **State Data Transmission**: Contractor shall ensure all transmission or exchange of system application data with the Eligible User and State of Utah and/or any other parties expressly designated by the State of Utah, shall take place via secure means (ex. HTTPS or FTPS).

d. **State Data Storage**: All State Data will be stored and maintained in data centers in the United States. No State Data will be processed on or transferred to any portable or laptop computing device or portable storage medium, except for devices that are used and kept only at Contractor's United States data centers, unless such medium is part of the Contractor's designated backup and recovery process.

e. **Access**: Contractor shall permit its employees and Subcontractors to remotely access non-State Data only as required to provide technical support.

f. **State Data Encryption**: Contractor shall store all data provided to Contractor, including State, as well as any backups made of that data, in encrypted form using no less than 128 bit key and include all data as part of a designated backup and recovery process.

g. **Password Protection**: Any portable or laptop computer that has access to the Eligible User's or State of Utah networks, or stores any Eligible User data shall be equipped with strong and secure password protection.

h. **Confidential Information Certification:** Contractor shall sign a Confidential Information Certification form prior to being given access to confidential computerized records.

i. **State Data Re-Use:** All data exchanged shall be used expressly and solely for the purpose enumerated in this Contract. No State Data of any kind may be transmitted, exchanged, or provided to other contractors or third parties except on a case-by-case basis as specifically agreed to in writing by the Eligible User.

j. **State Data Destruction**: Upon expiration or termination of this Contract, Contractor shall erase, destroy, and render unreadable all State Data from all non-state computer systems and backups, and certify in writing that these actions have been completed within thirty (30) days of the expiration or termination of this Contract or within seven (7) days of the request of the Eligible User, whichever shall come first, unless the Eligible User provides Contractor with a written directive. The Eligible User's written directive may require that certain data be preserved in accordance with applicable law.

k. **Services Shall Be Performed Within United States**: ALL OF THE SERVICES RELATED TO STATE DATA SHALL BE PERFORMED WITHIN THE BORDERS AND JURISDICTION OF THE UNITED STATES.

l. **User Support**: Contractor may provide technical user support on a 24/7 basis using a Follow the Sun model, unless otherwise prohibited by this contract.

21. SECURITY INCIDENT OR DATA BREACH NOTIFICATION: Contractor shall immediately inform the Eligible User of any Security Incident or Data Breach. It is within the Eligible User's discretion to determine whether any attempted unauthorized access is a Security Incident or a Data Breach.

a. **Incident Response**: Contractor may need to communicate with outside parties regarding a Security Incident, which may include contacting law enforcement and seeking external expertise as mutually agreed upon, defined by law or contained in this Contract. Discussing Security Incidents with the Eligible User should be handled on an urgent as-needed basis, as part of Contractor's communication and mitigation processes, defined by law or contained in this Contract.

b. **Security Incident Reporting Requirements**: Contractor shall promptly report a Security Incident to the Eligible User.

c. **Breach Reporting Requirements**: As required by Utah Code 13-44-202 or any other law, Contractor shall immediately notify the Eligible User of a Data Breach that affects the security of State Data.

22. **DATA BREACH RESPONSIBILITIES:** Contractor shall comply with all applicable laws that require the notification of individuals in the event of a Data Breach or other events requiring notification(*DTS Policy 5000-0002 Enterprise Information Security Policy)*. In the event of a Data Breach or other event requiring notification under applicable law (Utah Code § 13-44-101 thru 301 et al), Contractor shall: (a) cooperate with the Eligible User by sharing information relevant to the Data Breach; (b) promptly implement necessary remedial measures, if necessary; and (c) document responsive actions taken related to the Data Breach, including any post-incident review of events and actions taken to make changes in business practices in relation to the Data Breach. If the Data Breach requires public notification, all communication shall be coordinated with the Eligible User. Contractor is responsible for all notification and remedial costs and damages.

23. **STATE INFORMATION TECHNOLOGY POLICIES:** If Contractor is providing an Executive Branch Agency of the State of Utah with Goods or Custom Deliverables, Contractor shall comply with policies and procedures that meet or exceed those DTS follows for internally developed goods and deliverables to minimize security risk, ensure applicable Utah and Federal laws are followed, address issues with accessibility and mobile device access, and prevent outages and data breaches within the State of Utah's environment. Contractor shall comply with the following DTS Policies:

    a. **DTS Policy 4000-0001, Enterprise Application and Database Deployment Policy**: A Contractor developing software for the State to develop and establish proper controls that will ensure a clear separation of duties between developing and deploying applications and databases to minimize security risk; to meet due diligence requirements pursuant to applicable Utah and federal regulations; to enforce contractual obligations; and to protect the State's electronic information and information technology assets.

    b. **DTS policy 4000-0002, Enterprise Password Standards Policy**: A Contractor developing software for the State must ensure it complies with the password requirements of the Enterprise Password Standards Policy.

    c. **DTS Policy 4000-0003, Software Development Life Cycle Policy**: A Contractor developing software for the State shall work with DTS in implementing a Software Development Lifecycle (SDLC) that addresses key issues of security, accessibility, mobile device access, and standards compliance.

    d. **DTS Policy 4000-0004, Change Management Policy**: Goods or Custom Deliverables furnished or Services performed by Contractor which have the potential to cause any form of outage or to modify DTS's or the State of Utah's infrastructure must be reviewed by the DTS Change Management Committee. Any outages or Data Breaches which are a result of Contractor's failure to comply with DTS instructions and policies will result in Contractor's liability for all damages resulting from or associated with the outage or Data Breach.

24. **CONFIDENTIALITY:** This section does not apply to records where disclosure is regulated under Federal or State laws.

    GRAMA applies only to records, therefore if information (other than Non-Public Data, Public Health Information, or State Data) is disclosed orally by either party which either party wishes to remain confidential, then each party shall adhere to the following:

    Each party will: (a) limit disclosure of any such information to Authorized Persons who have a need to know such information in connection with the current or contemplated business relationship between the parties to which this Contract relates, and only for that purpose; (b) advise its Authorized Persons of the proprietary nature of the information and of the obligations set forth in this Contract and require such Authorized Persons to keep the information confidential; (c) shall keep all information strictly confidential by using a reasonable degree of care, but not less than the degree of care used by it in safeguarding its own confidential information; and (d) not disclose any such information received by it to any third parties, except as otherwise agreed to in writing by the disclosing party. Each party will notify the other of any misuse or misappropriation of such information that comes to said party's attention.

    This duty of confidentiality shall be ongoing and survive the Contract Period.

25. **Reserved**

26. **OWNERSHIP IN INTELLECTUAL PROPERTY:** The Parties recognize that each has no right, title, or interest, proprietary or otherwise, in or to the name, logo, or intellectual property owned or licensed by the other. The Parties shall not, without the prior written consent of the other or as authorized in this Contract, use the name, logo, or intellectual property owned or licensed by the other.

27. **OWNERSHIP IN CUSTOM DELIVERABLES:** Contractor warrants, represents and conveys full ownership, clear title free of all liens and encumbrances to any Custom Deliverable. Contractor conveys the ownership in Custom Deliverables as defined in this Attachment A to the Eligible User. All intellectual property rights, title and interest in the Custom Deliverables shall transfer to the Eligible User, subject to the following:

a. Contractor has received payment for the Custom Deliverables,

b. Each party will retain all rights to Background IP, even if embedded in the Custom Deliverables.

c. Custom Deliverables, excluding Contractor's Background IP may not be marketed or distributed without written approval by the Eligible User.

Contractor shall grant to the Eligible User a perpetual, irrevocable, royalty-free license to use Contractor's Background IP as defined above, solely for the Eligible User to use the Custom Deliverables.

28. **LICENSE FOR GOODS:** For the Goods delivered that include Contractor's scripts and code and are not considered Custom Deliverables, Contractor grants the Eligible User a non-exclusive, non-transferable, irrevocable, perpetual right to use, copy, and, without the right to sublicense, for the Eligible User's internal business operation under this Contract

29. **OWNERSHIP, PROTECTION, AND USE OF RECORDS:** The Eligible User shall own exclusive title to all information and data gathered, reports developed, and conclusions reached by the Eligible User in performance of this Contract. Contractor may not use, except in meeting its obligations under this Contract, information gathered, reports developed, or conclusions reached by the Eligible User in performance of this Contract without the express written consent of the Eligible User.

30. **OWNERSHIP, PROTECTION, AND USE OF DATA:** The Eligible User shall own and retain unlimited rights to use, disclose, or duplicate all information and data (copyrighted or otherwise) developed, derived, documented, stored, or furnished by Contractor under this Contract. Contractor, and any Subcontractors under its control, expressly agrees not to use Non-Public Data without prior written permission from the Eligible User.

31. **OWNERSHIP, PROTECTION, AND USE OF CONFIDENTIAL FEDERAL, UTAH, OR LOCAL GOVERNMENT INTERNAL BUSINESS PROCESSES AND PROCEDURES:** In the event that the Eligible User provides Contractor with confidential federal or state business processes, policies, procedures, or practices, pursuant to this Contract, Contractor shall hold such information in confidence, in accordance with applicable laws and industry standards of confidentiality, and not to copy, reproduce, sell, assign, license, market, transfer, or otherwise dispose of, give, or disclose such information to third parties or use such information for any purpose whatsoever other than the performance of this Contract. The improper use or disclosure by any party of protected internal federal or state business processes, policies, procedures, or practices is prohibited. Confidential federal or state business processes, policies, procedures, or practices shall not be divulged by Contractor or its Subcontractors, except for the performance of this Contract, unless prior written consent has been obtained in advance from the Eligible User.

32. **OWNERSHIP, PROTECTION, AND RETURN OF DOCUMENTS AND DATA UPON CONTRACT TERMINATION OR COMPLETION:** All documents and data pertaining to work required by this Contract will be the property of the Eligible User, and must be delivered to the Eligible User within thirty (30) working days after termination or expiration of this Contract, and without restriction or limitation to their future use. Any State Data returned under this section must either be in the format as originally provided, in a format that is readily usable by the Eligible User, or formatted in a way that it can be used. The costs for returning documents and data to the Eligible User are included in this Contract.

33. **ORDERING AND INVOICING:** For State of Utah Executive Branch Agencies, a purchase order must be sent to the Contractor by DTS prior to any work being initiated, product shipped, or invoices cut under this contract. All orders will be shipped promptly in accordance with the delivery schedule. Contractor will promptly submit invoices (within 30 days after shipment or delivery of goods or services, with the exclusion of end of fiscal year invoicing for Executive Branch Agencies) to the appropriate Eligible User. The contract number shall be listed on all invoices, freight tickets, and correspondence relating to an order under this Contract. The prices paid by the Eligible User shall not exceed prices listed in this Contract. The Eligible User shall adjust or return any invoice reflecting incorrect pricing. For Executive Branch Agencies, Contractor must send all invoices no later than July 10, or the last working day prior, to the State for all work completed or items received during the State's fiscal year of July 1-June 30.

34. **PAYMENT AND NOTICE:**

a. Payments will be made within thirty (30) days from the date a correct invoice is received. For Executive Branch Agencies, a correct invoice will contain the contract and purchase order numbers as indicated in Section 33. After sixty (60) days from the date a correct invoice is received by the appropriate State official, the Contractor may assess interest on overdue, undisputed account charges up to the interest rate paid by the IRS on refund claims, plus two percent, computed in accordance with Section 15-6-3, Utah Prompt Payment Act of Utah Code, as amended.

b. The contract costs may be changed only by written amendment. All payments to Contractor will be remitted by mail, by electronic funds transfer, or by the Eligible User's purchasing card (major credit card). The Division will not pay electronic payment fees of any kind.

c. Any written protest of the final contract payment must filed with the Eligible User within ten (10) working days of receipt of final payment. If no protest is received, the Eligible User, the Division, and the State of Utah are released from all claims and all liability to Contractor for fees and costs pursuant to this Contract.
d. Overpayment: If during or subsequent to the Contract an audit determines that payments were incorrectly reported or paid by the Eligible User to Contractor, then Contractor shall, upon written request, immediately refund to the Eligible User any such overpayments.

35. CONTRACTOR'S INSURANCE RESPONSIBILITY: The Contractor shall maintain the following insurance coverage:

a. Workers' compensation insurance during the term of this Contract for all its employees and any Subcontractor employees related to this Contract. Workers' compensation insurance shall cover full liability under the workers' compensation laws of the jurisdiction in which the work is performed at the statutory limits required by said jurisdiction.

b. Commercial general liability [CGL] insurance from an insurance company authorized to do business in the State of Utah. The limits of the CGL insurance policy will be no less than one million dollars ($1,000,000.00) per person per occurrence and three million dollars ($3,000,000.00) aggregate.

c. Commercial automobile liability [CAL] insurance from an insurance company authorized to do business in the State of Utah. The CAL insurance policy must cover bodily injury and property damage liability and be applicable to all vehicles used in your performance of Services under this Agreement whether owned, non-owned, leased, or hired. The minimum liability limit must be $1 million per occurrence, combined single limit. The CAL insurance policy is required if Contractor will use a vehicle in the performance of this Contract.

d. Other insurance policies specified in the Solicitation.

Certificate of Insurance, showing up-to-date coverage, shall be on file with the State before the Contract may commence. Failure to provide proof of insurance as required will be deemed a material breach of this Contract.

Contractor's failure to maintain this insurance requirement for the Contract Period will be grounds for immediate termination.

36. ADDITIONAL INSURANCE REQUIREMENTS:

a. Professional liability insurance in the amount as described in the Solicitation for this Contract, if applicable.

b. Any other insurance policies described or referenced in the Solicitation for this Contract.

c. Any type of insurance or any increase of limits of liability not described in this Contract which the Contractor requires for its own protection or on account of any federal, Utah, or local statute, rule, or regulation shall be its own responsibility, and shall be provided at Contractor's own expense.

d. The carrying of insurance required by this Contract shall not be interpreted as relieving the Contractor of any other responsibility or liability under this Contract or any applicable law, statute, rule, regulation, or order. Contractor must provide proof of the above listed policies within thirty (30) days of being awarded this Contract.

37. ASSIGNMENT/SUBCONTRACT: Contractor will not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this Contract, in whole or in part, without the prior written approval of the Division.

38. TERMINATION: This Contract may be terminated for cause by either party upon written notice being given by the other party. The party in violation will be given ten (10) calendar days, or as otherwise agreed upon in writing, after notification to correct and cease the violations, after which this Contract may be terminated for cause immediately and subject to the remedies below. This Contract may also be terminated without cause (for convenience) by the Division, upon thirty (30) calendar days written termination notice being given to the Contractor. The Division and the Contractor may agree to terminate this Contract, in whole or in part, at any time by mutual written agreement.

Contractor shall be compensated for the Services properly performed and goods properly provided pursuant to this Contract up to the effective date of termination as stated in the notice. Contractor agrees that in the event of termination for cause or without cause, Contractor's sole remedy and monetary recovery from the Division, the Eligible User, or the State of Utah is limited to payment for all work properly performed as authorized under this Contract up to the date of termination, and any reasonable pro-rated monies that may be owed as a result of Contractor having to terminate other contracts necessarily and appropriately entered into by Contractor pursuant to this Contract, after receipt and verification of documented evidence of those terminated contracts.

39. **TERMINATION UPON DEFAULT:** In the event this Contract is terminated for default by Contractor, the Division may procure Goods, Custom Deliverables, or Services similar to those terminated, and Contractor shall be liable to the Division for any and all cover costs and damages.

40. **SUSPENSION OF WORK:** The Division may suspend Contractor's responsibilities under this Contract without terminating this Contract by issuing a written notice. Contractor's responsibilities may then be reinstated upon written notice from the Division.

41. **DEFAULT AND REMEDIES:** Any of the following events will constitute cause for the Division to declare Contractor in default of this Contract for nonperformance of contractual requirements or a material breach of any term or condition of this Contract. The Division will issue a written notice of default and may provide a fourteen (14) day period in which Contractor will have an opportunity to cure. Time allowed for cure will not diminish or eliminate Contractor's liability for damages. If the default remains, after Contractor has been provided the opportunity to cure, the Division may exercise any remedy provided by law; terminate this Contract and any related contracts or portions thereof; (c) impose liquidated damages, if liquidated damages are listed in the contract; (d) suspend or debar Contractor from receiving future solicitations; or (e) demand a full refund of the Goods, Custom Deliverables, or Services furnished by Contractor that are defective or Services that were inadequately performed.

42. **FORCE MAJEURE:** Neither party to this Contract will be held responsible for delay or default caused by fire, riot, acts of God, or war which is beyond that party's reasonable control. The Division may immediately terminate this Contract after determining such delay will reasonably prevent successful performance of this Contract.

43. **CONFLICT OF TERMS:** Contractor terms and conditions must be attached to this Contract. No other terms and conditions will apply to this Contract, including terms listed or referenced on a Contractor's website, quotation/sales order, purchase orders, or invoice. In the event of any conflict in the contract terms and conditions, the order of precedence is: (a) This Attachment A; (b) the Division's Contract Signature Page(s); (c) State of Utah's Additional Terms and Conditions, if any; and (d) Contractor Terms and Conditions, if any. Attachment A will be given precedence over any provisions including, limitation of liability, indemnification, standard of care, insurance, or warranty, and will not be nullified by or exception created by more specific terms elsewhere in this Contract.

44. **SURVIVORSHIP:** The contractual provisions that will remain in effect after expiration or termination of this Contract are: (a) Contract Jurisdiction, Choice of Law, and Venue; (b) Secure Protection and Handling of State Data; (c) Data Breach Responsibilities; (d) Ownership in Custom Deliverables; (e) Ownership, Protection, and Use of Records, including Residuals of such records; and (f) Ownership, Protection, and Use of Confidential Federal, Utah, or Local Government Internal Business Processes, including residuals of such confidential business processes; (g) Ownership, Protection, and Return of Documents and Data Upon Contract Termination or Completion; (h) Confidentiality; (i) Conflict of Terms; and (j) any other terms that by their nature would survive the expiration, completion, or termination of this contract.

45. **RELEVANT STATE AND FEDERAL LAWS**

    a. **Conflict of Interest with State Employees:** Contractor shall comply and cooperate in good faith with all conflict of interest and ethic laws, including Section 63G-6a-2404, Utah Procurement Code, as amended.

    b. **Procurement Ethics:** Contractor understands that a person who is interested in any way in the sale of any supplies, services, products, construction, or insurance to the State of Utah is violating the law if the person gives or offers to give any compensation, gratuity, contribution, loan, or reward, or any promise thereof to any person acting as a procurement officer on behalf of the State of Utah, or who in any official capacity participates in the procurement of such supplies, services, products, construction, or insurance, whether it is given for their own use or for the use or benefit of any other person or organization (63G-6a-2304.5, Utah Procurement Code, as amended).

    c. **Contact Information:** Per Utah Code §§63G-6a-110 and 35A-2-203, the State shall make Contractor's contact information available to the State of Utah Department of Workforce Services. The State of Utah Department of Workforce Services may post information regarding Contractor's job vacancies on its website.

    d. **Employment Practices:** Contractor shall abide by the following employment laws: (i)Title VI and VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e) which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of services, on the basis of race, religion, color, or national origin; (ii) Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; (iii) 45 CFR 90 which prohibits discrimination on the basis of age; (iv) Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990 which prohibits discrimination on the basis of disabilities; and (v) Utah's Executive Order 2019-1, dated February 5, 2019, which prohibits unlawful harassment in the work place. Contractor shall abide by any other laws, regulations, or orders that prohibit the discrimination of any kind of any of Contractor's employees.

e. **Compliance with Accessibility Standards:** Contractor shall comply with the Accessibility Standards of Section 508 Amendment to the Rehabilitation Act of 1973. Contractor shall comply with Utah Administrative Code R895-14-3(3), which states that contractors developing new websites or applications for State agencies are required to meet accessibility guidelines subject to rule R895 and correct any items that do not meet these guidelines at no cost to the agency. Contractor shall comply with Utah Administrative Code R895-14-4(2), which states that contractors proposing IT products and services shall provide Voluntary Product Accessibility Template® (VPAT™) documents.

46. RIGHT TO MONITOR PERFORMANCE AND AUDIT

a. **Audit:** Contractor shall, upon written notification permit the Division, or a third party designated by the Division, to perform an assessment, audit, examination, or review of all of Contractor's sites and environments - including physical, technical, and virtual sites and environments - in order to confirm Contractor's compliance with this Contract; associated scopes of work; and applicable laws, regulations, and industry standards. Contractor shall fully cooperate with such assessment by providing access to knowledgeable personnel; physical premises; records; technical and physical infrastructures; and any other person, place, or object which may assist the Division or its designee in completing such assessment. Upon request, Contractor shall provide the results of any audit performed by or on behalf of Contractor that would assist the Division or its designee in confirming Contractor's compliance with this Contract; associated scopes of work; and applicable laws, regulations, and industry standards.

b. **Monitor Performance**: The Division and Eligible Users reserve the right to monitor Contractor's performance, perform plan checks, plan reviews, other reviews, and/or comment upon the Services of Contractor. This includes Contractor's Subcontractors, if any. Results of any evaluation may be made available to the Contractor upon Contractor's request.

47. TIME IS OF THE ESSENCE: The Services shall be completed and Goods and Custom Deliverables delivered by any applicable deadline stated in this Contract. Time is of the essence.

48. STANDARD OF CARE: For Services of Contractor which require licenses and certifications, such Services shall be performed in accordance with the standard of care exercised by licensed members of their respective professions having substantial experience providing similar services which similarities include the type, magnitude, and complexity of the Services that are the subject of this Contract.

49. LARGE VOLUME DISCOUNT PRICING: Eligible Users may seek to obtain additional volume discount pricing for large orders provided Contractor is willing to offer additional discounts for large volume orders. No amendment to this Contract is necessary for Contractor to offer discount pricing to an Eligible User for large volume purchases.

50. ELIGIBLE USER PARTICIPATION: Participation under this Contract by Eligible Users is voluntarily determined by each Eligible User. Contractor agrees to supply each Eligible User with Goods based upon the same terms, conditions and prices of this Contract.

51. INDIVIDUAL CUSTOMERS: Each Eligible User that purchases Goods from this Contract will be treated as if they were individual customers. Each Eligible User will be responsible to follow the terms and conditions of this Contract. Contractor agrees that each Eligible User will be responsible for their own charges, fees, and liabilities. Contractor shall apply the charges to each Eligible User individually. The Division is not responsible for any unpaid invoice.

52. QUANTITY ESTIMATES: The Division does not guarantee any purchase amount under this Contract. Estimated quantities are for Solicitation purposes only and are not to be construed as a guarantee.

53. ORDERING: Orders will be placed by the using Eligible User directly with Contractor. All orders will be shipped promptly in accordance with the terms of this Contract.

54. REPORTS AND FEES:

a. **Administrative Fee:** Contractor agrees to provide a quarterly administrative fee to the State in the form of a check, EFT or online payment through the Division's Automated Vendor Usage Management System. Checks will be payable to the "State of Utah Division of Purchasing" and will be sent to State of Utah, Division of Purchasing, Attn: Cooperative Contracts, PO Box 141061, Salt Lake City, UT 84114-1061. The Administrative Fee will be the amount listed in the Solicitation and will apply to all purchases (net of any returns, credits, or adjustments) made under this Contract.

b. **Quarterly Reports:** Contractor agrees to provide a quarterly utilization report, reflecting net sales to the State during the associated fee period. The report will show the dollar volume of purchases by each Eligible User. The quarterly report will be provided in secure electronic format through the Division's Automated Vendor Usage Management System found at: https://statecontracts.utah.gov/Vendor**.**

c. **Report Schedule:** Quarterly utilization reports shall be made in accordance with the following schedule:

Period End	Reports Due
March 31	April 30
June 30	July 31
September 30	October 31
December 31	January 31

d. **Fee Payment:** After the Division receives the quarterly utilization report it will send Contractor an invoice for the total quarterly administrative fee owed to the Division. Contractor shall pay the quarterly administrative fee within thirty (30) days from receipt of invoice.

55. Timely Reports and Fees: If the quarterly administrative fee is not paid by thirty (30) days of receipt of invoice or quarterly utilization reports are not received by the report due date, then Contractor will be in material breach of this Contract.

(Revision Date: 23 April 2020)

VERMONT

STATE OF VERMONT
STANDARD RIDER
TO SOFTWARE LICENSES AND END USER LICENSE AGREEMENTS

1. MODIFICATIONS TO PROVIDER DOCUMENTS. The State and the Software Publisher/Services Provider ("Provider") specifically agree that, for purposes of execution of the Provider Documents and this Rider (collectively, "Agreement"), and notwithstanding any language to the contrary in Provider Documents, the Provider Documents are hereby modified and superseded as follows:

(**a**) Any requirement that the State defend or indemnify any party or otherwise be liable for the expenses or reimbursement, including attorneys' fees, collection costs or license verification costs of any party, is hereby deleted.

(**b**) Any requirement that the State agree to binding arbitration or otherwise waive the State's right to a jury trial is hereby deleted.

(**c**) Provider Documents shall be governed by and construed in accordance with the laws of the State of Vermont and that any action or proceeding brought by either the State or Provider in connection with this Agreement shall be brought and enforced in the Superior Court of the State of Vermont, Civil Division, Washington Unit.

(**d**) Nothing in the Provider Documents shall constitute an implied or deemed waiver of the immunities, defenses, rights or actions arising out of State's sovereign status or under the Eleventh Amendment to the United States Constitution.

(**e**) Any provision which limits the time within which an action may be brought is hereby deleted.

(**f**) Any obligations of the State to maintain the confidentiality of information shall be subject to the laws of the State of Vermont.

(**g**) State purchases must be invoiced tax free. An exemption certificate will be furnished upon request covering otherwise taxable items.

(**h**) To the extent Provider Documents permit access to State systems for the purpose of verifying State compliance with the terms of the Provider Documents, then, in lieu of any such right, the following shall apply: upon request and not more frequently than annually, the State agrees to provide Provider with a certified report concerning the State's use of any software licensed for State use pursuant this Agreement. Provider agrees that any non-compliance indicated by the report shall not constitute infringement of Provider's intellectual property rights, and that settlement payment mutually agreeable to the parties shall be the exclusive remedy for any such non-compliance. This clause shall not be interpreted to provide an independent right to access State systems where there is no such right expressed in Provider Documents.

(**i**) Any time software is delivered to the State, whether delivered via electronic media or the internet, to Provider's best knowledge following due inquiry, no portion of such software or the media upon which it is stored or delivered will have any type of software routine or other element which is designed to facilitate unauthorized access to or intrusion upon; or unrequested disabling or erasure of; or unauthorized interference with the operation of any hardware, software, data or peripheral equipment of or utilized by the State.

(**j**) Limitations or exclusions of liability shall not apply to State claims arising out of (i) Provider's confidentiality obligations (ii) Provider's obligations to defend and indemnify the State; (iii) personal injury or damage to real or tangible personal property; or (iv) gross negligence, fraud or intentional misconduct. Limits of liability for State claims shall not be construed to limit Provider's liability to any third party for any claims a third party may have directly against Provider which may arise out of Provider's acts or omissions in the performance of this Agreement.

(**k**) To the extent Provider is a "data collector" for purposes of 9 V.S.A. §2430, it shall comply with all applicable requirements of 9 V.S.A. §2435.

(**l**) Records Available for Audit: Provider shall maintain all records pertaining to performance under this Agreement. "Records" means any written or recorded information, regardless of physical form or characteristics, which is produced or acquired by Provider in the performance of this agreement. Records produced or acquired in a machine readable electronic format shall be maintained in that format. The records described shall be made available at reasonable times during the period of this Agreement and for three years thereafter or for any period required by law for inspection by any authorized representatives of the State or Federal Government. If any litigation, claim, or audit is started before the expiration of the three-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved.

(**m**) Fair Employment Practices and Americans with Disabilities Act: Provider agrees to comply with the requirement of Title 21 V.S.A. Chapter 5, Subchapter 6, relating to fair employment practices, to the full extent applicable. Provider shall also ensure, to the full extent required by the Americans with Disabilities Act of 1990, as amended, that qualified individuals with disabilities receive equitable access to the services, programs, and activities provided by Provider under this Agreement. Provider further agrees to include this provision in all subcontracts for services performed pursuant to this Agreement in the State of Vermont.

(**n**) The State may set off any sums which Provider owes the State against any sums due Provider under this Agreement; provided, however, that any set off of amounts due the State of Vermont as taxes shall be in accordance with the procedures set forth in 32 V.S.A. § 3113.

(**o**) Taxes Due to the State: Provider certifies under the pains and penalties of perjury that, as of the date the Agreement is signed, Provider is in good standing with respect to, or in full compliance with, a plan to pay any and all taxes due the State of Vermont.

(**p**) No Gifts or Gratuities: Provider shall not give title or possession of anything of substantial value (including property, currency, travel and/or education programs) to any officer or employee of the State during the term of this Agreement.

(**q**) Certification Regarding Debarment: Provider certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, neither Provider nor Provider's principals (officers, directors, owners, or partners) are presently debarred, suspended, proposed for debarment, declared ineligible or excluded from participation in federal programs, or programs supported in whole or in part by federal funds. Provider further certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, Provider is not presently debarred, suspended, nor named on the State's debarment list at: http://bgs.vermont.gov/purchasing/debarment

(**r**) Any provision regarding automatic renewal shall be waived and shall have no force and effect.

(**s**) The State retains full right and title to data provided by State and any data derived therefrom, including metadata (collectively, the "State Data"). Provider shall not collect, access, or use user-specific State Data except as strictly necessary to provide licensed service to State. No information regarding State's use of the licensed service may be disclosed, provided, rented or sold to any third party for any reason unless required by law or regulation or by an order of a court of competent jurisdiction. This obligation shall extend beyond the term of this Agreement in perpetuity. Provider shall not use any information collected in connection with this Agreement, including the State Data, for any purpose other than fulfilling its obligations under this Agreement. At no time may any State Data or processes which either belong to State, or are intended for State's exclusive use, be copied, disclosed, or retained by Provider for subsequent use in any transaction that does not include State.

For purposes of this Standard State Rider:

"State" shall mean the State of Vermont, acting through one or more of its agencies, departments, boards, commissions or other entities empowered to enter into contracts on behalf of the State.

"Provider Documents" shall mean one or more document, agreement or other instrument required by Provider in connection with the performance of the products and services being procured by the State, regardless of format, including the license agreement, end user license agreement or similar document to which this Rider is attached, any hyperlinks to documents contained in the Provider Documents and any other paper or "shrinkwrap," "clickwrap" or other electronic version thereof.

2. **ORDER OF PRECEDENCE.** Notwithstanding any other provision or other unilateral license terms which may be issued by Provider after the dated date of this Rider, and irrespective of whether any such provisions have been proposed prior to or

after the issuance of an order for the products and services being purchased by the State, as applicable, the components of which are licensed under the Provider Documents, or the fact that such other agreement may be affixed to or accompany the products and services being purchased by the State, as applicable, upon delivery ("shrink wrap"), the terms and conditions set forth herein shall supersede and govern licensing and delivery of all products and services hereunder. This Rider shall in all cases take precedence over the Provider Documents and any ambiguity, conflict or inconsistency in the Provider Documents shall be resolved in accordance with this order of precedence.

I HEREBY ACCEPT THESE TERMS AND CONDITIONS:

SIGNATURE

PRINT NAME

TITLE

COMPANY NAME

DATE

ATTACHMENT C: STANDARD STATE PROVISIONS FOR CONTRACTS AND GRANTS

REVISED DECEMBER 15, 2017

1. Definitions: For purposes of this Attachment, "Party" shall mean the Contractor, Grantee or Subrecipient, with whom the State of Vermont is executing this Agreement and consistent with the form of the Agreement. "Agreement" shall mean the specific contract or grant to which this form is attached.

2. Entire Agreement: This Agreement, whether in the form of a contract, State-funded grant, or Federally-funded grant, represents the entire agreement between the parties on the subject matter. All prior agreements, representations, statements, negotiations, and understandings shall have no effect.

3. Governing Law, Jurisdiction and Venue; No Waiver of Jury Trial: This Agreement will be governed by the laws of the State of Vermont. Any action or proceeding brought by either the State or the Party in connection with this Agreement shall be brought and enforced in the Superior Court of the State of Vermont, Civil Division, Washington Unit. The Party irrevocably submits to the jurisdiction of this court for any action or proceeding regarding this Agreement. The Party agrees that it must first exhaust any applicable administrative remedies with respect to any cause of action that it may have against the State with regard to its performance under this Agreement. Party agrees that the State shall not be required to submit to binding arbitration or waive its right to a jury trial.

4. Sovereign Immunity: The State reserves all immunities, defenses, rights or actions arising out of the State's sovereign status or under the Eleventh Amendment to the United States Constitution. No waiver of the State's immunities, defenses, rights or actions shall be implied or otherwise deemed to exist by reason of the State's entry into this Agreement.

5. No Employee Benefits For Party: The Party understands that the State will not provide any individual retirement benefits, group life insurance, group health and dental insurance, vacation or sick leave, workers compensation or other benefits or services available to State employees, nor will the State

withhold any state or Federal taxes except as required under applicable tax laws, which shall be determined in advance of execution of the Agreement. The Party understands that all tax returns required by the Internal Revenue Code and the State of Vermont, including but not limited to income, withholding, sales and use, and rooms and meals, must be filed by the Party, and information as to Agreement income will be provided by the State of Vermont to the Internal Revenue Service and the Vermont Department of Taxes.

6. Independence: The Party will act in an independent capacity and not as officers or employees of the State.

7. Defense and Indemnity: The Party shall defend the State and its officers and employees against all third party claims or suits arising in whole or in part from any act or omission of the Party or of any agent of the Party in connection with the performance of this Agreement. The State shall notify the Party in the event of any such claim or suit, and the Party shall immediately retain counsel and otherwise provide a complete defense against the entire claim or suit. The State retains the right to participate at its own expense in the defense of any claim. The State shall have the right to approve all proposed settlements of such claims or suits.

After a final judgment or settlement, the Party may request recoupment of specific defense costs and may file suit in Washington Superior Court requesting recoupment. The Party shall be entitled to recoup costs only upon a showing that such costs were entirely unrelated to the defense of any claim arising from an act or omission of the Party in connection with the performance of this Agreement.

The Party shall indemnify the State and its officers and employees if the State, its officers or employees become legally obligated to pay any damages or losses arising from any act or omission of the Party or an agent of the Party in connection with the performance of this Agreement.

Notwithstanding any contrary language anywhere, in no event shall the terms of this Agreement or any document furnished by the Party in connection with its performance under this Agreement obligate the State to (1) defend or indemnify the Party or any third party, or (2) otherwise be liable for the expenses or reimbursement, including attorneys' fees, collection costs or other costs of the Party or any third party.

8. Insurance: Before commencing work on this Agreement the Party must provide certificates of insurance to show that the following minimum coverages are in effect. It is the responsibility of the Party to maintain current certificates of insurance on file with the State through the term of this Agreement. No warranty is made that the coverages and limits listed

herein are adequate to cover and protect the interests of the Party for the Party's operations. These are solely minimums that have been established to protect the interests of the State.
Workers Compensation: With respect to all operations performed, the Party shall carry workers' compensation insurance in accordance with the laws of the State of Vermont. Vermont will accept an out-of-state employer's workers' compensation coverage while operating in Vermont provided that the insurance carrier is licensed to write insurance in Vermont and an amendatory endorsement is added to the policy adding Vermont for coverage purposes. Otherwise, the party shall secure a Vermont workers' compensation policy, if necessary to comply with Vermont law.
General Liability and Property Damage: With respect to all operations performed under this Agreement, the Party shall carry general liability insurance having all major divisions of coverage including, but not limited to:
Premises - Operations
Products and Completed Operations
Personal Injury Liability
Contractual Liability
The policy shall be on an occurrence form and limits shall not be less than:
$1,000,000 Each Occurrence
$2,000,000 General Aggregate
$1,000,000 Products/Completed Operations Aggregate
$1,000,000 Personal & Advertising Injury
Automotive Liability: The Party shall carry automotive liability insurance covering all motor vehicles, including hired and non-owned coverage, used in connection with the Agreement. Limits of coverage shall not be less than $500,000 combined single limit. If performance of this Agreement involves construction, or the transport of persons or hazardous materials, limits of coverage shall not be less than $1,000,000 combined single limit.
Additional Insured. The General Liability and Property Damage coverages required for performance of this Agreement shall include the State of Vermont and its agencies, departments, officers and employees as Additional Insureds. If performance of this Agreement involves construction, or the transport of persons or hazardous materials, then the required Automotive Liability coverage shall include the State of Vermont and its agencies, departments, officers and employees as Additional Insureds. Coverage shall be primary and non-contributory with any other insurance and self-insurance.
Notice of Cancellation or Change. There shall be no cancellation, change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without thirty (30) days written prior written notice to the State.
9. Reliance by the State on Representations: All payments by the State under this Agreement will be made in reliance upon the accuracy of all representations made by the Party in accordance with this Agreement, including but not limited to bills, invoices, progress reports and other proofs of work.
10. False Claims Act: The Party acknowledges that it is subject to the Vermont False Claims Act as set forth in 32 V.S.A. § 630 *et seq.* If the Party violates the Vermont False Claims Act it shall be liable to the State for civil penalties, treble damages and the costs of the investigation and prosecution of such violation, including attorney's fees, except as the same may be reduced by a court of competent jurisdiction. The Party's liability to the State under the False Claims Act shall not be limited notwithstanding any agreement of the State to otherwise limit Party's liability.
11. Whistleblower Protections: The Party shall not discriminate or retaliate against one of its employees or agents for disclosing information concerning a violation of law, fraud, waste, abuse of authority or acts threatening health or safety, including but not limited to allegations concerning the False Claims Act. Further, the Party shall not require such employees or agents to forego monetary awards as a result of such disclosures, nor should they be required to report misconduct to the Party or its agents prior to reporting to any governmental entity and/or the public.

12. Location of State Data: No State data received, obtained, or generated by the Party in connection with performance under this Agreement shall be processed, transmitted, stored, or transferred by any means outside the continental United States, except with the express written permission of the State.
13. Records Available for Audit: The Party shall maintain all records pertaining to performance under this agreement. "Records" means any written or recorded information, regardless of physical form or characteristics, which is produced or

acquired by the Party in the performance of this agreement. Records produced or acquired in a machine readable electronic format shall be maintained in that format. The records described shall be made available at reasonable times during the period of the Agreement and for three years thereafter or for any period required by law for inspection by any authorized representatives of the State or Federal Government. If any litigation, claim, or audit is started before the expiration of the three-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved.

14. Fair Employment Practices and Americans with Disabilities Act: Party agrees to comply with the requirement of 21 V.S.A. Chapter 5, Subchapter 6, relating to fair employment practices, to the full extent applicable. Party shall also ensure, to the full extent required by the Americans with Disabilities Act of 1990, as amended, that qualified individuals with disabilities receive equitable access to the services, programs, and activities provided by the Party under this Agreement.

15. Set Off: The State may set off any sums which the Party owes the State against any sums due the Party under this Agreement; provided, however, that any set off of amounts due the State of Vermont as taxes shall be in accordance with the procedures more specifically provided hereinafter.

16. Taxes Due to the State:

A. Party understands and acknowledges responsibility, if applicable, for compliance with State tax laws, including income tax withholding for employees performing services within the State, payment of use tax on property used within the State, corporate and/or personal income tax on income earned within the State.

B. Party certifies under the pains and penalties of perjury that, as of the date this Agreement is signed, the Party is in good standing with respect to, or in full compliance with, a plan to pay any and all taxes due the State of Vermont.

C. Party understands that final payment under this Agreement may be withheld if the Commissioner of Taxes determines that the Party is not in good standing with respect to or in full compliance with a plan to pay any and all taxes due to the State of Vermont.

D. Party also understands the State may set off taxes (and related penalties, interest and fees) due to the State of Vermont, but only if the Party has failed to make an appeal within the time allowed by law, or an appeal has been taken and finally determined and the Party has no further legal recourse to contest the amounts due.

17. Taxation of Purchases: All State purchases must be invoiced tax free. An exemption certificate will be furnished upon request with respect to otherwise taxable items.

18. Child Support: (Only applicable if the Party is a natural person, not a corporation or partnership.) Party states that, as of the date this Agreement is signed, he/she:

A. is not under any obligation to pay child support; or

B. is under such an obligation and is in good standing with respect to that obligation; or

C. has agreed to a payment plan with the Vermont Office of Child Support Services and is in full compliance with that plan.

Party makes this statement with regard to support owed to any and all children residing in Vermont. In addition, if the Party is a resident of Vermont, Party makes this statement with regard to support owed to any and all children residing in any other state or territory of the United States.

19. Sub-Agreements: Party shall not assign, subcontract or subgrant the performance of this Agreement or any portion thereof to any other Party without the prior written approval of the State. Party shall be responsible and liable to the State for all acts or omissions of subcontractors and any other person performing work under this Agreement pursuant to an agreement with Party or any subcontractor.
In the case this Agreement is a contract with a total cost in excess of $250,000, the Party shall provide to the State a list of all proposed subcontractors and subcontractors' subcontractors, together with the

identity of those subcontractors' workers compensation insurance providers, and additional required or requested information, as applicable, in accordance with Section 32 of The Vermont Recovery and Reinvestment Act of 2009 (Act No. 54).

Party shall include the following provisions of this Attachment C in all subcontracts for work performed solely for the State of Vermont and subcontracts for work performed in the State of Vermont: Section 10 ("False Claims Act"); Section 11 ("Whistleblower Protections"); Section 12 ("Location of State Data"); Section 14 ("Fair Employment Practices and

Americans with Disabilities Act"); Section 16 ("Taxes Due the State"); Section 18 ("Child Support"); Section 20 ("No Gifts or Gratuities"); Section 22 ("Certification Regarding Debarment"); Section 30 ("State Facilities"); and Section 32.A ("Certification Regarding Use of State Funds").

20. No Gifts or Gratuities: Party shall not give title or possession of anything of substantial value (including property, currency, travel and/or education programs) to any officer or employee of the State during the term of this Agreement.

21. Copies: Party shall use reasonable best efforts to ensure that all written reports prepared under this Agreement are printed using both sides of the paper.

22. Certification Regarding Debarment: Party certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, neither Party nor Party's principals (officers, directors, owners, or partners) are presently debarred, suspended, proposed for debarment, declared ineligible or excluded from participation in Federal programs, or programs supported in whole or in part by Federal funds.

Party further certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, Party is not presently debarred, suspended, nor named on the State's debarment list at: http://bgs.vermont.gov/purchasing/debarment

23. Conflict of Interest: Party shall fully disclose, in writing, any conflicts of interest or potential conflicts of interest.

24. Confidentiality: Party acknowledges and agrees that this Agreement and any and all information obtained by the State from the Party in connection with this Agreement are subject to the State of Vermont Access to Public Records Act, 1 V.S.A. § 315 et seq.

25. Force Majeure: Neither the State nor the Party shall be liable to the other for any failure or delay of performance of any obligations under this Agreement to the extent such failure or delay shall have been wholly or principally caused by acts or events beyond its reasonable control rendering performance illegal or impossible (excluding strikes or lock-outs) ("Force Majeure"). Where Force Majeure is asserted, the nonperforming party must prove that it made all reasonable efforts to remove, eliminate or minimize such cause of delay or damages, diligently pursued performance of its obligations under this Agreement, substantially fulfilled all non-excused obligations, and timely notified the other party of the likelihood or actual occurrence of an event described in this paragraph.

26. Marketing: Party shall not refer to the State in any publicity materials, information pamphlets, press releases, research reports, advertising, sales promotions, trade shows, or marketing materials or similar communications to third parties except with the prior written consent of the State.

27. Termination:

A. Non-Appropriation: If this Agreement extends into more than one fiscal year of the State (July 1 to June 30), and if appropriations are insufficient to support this Agreement, the State may cancel at the end of the fiscal year, or otherwise upon the expiration of existing appropriation authority. In the case that this Agreement is a Grant that is funded in whole or in part by Federal funds, and in the event Federal funds become unavailable or reduced, the State may suspend or cancel this Grant immediately, and the State shall have no obligation to pay Subrecipient from State revenues.

B. Termination for Cause: Either party may terminate this Agreement if a party materially breaches its obligations under this Agreement, and such breach is not cured within thirty (30) days after delivery of the non-breaching party's notice or such longer time as the non-breaching party may specify in the notice.

C. Termination Assistance: Upon nearing the end of the final term or termination of this Agreement, without respect to cause, the Party shall take all reasonable and prudent measures to facilitate any transition required by the State. All State property, tangible and intangible, shall be returned to the State upon demand at no additional cost to the State in a format acceptable to the State.

28. Continuity of Performance: In the event of a dispute between the Party and the State, each party will continue to perform its obligations under this Agreement during the resolution of the dispute until this Agreement is terminated in accordance with its terms.

29. No Implied Waiver of Remedies: Either party's delay or failure to exercise any right, power or remedy under this Agreement shall not impair any such right, power or remedy, or be construed as a waiver of any such right, power or remedy. All waivers must be in writing.

30. State Facilities: If the State makes space available to the Party in any State facility during the term of this Agreement for purposes of the Party's performance under this Agreement, the Party shall only use the space in accordance with all policies and procedures governing access to and use of State facilities which shall be made available upon request. State facilities will be made available to Party on an "AS IS, WHERE IS" basis, with no warranties whatsoever.

31. Requirements Pertaining Only to Federal Grants and Subrecipient Agreements: If this Agreement is a grant that is funded in whole or in part by Federal funds:

A. Requirement to Have a Single Audit: The Subrecipient will complete the Subrecipient Annual Report annually within 45 days after its fiscal year end, informing the State of Vermont whether or not a Single Audit is required for the prior fiscal year. If a Single Audit is required, the Subrecipient will submit a copy of the audit report to the granting Party within 9 months. If a single audit is not required, only the Subrecipient Annual Report is required.

For fiscal years ending before December 25, 2015, a Single Audit is required if the subrecipient expends $500,000 or more in Federal assistance during its fiscal year and must be conducted in accordance with OMB Circular A-133. For fiscal years ending on or after December 25, 2015, a Single Audit is required if the subrecipient expends $750,000 or more in Federal assistance during its fiscal year and must be conducted in accordance with 2 CFR Chapter I, Chapter II, Part 200, Subpart F. The Subrecipient Annual Report is required to be submitted within 45 days, whether or not a Single Audit is required.

B. Internal Controls: In accordance with 2 CFR Part II, §200.303, the Party must establish and maintain effective internal control over the Federal award to provide reasonable assurance that the Party is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the award. These internal controls should be in compliance with guidance in "Standards for Internal Control in the Federal Government" issued by the Comptroller General of the United States and the "Internal Control Integrated Framework", issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

C. Mandatory Disclosures: In accordance with 2 CFR Part II, §200.113, Party must disclose, in a timely manner, in writing to the State, all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Failure to make required disclosures may result in the imposition of sanctions which may include disallowance of costs incurred, withholding of payments, termination of the Agreement, suspension/debarment, etc.

32. Requirements Pertaining Only to State-Funded Grants:

A. Certification Regarding Use of State Funds: If Party is an employer and this Agreement is a State-funded grant in excess of $1,001, Party certifies that none of these State funds will be used to interfere with or restrain the exercise of Party's employee's rights with respect to unionization.

B. Good Standing Certification (Act 154 of 2016): If this Agreement is a State-funded grant, Party hereby represents: (i) that it has signed and provided to the State the form prescribed by the Secretary of Administration for purposes of certifying that it is in good standing (as provided in Section 13(a)(2) of Act 154) with the Agency of Natural Resources and the Agency of Agriculture, Food and Markets, or otherwise explaining the circumstances surrounding the inability to so certify, and (ii) that it will comply with the requirements stated therein.

(End of Standard Provisions)

STATE OF VERMONT
STANDARD RIDER

TO SOFTWARE LICENSES AND END USER LICENSE AGREEMENTS

3. MODIFICATIONS TO PROVIDER DOCUMENTS. The State and the Software Publisher/Services Provider ("Provider") specifically agree that, for purposes of execution of the Provider Documents and this Rider (collectively, "Agreement"), and notwithstanding any language to the contrary in Provider Documents, the Provider Documents are hereby modified and superseded as follows:

(**a**) Any requirement that the State defend or indemnify any party or otherwise be liable for the expenses or reimbursement, including attorneys' fees, collection costs or license verification costs of any party, is hereby deleted.

(**b**) Any requirement that the State agree to binding arbitration or otherwise waive the State's right to a jury trial is hereby deleted.

(**c**) Provider Documents shall be governed by and construed in accordance with the laws of the State of Vermont and that any action or proceeding brought by either the State or Provider in connection with this Agreement shall be brought and enforced in the Superior Court of the State of Vermont, Civil Division, Washington Unit.

(**d**) Nothing in the Provider Documents shall constitute an implied or deemed waiver of the immunities, defenses, rights or actions arising out of State's sovereign status or under the Eleventh Amendment to the United States Constitution.

(**e**) Any provision which limits the time within which an action may be brought is hereby deleted.

(**f**) Any obligations of the State to maintain the confidentiality of information shall be subject to the laws of the State of Vermont.

(**g**) State purchases must be invoiced tax free. An exemption certificate will be furnished upon request covering otherwise taxable items.

(**h**) To the extent Provider Documents permit access to State systems for the purpose of verifying State compliance with the terms of the Provider Documents, then, in lieu of any such right, the following shall apply: upon request and not more frequently than annually, the State agrees to provide Provider with a certified report concerning the State's use of any software licensed for State use pursuant this Agreement. Provider agrees that any non-compliance indicated by the report shall not constitute infringement of Provider's intellectual property rights, and that settlement payment mutually agreeable to the parties shall be the exclusive remedy for any such non-compliance. This clause shall not be interpreted to provide an independent right to access State systems where there is no such right expressed in Provider Documents.

(**i**) Any time software is delivered to the State, whether delivered via electronic media or the internet, to Provider's best knowledge following due inquiry, no portion of such software or the media upon which it is stored or delivered will have any type of software routine or other element which is designed to facilitate unauthorized access to or intrusion upon; or unrequested disabling or erasure of; or unauthorized interference with the operation of any hardware, software, data or peripheral equipment of or utilized by the State.

(**j**) Limitations or exclusions of liability shall not apply to State claims arising out of (i) Provider's confidentiality obligations (ii) Provider's obligations to defend and indemnify the State; (iii) personal injury or damage to real or tangible personal property; or (iv) gross negligence, fraud or intentional misconduct. Limits of liability for State claims shall not be construed to limit Provider's liability to any third party for any claims a third party may have directly against Provider which may arise out of Provider's acts or omissions in the performance of this Agreement.

(**k**) To the extent Provider is a "data collector" for purposes of 9 V.S.A. §2430, it shall comply with all applicable requirements of 9 V.S.A. §2435.

(**l**) Records Available for Audit: Provider shall maintain all records pertaining to performance under this Agreement. "Records" means any written or recorded information, regardless of physical form or characteristics, which is produced or acquired by Provider in the performance of this agreement. Records produced or acquired in a machine readable electronic format shall be maintained in that format. The records described shall be made available at reasonable times during the period of this Agreement and for three years thereafter or for any period required by law for inspection by any authorized representatives of the State or Federal Government. If any litigation, claim, or audit is started before the expiration of the three-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved.

(**m**) Fair Employment Practices and Americans with Disabilities Act: Provider agrees to comply with the requirement of Title 21 V.S.A. Chapter 5, Subchapter 6, relating to fair employment practices, to the full extent applicable. Provider shall also ensure, to the full extent required by the Americans with Disabilities Act of 1990, as amended, that qualified individuals with disabilities receive equitable access to the services, programs, and activities provided by Provider under this Agreement. Provider further agrees to include this provision in all subcontracts for services performed pursuant to this Agreement in the State of Vermont.

(**n**) The State may set off any sums which Provider owes the State against any sums due Provider under this Agreement;

provided, however, that any set off of amounts due the State of Vermont as taxes shall be in accordance with the procedures set forth in 32 V.S.A. § 3113.

(**o**) Taxes Due to the State: Provider certifies under the pains and penalties of perjury that, as of the date the Agreement is signed, Provider is in good standing with respect to, or in full compliance with, a plan to pay any and all taxes due the State of Vermont.

(**p**) No Gifts or Gratuities: Provider shall not give title or possession of anything of substantial value (including property, currency, travel and/or education programs) to any officer or employee of the State during the term of this Agreement.

(**q**) Certification Regarding Debarment: Provider certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, neither Provider nor Provider's principals (officers, directors, owners, or partners) are presently debarred, suspended, proposed for debarment, declared ineligible or excluded from participation in federal programs, or programs supported in whole or in part by federal funds. Provider further certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, Provider is not presently debarred, suspended, nor named on the State's debarment list at: http://bgs.vermont.gov/purchasing/debarment

(**r**) Any provision regarding automatic renewal shall be waived and shall have no force and effect.

(**s**) The State retains full right and title to data provided by State and any data derived therefrom, including metadata (collectively, the "State Data"). Provider shall not collect, access, or use user-specific State Data except as strictly necessary to provide licensed service to State. No information regarding State's use of the licensed service may be disclosed, provided, rented or sold to any third party for any reason unless required by law or regulation or by an order of a court of competent jurisdiction. This obligation shall extend beyond the term of this Agreement in perpetuity. Provider shall not use any information collected in connection with this Agreement, including the State Data, for any purpose other than fulfilling its obligations under this Agreement. At no time may any State Data or processes which either belong to State, or are intended for State's exclusive use, be copied, disclosed, or retained by Provider for subsequent use in any transaction that does not include State.

For purposes of this Standard State Rider:

"State" shall mean the State of Vermont, acting through one or more of its agencies, departments, boards, commissions or other entities empowered to enter into contracts on behalf of the State.

"Provider Documents" shall mean one or more document, agreement or other instrument required by Provider in connection with the performance of the products and services being procured by the State, regardless of format, including the license agreement, end user license agreement or similar document to which this Rider is attached, any hyperlinks to documents contained in the Provider Documents and any other paper or "shrinkwrap," "clickwrap" or other electronic version thereof.

4. **ORDER OF PRECEDENCE.** Notwithstanding any other provision or other unilateral license terms which may be issued by Provider after the dated date of this Rider, and irrespective of whether any such provisions have been proposed prior to or after the issuance of an order for the products and services being purchased by the State, as applicable, the components of which are licensed under the Provider Documents, or the fact that such other agreement may be affixed to or accompany the products and services being purchased by the State, as applicable, upon delivery ("shrink wrap"), the terms and conditions set forth herein shall supersede and govern licensing and delivery of all products and services hereunder. This Rider shall in all cases take precedence over the Provider Documents and any ambiguity, conflict or inconsistency in the Provider Documents shall be resolved in accordance with this order of precedence.

I HEREBY ACCEPT THESE TERMS AND CONDITIONS:

SIGNATURE

PRINT NAME

TITLE

COMPANY NAME

DATE

ATTACHMENT E

BUSINESS ASSOCIATE AGREEMENT (VT ADS/AHS)

Revised MAY 23, 2019

SOV Contractor or Vendor (*Contractor Business Associate*):

SOV Contract Number: **Date of Contract:**

This Business Associate Agreement ("Agreement") is entered into by and between the State of Vermont Agency of Digital Services as a Business Associate ("ADS") of the State of Vermont Agency of Human Services ("Covered Entity") (together "the State") and the party identified in this Agreement above as Contractor or Vendor ("Contractor Business Associate"). This Agreement supplements and is made a part of the contract identified above ("Contract").

ADS and Contractor Business Associate enter into this Agreement to comply with the Business Associate Agreement between Covered Entity and ADS, and with standards promulgated under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), including the Standards for the Privacy of Individually Identifiable Health Information, at 45 CFR Parts 160 and 164 ("Privacy Rule"), and the Security Standards, at 45 CFR Parts 160 and 164 ("Security Rule"), as amended by Subtitle D of the Health Information Technology for Economic and Clinical Health Act (HITECH), and any associated federal rules and regulations.

The parties agree as follows:

1. Definitions. All capitalized terms used but not otherwise defined in this Agreement have the meanings set forth in 45 CFR Parts 160 and 164 as amended by HITECH and associated federal rules and regulations. Terms defined in this Agreement are italicized. Unless otherwise specified, when used in this Agreement, defined terms used in the singular shall be understood if appropriate in their context to include the plural when applicable.

"*ADS Vendor Manager*" means that person designated in the Contract as the *ADS Vendor Manager*, or such person who is subsequently designated in writing by ADS to the *Contractor Business Associate*. The *ADS Vendor Manager* is not authorized to enter into Contract amendments on behalf of ADS or the State."

"*Agent*" means an *Individual* acting within the scope of the agency of the *Contractor Business Associate*, in accordance with the Federal common law of agency, as referenced in 45 CFR § 160.402(c) and includes Workforce members and *Subcontractors*.

"*Breach*" means the acquisition, Access, Use or Disclosure of *Protected Health Information* (*PHI*) which compromises the Security or privacy of the *PHI*, except as excluded in the definition of *Breach* in 45 CFR § 164.402.

"*Business Associate*" shall have the meaning given for "Business Associate" in 45 CFR § 160.103.

"*Contractor Business Associate*" shall have the meaning given for "Business Associate" in 45 CFR § 160.103 and means Vendor and includes its Workforce, *Agents* and *Subcontractors*.

"*Electronic PHI*" shall mean *PHI* created, received, maintained or transmitted electronically in accordance with 45 CFR § 160.103.

"*Individual*" includes a Person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).

"*Protected Health Information*" ("*PHI*") shall have the meaning given in 45 CFR § 160.103, limited to the *PHI* created or received by *Contractor Business Associate* from or on behalf of ADS or Covered Entity.

"*Required by Law*" means a mandate contained in law that compels an entity to make a use or disclosure of *PHI* and that is enforceable in a court of law and shall have the meaning given in 45 CFR § 164.103.

"*Report*" means submissions required by this Agreement as provided in section 2.3.

"*Security Incident*" means the attempted or successful unauthorized Access, Use, Disclosure, modification, or destruction of information or interference with system operations in an Information System relating to *PHI* in accordance with 45 CFR § 164.304.

"*Services*" includes all work performed by the *Contractor Business Associate* for or on behalf of the State that requires the Use and/or Disclosure of *PHI* to perform a *Business Associate* function described in 45 CFR § 160.103.

"*Subcontractor*" means a Person to whom *Contractor Business Associate* delegates a function, activity, or service, other than in the capacity of a member of the Workforce of such *Contractor Business Associate*.

"*Successful Security Incident*" shall mean a *Security Incident* that results in the unauthorized Access, Use, Disclosure, modification, or destruction of information or interference with system operations in an Information System.

"*Unsuccessful Security Incident*" shall mean a *Security Incident* such as routine occurrences that do not result in unauthorized Access, Use, Disclosure, modification, or destruction of information

or interference with system operations in an Information System, such as: (i) unsuccessful attempts to penetrate computer networks or services maintained by *Contractor Business Associate*; and (ii) immaterial incidents such as pings and other broadcast attacks on *Contractor Business Associate's* firewall, port scans, unsuccessful log-on attempts, denials of service and any combination of the above with respect to *Contractor Business Associate's* Information System.

"*Targeted Unsuccessful Security Incident*" means an *Unsuccessful Security Incident* that appears to be an attempt to obtain unauthorized Access, Use, disclosure, modification or destruction of the Covered Entity's *Electronic PHI*.

2. Contact Information for Privacy and Security Officers and Reports.

2.1 *Contractor Business Associate* shall provide, within ten (10) days of the execution of this Agreement, written notice to the *ADS Vendor Manager* the names and contact information of both the HIPAA Privacy Officer and HIPAA Security Officer of the *Contractor Business Associate*. This information must be updated by *Contractor Business Associate* any time these contacts change.

2.2 Covered Entity's HIPAA Privacy Officer and HIPAA Security Officer contact information is posted at: http://humanservices.vermont.gov/policy-legislation/hipaa/hipaa-info-beneficiaries/ahs-hipaa-contacts/

2.3 *Contractor Business Associate* shall submit all *Reports* required by this Agreement to the following email address:

AHS.PrivacyAndSecurity@vermont.gov

3. Permitted and Required Uses/Disclosures of PHI.

3.1 Subject to the terms in this Agreement, *Contractor Business Associate* may Use or Disclose *PHI* to perform *Services*, as specified in the Contract. Such Uses and Disclosures are limited to the minimum necessary to provide the *Services*. *Contractor Business Associate* shall not Use or Disclose *PHI* in any manner that would constitute a violation of the Privacy Rule if Used or Disclosed by Covered Entity in that manner. *Contractor Business Associate* may not Use or Disclose *PHI* other than as permitted or required by this Agreement or as *Required by Law* and only in compliance with applicable laws and regulations.

3.2 *Contractor Business Associate* may make *PHI* available to its Workforce*, Agent and Subcontractor* who need Access to perform *Services* as permitted by this Agreement, provided that *Contractor Business Associate* makes them aware of the Use and Disclosure restrictions in this Agreement and binds them to comply with such restrictions.

3.3 *Contractor Business Associate* shall be directly liable under HIPAA for impermissible Uses and Disclosures of *PHI*.

4. Business Activities. *Contractor Business Associate* may Use *PHI* if necessary for *Contractor Business Associate's* proper management and administration or to carry out its legal responsibilities. *Contractor Business Associate* may Disclose *PHI* for *Contractor Business Associate's* proper management and administration or to carry out its legal responsibilities if a Disclosure is *Required by Law* or if *Contractor Business Associate* obtains reasonable written assurances via a written agreement from the Person to whom the information is to be Disclosed that such *PHI* shall remain confidential and be Used or further Disclosed only as *Required by Law* or for the purpose for which it was Disclosed to the Person, and the Agreement requires the Person to notify *Contractor Business Associate*, within five (5) business days, in writing of any *Breach* of Unsecured *PHI* of which it is aware. Such Uses and Disclosures of *PHI* must be of the minimum amount necessary to accomplish such purposes.

5. Electronic PHI Security Rule Obligations.

5.1 With respect to *Electronic PHI*, *Contractor Business Associate* shall:

a) Implement and use Administrative, Physical, and Technical Safeguards in compliance with 45 CFR sections 164.308, 164.310, and 164.312;

b) Identify in writing upon request from the State all the safeguards that it uses to protect such Electronic PHI;

c) Prior to any Use or Disclosure of *Electronic PHI* by an *Agent* or *Subcontractor*, ensure that any *Agent* or *Subcontractor* to whom it provides *Electronic PHI* agrees in writing to implement and use Administrative, Physical, and Technical Safeguards that reasonably and appropriately protect the Confidentiality, Integrity and Availability of Electronic PHI. The written agreement must identify the State as a direct and intended third party beneficiary with the right to enforce any breach of the agreement concerning the Use or Disclosure of *Electronic PHI*, and be provided to the State upon request;

d) Report in writing to Covered Entity any *Successful Security Incident* or *Targeted Security Incident* as soon as it becomes aware of such incident and in no event later than five (5) business days after such awareness. Such report shall be timely made notwithstanding the fact that little information may be known at the time of the report and need only include such information then available;

e) Following such report, provide Covered Entity with the information necessary for Covered Entity to investigate any such incident; and

f) Continue to provide to Covered Entity information concerning the incident as it becomes available to it.

5.2 Reporting *Unsuccessful Security Incidents. Contractor Business Associate* shall provide Covered Entity upon written request a *Report* that: (a) identifies the categories of Unsuccessful Security Incidents; (b) indicates whether *Business Associate* believes its current defensive security measures are adequate to address all Unsuccessful Security Incidents, given the scope and nature of such attempts; and (c) if the security measures are not adequate, the measures *Business Associate* will implement to address the security inadequacies.

5.3 *Contractor Business Associate* shall comply with any reasonable policies and procedures Covered Entity implements to obtain compliance under the Security Rule.

6. <u>Reporting and Documenting Breaches</u>.

6.1 *Contractor Business Associate* shall *Report* to Covered Entity any *Breach* of Unsecured *PHI* as soon as it, or any Person to whom *PHI* is disclosed under this Agreement, becomes aware of any such *Breach*, and in no event later than five (5) business days after such awareness, except when a law enforcement official determines that a notification would impede a criminal investigation or cause damage to national security. Such *Report* shall be timely made notwithstanding the fact that little information may be known at the time of the *Report* and need only include such information then available.

6.2 Following the *Report* described in 6.1, *Contractor Business Associate* shall conduct a risk assessment and provide it to Covered Entity with a summary of the event. *Contractor Business Associate* shall provide Covered Entity with the names of any *Individual* whose Unsecured *PHI* has been, or is reasonably believed to have been, the subject of the *Breach* and any other available information that is required to be given to the affected *Individual*, as set forth in 45 CFR § 164.404(c). Upon request by Covered Entity, *Contractor Business Associate shall provide* information necessary for Covered Entity to investigate the impermissible Use or Disclosure. *Contractor Business Associate*

shall continue to provide to Covered Entity information concerning the *Breach* as it becomes available.

6.3 When *Contractor Business Associate* determines that an impermissible acquisition, Access, Use or Disclosure of *PHI* for which it is responsible is not a *Breach*, and therefore does not necessitate notice to the impacted *Individual*, it shall document its assessment of risk, conducted as set forth in 45 CFR § 402(2). *Contractor Business Associate* shall make its risk assessment available to Covered Entity upon request. It shall include 1) the name of the person making the assessment, 2) a brief summary of the facts, and 3) a brief statement of the reasons supporting the determination of low probability that the *PHI* had been compromised.

7. Mitigation and Corrective Action. *Contractor Business Associate* shall mitigate, to the extent practicable, any harmful effect that is known to it of an impermissible Use or Disclosure of *PHI*, even if the impermissible Use or Disclosure does not constitute a *Breach*. *Contractor Business Associate* shall draft and carry out a plan of corrective action to address any incident of impermissible Use or Disclosure of *PHI*. *Contractor Business Associate* shall make its mitigation and corrective action plans available to the State upon request.

8. Providing Notice of Breaches.

8.1 If Covered Entity determines that a *Breach* of *PHI* for which *Contractor Business Associate* was responsible, and if requested by Covered Entity, *Contractor Business Associate* shall provide notice to the *Individual* whose *PHI* has been the subject of the *Breach*. When so requested, *Contractor Business Associate* shall consult with Covered Entity about the timeliness, content and method of notice, and shall receive Covered Entity's approval concerning these elements. *Contractor Business Associate* shall be responsible for the cost of notice and related remedies.

8.2 The notice to affected *Individuals* shall be provided as soon as reasonably possible and in no case later than 60 calendar days after *Contractor Business Associate* reported the *Breach* to Covered Entity.

8.3 The notice to affected *Individuals* shall be written in plain language and shall include, to the extent possible, 1) a brief description of what happened, 2) a description of the types of Unsecured *PHI* that were involved in the *Breach*, 3) any steps *Individuals* can take to protect themselves from potential harm resulting from the *Breach*, 4) a brief description of what the *Contractor Business Associate* is doing to investigate the *Breach* to mitigate harm to *Individuals* and to protect against further *Breaches*, and 5) contact

procedures for *Individuals* to ask questions or obtain additional information, as set forth in 45 CFR § 164.404(c).

8.4 *Contractor Business Associate* shall notify *Individuals* of *Breaches* as specified in 45 CFR § 164.404(d) (methods of *Individual* notice). In addition, when a *Breach* involves more than 500 residents of Vermont, *Contractor Business Associate* shall, if requested by Covered Entity, notify prominent media outlets serving Vermont, following the requirements set forth in 45 CFR § 164.406.

9. Agreements with Subcontractors. *Contractor Business Associate* shall enter into a Business Associate Agreement with any *Subcontractor* to whom it provides *PHI* to require compliance with HIPAA and to ensure *Contractor Business Associate* and *Subcontractor* comply with the terms and conditions of this Agreement. *Contractor Business Associate* must enter into such written agreement before any Use by or Disclosure of *PHI* to such *Subcontractor*. The written agreement must identify the State as a direct and intended third party beneficiary with the right to enforce any breach of the agreement concerning the Use or Disclosure of *PHI*. *Contractor Business Associate* shall provide a copy of the written agreement it enters into with a *Subcontractor* to the State upon request. *Contractor Business Associate* may not make any Disclosure of *PHI* to any *Subcontractor* without prior written consent of the State.

10. Access to PHI. *Contractor Business Associate* shall provide access to *PHI* in a Designated Record Set to Covered Entity or as directed by Covered Entity to an *Individual* to meet the requirements under 45 CFR § 164.524. *Contractor Business Associate* shall provide such access in the time and manner reasonably designated by Covered Entity. Within five (5) business days, *Contractor Business Associate* shall forward to Covered Entity for handling any request for Access to *PHI* that *Contractor Business Associate* directly receives from an *Individual*.

11. Amendment of PHI. *Contractor Business Associate* shall make any amendments to *PHI* in a Designated Record Set that Covered Entity directs or agrees to pursuant to 45 CFR § 164.526, whether at the request of Covered Entity or an *Individual*. *Contractor Business Associate* shall make such amendments in the time and manner reasonably designated by Covered Entity. Within five (5) business days, *Contractor Business Associate* shall forward to Covered Entity for handling any request for amendment to *PHI* that *Contractor Business Associate* directly receives from an *Individual*.

12. Accounting of Disclosures. *Contractor Business Associate* shall document Disclosures of *PHI* and all information related to such Disclosures as would be required for Covered Entity to respond to a request by an *Individual* for an accounting of disclosures of *PHI* in accordance with 45 CFR § 164.528. *Contractor Business Associate* shall provide such information to Covered Entity or as directed by Covered Entity to an *Individual*, to permit Covered Entity to respond to an accounting request. *Contractor Business Associate* shall provide such information in the time

and manner reasonably designated by Covered Entity. Within five (5) business days, *Contractor Business Associate* shall forward to Covered Entity for handling any accounting request that *Contractor Business Associate* directly receives from an *Individual*.

13. Books and Records. Subject to the attorney-client and other applicable legal privileges, *Contractor Business Associate* shall make its internal practices, books, and records (including policies and procedures and *PHI*) relating to the Use and Disclosure of *PHI* available to the Secretary of Health and Human Services ("HHS") in the time and manner designated by the Secretary. *Contractor Business Associate* shall make the same information available to Covered Entity, upon Covered Entity's request, in the time and manner reasonably designated by Covered Entity so that Covered Entity may determine whether *Contractor Business Associate* is in compliance with this Agreement.

14. Termination.

14.1 This Agreement commences on the Effective Date and shall remain in effect until terminated by the State or until all the *PHI* is destroyed or returned to Covered Entity subject to Section 18.8.

14.2 If *Contractor Business Associate* fails to comply with any material term of this Agreement, the State may provide an opportunity for *Contractor Business Associate* to cure. If *Contractor Business Associate* does not cure within the time specified by the State or if the State believes that cure is not reasonably possible, the State may immediately terminate the Contract without incurring liability or penalty for such termination. If neither termination nor cure are feasible, Covered Entity shall report the breach to the Secretary of HHS. The State has the right to seek to cure such failure by *Contractor Business Associate*. Regardless of whether the State cures, it retains any right or remedy available at law, in equity, or under the Contract and *Contractor Business Associate* retains its responsibility for such failure.

15. Return/Destruction of PHI.

15.1 *Contractor Business Associate* in connection with the expiration or termination of the Contract shall return or destroy, at the discretion of the Covered Entity, *PHI* that *Contractor Business Associate* still maintains in any form or medium (including electronic) within thirty (30) days after such expiration or termination. *Contractor Business Associate* shall not retain any copies of *PHI*. *Contractor Business Associate* shall certify in writing and report to Covered Entity (1) when all *PHI* has been returned or destroyed and (2) that *Contractor Business Associate* does not continue to maintain any *PHI*. *Contractor Business Associate* is to provide this certification during this thirty (30) day period.

15.2 *Contractor Business Associate* shall report to Covered Entity any conditions that *Contractor Business Associate* believes make the return or destruction of *PHI* infeasible. *Contractor Business Associate* shall extend the protections of this Agreement to such *PHI* and limit further Uses and Disclosures to those purposes that make the return or destruction infeasible for so long as *Contractor Business Associate* maintains such *PHI*.

16. Penalties. *Contractor Business Associate* understands that: (a) there may be civil or criminal penalties for misuse or misappropriation of *PHI* and (b) violations of this Agreement may result in notification by Covered Entity to law enforcement officials and regulatory, accreditation, and licensure organizations.

17. Training. *Contractor Business Associate* understands its obligation to comply with the law and shall provide appropriate training and education to ensure compliance with this Agreement. If requested by the State, *Contractor Business Associate* shall participate in Covered Entity's training regarding the Use, Confidentiality, and Security of *PHI*; however, participation in such training shall not supplant nor relieve *Contractor Business Associate* of its obligations under this Agreement to independently assure compliance with the law and this Agreement.

18. Miscellaneous.

18.1 In the event of any conflict or inconsistency between the terms of this Agreement and the terms of the Contract, the terms of this Agreement shall govern with respect to its subject matter. Otherwise, the terms of the Contract continue in effect.

18.2 Each party shall cooperate with the other party to amend this Agreement from time to time as is necessary for such party to comply with the Privacy Rule, the Security Rule, or any other standards promulgated under HIPAA. This Agreement may not be amended, except by a writing signed by all parties hereto.

18.3 Any ambiguity in this Agreement shall be resolved to permit the parties to comply with the Privacy Rule, Security Rule, or any other standards promulgated under HIPAA.

18.4 In addition to applicable Vermont law, the parties shall rely on applicable federal law (e.g., HIPAA, the Privacy Rule, Security Rule, and HITECH) in construing the meaning and effect of this Agreement.

18.5 *Contractor Business Associate* shall not have or claim any ownership of *PHI*.

18.6 *Contractor Business Associate* shall abide by the terms and conditions of this Agreement with respect to all *PHI* even if some of that information relates to specific services for which *Contractor Business Associate* may not be a "*Contractor Business Associate*" of Covered Entity under the Privacy Rule.

18.7 *Contractor Business Associate* is prohibited from directly or indirectly receiving any remuneration in exchange for an *Individual's PHI*. *Contractor Business Associate* will refrain from marketing activities that would violate HIPAA, including specifically Section 13406 of the HITECH Act. Reports or data containing *PHI* may not be sold without Covered Entity's or the affected Individual's written consent.

18.8 The provisions of this Agreement that by their terms encompass continuing rights or responsibilities shall survive the expiration or termination of this Agreement. For example: (a) the provisions of this Agreement shall continue to apply if Covered Entity determines that it would be infeasible for *Contractor Business Associate* to return or destroy *PHI* as provided in Section 14.2 and (b) the obligation of *Contractor Business Associate* to provide an accounting of disclosures as set forth in Section 12 survives the expiration or termination of this Agreement with respect to accounting requests, if any, made after such expiration or termination.

For ADS:

Signature: _____

Name: _____

Title: _____

Date: _____

For Contractor Business Associate:

Signature: _____

Name: _____

Title: _____

Date: _____

(End of Attachment E)

WASHINGTON

1. **WASHINGTON'S ELECTRONIC BUSINESS SOLUTIONS (WEBS) SYSTEM**: Within seven (7) days of execution of this Participating Addendum, Contractor shall register in the Washington State Department of Enterprise Services' Electronic Business Solutions (WEBS) System at WEBS. Contractor shall ensure that all of its information therein is current and accurate and that, throughout the term of the Master Agreement, Contractor shall maintain an accurate profile in WEBS.

2. **WASHINGTON'S STATEWIDE PAYEE DESK**: To be paid for contract sales, Contractors must register with Washington's Statewide Payee Desk. Washington state agencies cannot make payments to a contractor until it is registered. Registration materials are available here: Receiving Payment from the State.

3. **CONTRACT SALES REPORTING:** Contractor shall report total contract sales quarterly to Enterprise Services, as set forth below.

   a. REPORTING. Contractor shall report quarterly Contract sales in Enterprise Services' Contract Sales Reporting System. Enterprise Services will provide Contractor with a login password and a vendor number.

   b. DATA. Each sales report must identify every authorized Purchasing Entity by name as it is known to Enterprise Services and its total combined sales amount invoiced during the reporting period (i.e., sales of an entire agency or political subdivision, not its individual subsections). The "Miscellaneous" option may be used only with prior approval by Enterprise Services. Upon request, Contractor shall provide contact information for all authorized Purchasing Entities specified herein during the term of this Participating Addendum. Refer sales reporting questions to the Primary Contact set forth below. If there are no contract sales during the reporting period, Contractor must report zero sales.

c. DUE DATES FOR CONTRACT SALES REPORTING. Quarterly Contract Sales Reports must be submitted electronically by the following deadlines for all sales invoiced during the applicable calendar quarter:

For Calendar Quarter Ending	Contract Sales Report Due
March 31	April 30
June 30	July 31
September 30	October 31
December 31	January 31

4. **VENDOR MANAGEMENT FEE**: Contractor shall pay to Enterprise Services a vendor management fee ("VMF") of 1.5 percent on the purchase price for all contract sales (the purchase price is the total invoice price less applicable sales tax) authorized by this Participating Addendum.

a. The sum owed by Contractor to Enterprise Services as a result of the VMF is calculated as follows:

Amount owed to Enterprise Services = Total contract sales invoiced (not including sales tax) x .0150.

b. The VMF must be rolled into Contractor's current pricing. The VMF must not be shown as a separate line item on any invoice unless specifically requested and approved by Enterprise Services.

c. Enterprise Services will invoice Contractor quarterly based on contract sales reported by Contractor. Contractor shall not remit payment until it receives an invoice from Enterprise Services. Contractor's VMF payment to Enterprise Services must reference the following:

- This Washington Master Contract No.: _____
- The NASPO Master Agreement No.: _____
- The year and quarter for which the VMF is being remitted, and
- Contractor's name as set forth in this Contract, if not already included on the face of the check.

d. Contractor's failure accurately and timely to report total net sales, to submit usage reports, or remit payment of the VMF to Enterprise Services, may be cause for suspension or termination of this Participating Addendum or the exercise of any other remedies as provided by law.

e. Enterprise Services reserves the right, upon thirty (30) days advance written notice, to increase, reduce, or eliminate the VMF for subsequent purchases.

f. For purposes of the VMF, the parties agree that the initial management fee is included in the pricing. Therefore, any increase or reduction of the management fee must be reflected in contract pricing commensurate with the adjustment.

5. **CONTRACTOR REPRESENTATIONS AND WARRANTIES**: Contractor makes each of the following representations and warranties as of the effective date of this Participating Addendum and at the time any order is placed pursuant to the Master Contract. If, at the time of any such order, Contractor cannot make such representations and warranties, Contractor shall not process any orders and shall, within three (3) business days notify Enterprise Services, in writing, of such breach.

a. WAGE VIOLATIONS. Contractor represents and warrants that, during the term of this Master Contract and the three (3) year period immediately preceding the award of the Master Contract, it is not determined, by a final and binding citation and notice of assessment issued by the Washington Department of Labor and Industries or through

a civil judgment entered by a court of limited or general jurisdiction, to be in willful violation of any provision of Washington state wage laws set forth in RCW chapters 49.46, 49.48, or 49.52.

b. PAY EQUALITY. Contractor represents and warrants that, among its workers, similarly employed individuals are compensated as equals. For purposes of this provision, employees are similarly employed if the individuals work for the same employer, the performance of the job requires comparable skill, effort, and responsibility, and the jobs are performed under similar working conditions. Job titles alone are not determinative of whether employees are similarly employed. Contractor may allow differentials in compensation for its workers based in good faith on any of the following: a seniority system; a merit system; a system that measures earnings by quantity or quality of production; a bona fide job-related factor or factors; or a bona fide regional difference in compensation levels. A bona fide job-related factor or factors may include, but not be limited to, education, training, or experience that is: consistent with business necessity; not based on or derived from a gender-based differential; and accounts for the entire differential. A bona fide regional difference in compensation level must be consistent with business necessity; not based on or derived from a gender-based differential; and account for the entire differential. Notwithstanding any provision to the contrary, upon breach of warranty and Contractor's failure to provide satisfactory evidence of compliance within thirty (30) days, Enterprise Services may suspend or terminate this Participating Addendum and Master Contract and any Purchaser hereunder similarly may suspend or terminate its use of the Master Contract and/or any agreement entered into pursuant to this Participating Addendum.

c. EXECUTIVE ORDER 18-03 – WORKERS' RIGHTS (MANDATORY INDIVIDUAL ARBITRATION). Contractor represents and warrants, that Contractor does NOT require its employees, as a condition of employment, to sign or agree to mandatory individual arbitration clauses or class or collective action waivers. Contractor further represents and warrants that, during the term of this Master Contract, Contractor shall not, as a condition of employment, require its employees to sign or agree to mandatory individual arbitration clauses or class or collective action waivers.

6. **COMPLIANCE WITH LAW; TAXES, LICENSES, & REGISTRATION**: Contractor shall comply with all applicable law. Prior to making any sales hereunder, if Contractor is not already registered, Contractor shall register to conduct business in the State of Washington and promptly acquire and maintain all necessary licenses and registrations and pay all applicable taxes and fees. In addition, for all sales to Purchasers in the State of Washington, if Contractor does not currently do so, Contractor shall calculate, collect, and remit, as appropriate, the applicable state and local sales tax on all invoices.

EXHIBIT 3 – SOFTWARE VAR HISTORICAL AGGREGATE SPEND

Year	Spend (Millions)
2019	$729.31
2018	$646.48
2017	$428.28

NASPO ValuePoint requires lir

Quarterly detailed sales repor
spendreports@naspovaluepo

Q1

Quarter End:
Report Due: A

Q2

Quarter End:
Report Due: J

Q3

Quarter End:
Report Due: C

Q4

Quarter End:
Report Due: J

Reports should be submitted i
required are described below

Please contact Jonathan Hollir
sales reporting

**Field not required if submitte*

Field
Portfolio*
Year*
Quarter*
Vendor_Name*
Vendor_Contract_Number
State
Customer_Type
Customer_Number
Bill_to_Name
Bill_to_Address
Bill_to_City
Bill_to_Zipcode
Customer PO Number
Invoice_Number
Invoice_Date
Band
Product_Publisher

Product_Category
Product_Number
Product_Description
UNSPSC_Code
Unit_Price
Quantity
Total_Price

Quarterly Detailed Sales Report Submission

ıe item sales reports on a quarterly basis for all sales completed under NASPO Value Point contracts.

ts are required to be submitted via the online portal at https://reporting.naspovaluepoint.org, via email int.org, or via another approved automatic submission method based on the following schedule.

March 31st
April 30th

June 30th
uly 31st

September 30th
October 31st

December 31st
anuary 31st

in CSV or Excel format (on Data worksheet) with no additional formatting, subtotals, or total rows includ and should be included exactly as they are labeled and can be provided in any order.

nger at jhollinger@naspo.org to set up automated reporting integrations or with other questions related

ed via online portal.

Description
Name of portfolio.
Reporting period year.
Reporting period quarter on a calendar year basis.
Name of vendor.
Contract number sale is occurring under. Numbering and format is determined by entity.
State postal abbreviation code (Alaska = AK, Missouri = MO, etc.)
State Gov, Education-K12, Education-HED, Local Gov, Non-Profit, Other
Vendor assigned identifier for customer.
Customer (agency) Bill to name
Customer (agency) Bill to address
Customer (agency) Bill to city
Zip code in standard format
PO number assigned by purchasing entity.
Vendor assigned order or invoice number
mm/dd/yyyy
Microsft, Oracle, All Other Publishers
Original publisher of software: Microsoft, Oracle, Adobe, Salesforce, Etc.

On-Premise, Saas, PaaS, Iaas, Resold Professional Service, Reseller Service
Unique publisher/reseller assigned product number of purchased product
Product description of purchased product.
UNSPSC Commodity Code
Unit Price - US Currency ($99999.99)
Quantity Invoiced (99999.99)
Extended Price (unit price multiplied by the quantity invoiced) - US Currency ($999999.99)

to

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l to detailed

Example
Software VAR
2020
4
Software Resale, Inc.
AR3114
KY
Education-HED
173628
University of Kentucky
100 Administration Dr
Lexington
40508
PO561424
71636177
1/1/2019
Microsoft
Microsoft

SaaS
8279102
Office 365 License
43232100
$50.00
10.00
$500.00

Portfolio	Year	Quarter	Vendor_Name	Vendor_Contract_Number	State

Customer_Type	Customer_Number	Bill_to_Name	Bill_to_Address	Bill_to_City

Bill_to_Zipcode	Customer PO Number	Invoice_Number	Invoice_Date	Band

Product_Publisher	Product_Category	Product_Number	Product_Description

UNSPSC_Code	Unit_Price	Quantity	Total_Price

NASPO VALUEPOINT SOFTWARE VALUE-ADDED RESEL
STATE OF ARIZONA SOLICITATION #BPM0023
MANDATORY COST PROPOSAL FORM FOR ALL PUBLISHERS EXCEPT

Use this tab ONLY if you wish to be considered for a contract award in this category AND if you have submitted a res
your proposal. Evaluation shall be based on the AVERAGE OF ALL PERCENTAGES listed for each pricing model in this

INSTRUCTIONS: Please complete all GREEN, YELLOW, and ORANGE fields below. For the full set of line items include
Reseller's Invoiced Cost, 2) a Minimum Discount Off Manufacturer's Suggested Retail Price (MSRP), or 3) both. YOU
you may not submit a Maximum Markup for half of the line items in this category and a Minimum Discount for the o
types of pricing models, submitting pricing for only one model may prevent you from doing business with certain en
models if possible. Proposals using one cost model will be evaluated against only those proposals using the same cos
both models may be permitted to offer products and services using both models, or may be permitted to offer prod
outcome of the evaluation.

NOTE: Any formulas entered into this form have been entered as a COURTESY ONLY, and it is solely the responsibilit
this spreadsheet--including mathematical calculations--are complete and accurate.

	PUBLISHERS
	Tier I Publishers (Key Itemized Publishers)
1	ADOBE
2	CA TECHNOLOGIES
3	CISCO
4	COMMVAULT
5	IBM
6	RED HAT
7	SPLUNK
8	TABLEAU
9	VEEAM
10	VMWARE
	Tier II Publishers (Other Itemized Publishers)
11	AUTODESK
12	BARRACUDA NETWORKS
13	BMC SOFTWARE
14	CHECK POINT SOFTWARE
15	CHERWELL
16	CITRIX
17	CHATSWORTH PRODUCTS (CPI)
18	CROWDSTRIKE
19	DELL
20	DELPHIX
21	DOCUSIGN
22	DYNATRACE
23	FORCEPOINT

24	FORTINET
25	GOOGLE
26	INFORMATICA
27	IVANTI
28	KNOWBE4
29	MCAFEE
30	MICRO FOCUS
31	MULESOFT
32	NETMOTION
33	OKTA
34	OPENTEXT
35	PROGRESS SOFTWARE
36	PROOFPOINT
37	QUEST SOFTWARE
38	RAPID7
39	RSA SECURITY
40	SALESFORCE
41	SAP
42	SOLARWINDS
43	SOPHOS
44	SPILLMAN
45	SYMANTEC
46	TENABLE
47	TREND MICRO
48	VARONIS
49	VERITAS
50	ZOHO
	Non-itemized Publishers
51	All other publishers
52	**Reseller Services**
53	- Asset management
54	- Solutions architect
55	- Senior solutions architect
56	- Program engagement manager
57	- Project leader
58	- Project manager
59	- Senior project manager
60	All other in-scope reseller services

A	**Average Tier I Publishers Markup/Discount:**
B	**Average Tier II Publishers Markup/Discount:**
C	**Non-itemized Publishers Markup/Discount**
D	**Average Reseller Services Hourly Rate:**

LER (SVAR)
38
MICROSOFT AND ORACLE

ponse to all questions and criteria related to this category in tab.

d in this category, you may submit 1) a Maximum Markup on MUST BE CONSISTENT IN YOUR USE OF PRICING MODELS (*i.e.* , ther half). As some Purchasing Entities can only use certain tities, and resellers are encouraged to submit pricing for both st model. If awarded a contract, a vendor submitting pricing for ucts and services using only one model, depending on the

y of each Offeror to ensure that all information entered into

MAXIMUM MARKUP ON RESELLER'S INVOICED COST	MINIMUM DISCOUNT OFF MANUFACTURER'S SUGGESTED RETAIL PRICE (MSRP)
0.00%	0.00%
0.00%	0.00%
0.00%	0.00%
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0.00%	0.00%
0.00%	0.00%
0.00%	0.00%
0.00%	0.00%
HOURLY RATE	
$0.00	
$0.00	
$0.00	
$0.00	
$0.00	
$0.00	
$0.00	
$0.00	

0.00%	**0.00%**
0.00%	**0.00%**
0.00%	**0.00%**
$0.00	

NASPO VALUEPOINT SOFTWARE VALUE-ADDED RESEL
STATE OF ARIZONA SOLICITATION #BPM0023
OPTIONAL SERVICES COST PROPOSAL FORM FOR ALL PUBLISHERS EXCE

Use this tab ONLY if you wish to be considered for a contract award in this category AND if you have submitted a res
your proposal. Evaluation shall be based on the AVERAGE OF ALL PERCENTAGES listed for each pricing model in this

INSTRUCTIONS: The offering of other services not included in the General Mandatory tab is OPTIONAL. Pricing provi
master agreement, but states may consider this pricing when determining with which contractors to execute a parti
submit 1) a Maximum Markup on Reseller's Invoiced Cost, 2) a Minimum Discount Off Manufacturer's Suggested Re
YOUR USE OF PRICING MODELS (*i.e.* , you may not submit a Maximum Markup for half of the line items in this categ
Purchasing Entities can only use certain types of pricing models, submitting pricing for only one model may prevent
encouraged to submit pricing for both models if possible.

NOTE: Any formulas entered into this form have been entered as a COURTESY ONLY, and it is solely the responsibilit
this spreadsheet--including mathematical calculations--are complete and accurate.

	OPTIONAL SERVICES
	Optional Discount- and/or Markup-based Services
1	[Enter service here. Insert rows as necessary.]
2	[Enter service here. Insert rows as necessary.]
3	[Enter service here. Insert rows as necessary.]
4	[Enter service here. Insert rows as necessary.]
5	[Enter service here. Insert rows as necessary.]
	Optional Fixed Rate-based Services
6	[Enter service here. Insert rows as necessary.]
7	[Enter service here. Insert rows as necessary.]
8	[Enter service here. Insert rows as necessary.]
9	[Enter service here. Insert rows as necessary.]
10	[Enter service here. Insert rows as necessary.]

LER (SVAR)
38
PT MICROSOFT AND ORACLE

ponse to all questions and criteria related to this category in tab.

ded in this tab will not be evaluated for purposes of awarding a cipating addendum and which services to include. You may tail Price (MSRP), or 3) both, but YOU MUST BE CONSISTENT IN ory and a Minimum Discount for the other half). As some you from doing business with certain entities, and resellers are

y of each Offeror to ensure that all information entered into

MAXIMUM MARKUP ON RESELLER'S INVOICED COST	MINIMUM DISCOUNT OFF MANUFACTURER'S SUGGESTED RETAIL PRICE (MSRP)
HOURLY RATE	
$0.00	
$0.00	
$0.00	
$0.00	
$0.00	

NASPO VALUEPOINT SOFTWARE VALUE-ADDED RESEL
STATE OF ARIZONA SOLICITATION #BPM0023
MANDATORY COST PROPOSAL FORM FOR MICROSO

Use this tab ONLY if you wish to be considered for a contract award in this category AND if you have submitted a res
your proposal. Evaluation shall be based on the AVERAGE OF ALL PERCENTAGES listed for each pricing model in this

INSTRUCTIONS: Please complete all GREEN, YELLOW, and ORANGE fields below. For the full set of line items include
Reseller's Invoiced Cost, 2) a Minimum Discount Off Manufacturer's Suggested Retail Price (MSRP), or 3) both. YOU
you may not submit a Maximum Markup for half of the line items in this category and a Minimum Discount for the o
types of pricing models, submitting pricing for only one model may prevent you from doing business with certain en
models if possible. Proposals using one cost model will be evaluated against only those proposals using the same cos
both models may be permitted to offer products and services using both models, or may be permitted to offer prod
outcome of the evaluation.

NOTE: Any formulas entered into this form have been entered as a COURTESY ONLY, and it is solely the responsibilit
this spreadsheet--including mathematical calculations--are complete and accurate.

	SUBCATEGORY
	Itemized Microsoft Offerings
1	EMS E5
2	G1
3	G2
4	G3
5	G5
6	Govt E4
7	Advanced Threat Protection
8	Power BI
9	Exchange Online
10	Kiosk F3 Now
11	Dynamics
12	PowerApps
13	Project Online
14	Azure
	All Other Microsoft Offerings
15	SaaS
16	On-Premise
	Resold In-scope Professional Services
17	- Ongoing maintenance & support services not included in software license agreement
18	- Deployment services
19	- Architectural design services
20	- Training deployment services
21	All other resold in-scope professional services

	In-scope Reseller Services
22	- Asset management
23	- Solutions architect
24	- Senior solutions architect
25	- Program engagement manager
26	- Project leader
27	- Project manager
28	- Senior project manager
29	All other in-scope reseller services

A	**Average Itemized Offerings Markup/Discount:**
B	**Average Other Offerings Markup/Discount:**
C	**Average Resold In-scope Professional Services Markup/Discount:**
D	**Average In-scope Reseller Services Hourly Rate:**

LER (SVAR)
838
OFT ONLY

ponse to all questions and criteria related to this category in tab.

d in this category, you may submit 1) a Maximum Markup on MUST BE CONSISTENT IN YOUR USE OF PRICING MODELS (*i.e.* , ther half). As some Purchasing Entities can only use certain tities, and resellers are encouraged to submit pricing for both st model. If awarded a contract, a vendor submitting pricing for ucts and services using only one model, depending on the

y of each Offeror to ensure that all information entered into

MAXIMUM MARKUP ON RESELLER'S INVOICED COST (may be negative if sold at loss)	MINIMUM DISCOUNT OFF MANUFACTURER'S SUGGESTED RETAIL PRICE (MSRP)
0.00%	0.00%
0.00%	0.00%
0.00%	0.00%
0.00%	0.00%
0.00%	0.00%
0.00%	0.00%
0.00%	0.00%
0.00%	0.00%
0.00%	0.00%
0.00%	0.00%
0.00%	0.00%
0.00%	0.00%
0.00%	0.00%
0.00%	0.00%
0.00%	0.00%
0.00%	0.00%
0.00%	0.00%
0.00%	0.00%
0.00%	0.00%
0.00%	0.00%
0.00%	0.00%
0.00%	0.00%

HOURLY RATE
$0.00
$0.00
$0.00
$0.00
$0.00
$0.00
$0.00
$0.00

0.00%	**0.00%**
0.00%	**0.00%**
0.00%	**0.00%**
$0.00	

NASPO VALUEPOINT SOFTWARE VALUE-ADDED RESEL
STATE OF ARIZONA SOLICITATION #BPM0023
OPTIONAL SERVICES COST PROPOSAL FORM FOR MICR

Use this tab ONLY if you wish to be considered for a contract award in this category AND if you have submitted a res
your proposal. Evaluation shall be based on the AVERAGE OF ALL PERCENTAGES listed for each pricing model in this

INSTRUCTIONS: The offering of other services not included in the Microsoft Mandatory tab is OPTIONAL. Pricing pro
a master agreement, but states may consider this pricing when determining with which contractors to execute a par
submit 1) a Maximum Markup on Reseller's Invoiced Cost, 2) a Minimum Discount Off Manufacturer's Suggested Re
YOUR USE OF PRICING MODELS (*i.e.* , you may not submit a Maximum Markup for half of the line items in this categ
Purchasing Entities can only use certain types of pricing models, submitting pricing for only one model may prevent
encouraged to submit pricing for both models if possible.

NOTE: Any formulas entered into this form have been entered as a COURTESY ONLY, and it is solely the responsibilit
this spreadsheet--including mathematical calculations--are complete and accurate.

	OPTIONAL SERVICES
	Optional Discount- and/or Markup-based Services
1	[Enter service here. Insert rows as necessary.]
2	[Enter service here. Insert rows as necessary.]
3	[Enter service here. Insert rows as necessary.]
4	[Enter service here. Insert rows as necessary.]
5	[Enter service here. Insert rows as necessary.]
	Optional Fixed Rate-based Services
6	[Enter service here. Insert rows as necessary.]
7	[Enter service here. Insert rows as necessary.]
8	[Enter service here. Insert rows as necessary.]
9	[Enter service here. Insert rows as necessary.]
10	[Enter service here. Insert rows as necessary.]

LLER (SVAR)
338
OSOFT ONLY

ponse to all questions and criteria related to this category in tab.

vided in this tab will not be evaluated for purposes of awarding ticipating addendum and which services to include. You may tail Price (MSRP), or 3) both, but YOU MUST BE CONSISTENT IN ory and a Minimum Discount for the other half). As some you from doing business with certain entities, and resellers are

y of each Offeror to ensure that all information entered into

MAXIMUM MARKUP ON RESELLER'S INVOICED COST	MINIMUM DISCOUNT OFF MANUFACTURER'S SUGGESTED RETAIL PRICE (MSRP)
HOURLY RATE	
$0.00	
$0.00	
$0.00	
$0.00	
$0.00	

NASPO VALUEPOINT SOFTWARE VALUE-ADDED RESEL
STATE OF ARIZONA SOLICITATION #BPM0023
MANDATORY COST PROPOSAL FORM FOR ORACL

Use this tab ONLY if you wish to be considered for a contract award in this category AND if you have submitted a res
your proposal. Evaluation shall be based on the AVERAGE OF ALL PERCENTAGES listed for each pricing model in this

INSTRUCTIONS: Please complete all GREEN, YELLOW, and ORANGE fields below. For the full set of line items include
Reseller's Invoiced Cost, 2) a Minimum Discount Off Manufacturer's Suggested Retail Price (MSRP), or 3) both. YOU
you may not submit a Maximum Markup for half of the line items in this category and a Minimum Discount for the o
types of pricing models, submitting pricing for only one model may prevent you from doing business with certain en
models if possible. Proposals using one cost model will be evaluated against only those proposals using the same co
both models may be permitted to offer products and services using both models, or may be permitted to offer prod
outcome of the evaluation.

NOTE: Any formulas entered into this form have been entered as a COURTESY ONLY, and it is solely the responsibilit
this spreadsheet--including mathematical calculations--are complete and accurate.

	SUBCATEGORY
	Oracle Offerings
1	SaaS
2	On-Premise
	Resold In-scope Professional Services
3	- Ongoing maintenance & support services not included in software license agreement
4	- Deployment services
5	- Architectural design services
6	- Training deployment services
7	All other resold in-scope professional services
	In-scope Reseller Services
8	- Asset management
9	- Solutions architect
10	- Senior solutions architect
11	- Program engagement manager
12	- Project leader
13	- Project manager
14	- Senior project manager
15	All other in-scope reseller services

A	**Average Offerings Markup/Discount:**
B	**Average Resold In-scope Professional Services Markup/Discount:**
C	**Average In-scope Reseller Services Hourly Rate:**

LER (SVAR)
38
E ONLY

ponse to all questions and criteria related to this category in tab.

d in this category, you may submit 1) a Maximum Markup on MUST BE CONSISTENT IN YOUR USE OF PRICING MODELS (*i.e.* , ther half). As some Purchasing Entities can only use certain tities, and resellers are encouraged to submit pricing for both st model. If awarded a contract, a vendor submitting pricing for ucts and services using only one model, depending on the

y of each Offeror to ensure that all information entered into

MAXIMUM MARKUP ON RESELLER'S INVOICED COST	MINIMUM DISCOUNT OFF MANUFACTURER'S SUGGESTED RETAIL PRICE (MSRP)
0.00%	0.00%
0.00%	0.00%
0.00%	0.00%
0.00%	0.00%
0.00%	0.00%
0.00%	0.00%
0.00%	0.00%
HOURLY RATE	
$0.00	
$0.00	
$0.00	
$0.00	
$0.00	
$0.00	
$0.00	
$0.00	

0.00%	**0.00%**
0.00%	**0.00%**
$0.00	

NASPO VALUEPOINT SOFTWARE VALUE-ADDED RESEL
STATE OF ARIZONA SOLICITATION #BPM0023
OPTIONAL SERVICES COST PROPOSAL FORM FOR ORA

Use this tab ONLY if you wish to be considered for a contract award in this category AND if you have submitted a res
your proposal. Evaluation shall be based on the AVERAGE OF ALL PERCENTAGES listed for each pricing model in this

INSTRUCTIONS: The offering of other services not included in the Oracle Mandatory tab is OPTIONAL. Pricing provide
master agreement, but states may consider this pricing when determining with which contractors to execute a partic
submit 1) a Maximum Markup on Reseller's Invoiced Cost, 2) a Minimum Discount Off Manufacturer's Suggested Ret
YOUR USE OF PRICING MODELS (*i.e.* , you may not submit a Maximum Markup for half of the line items in this catego
Purchasing Entities can only use certain types of pricing models, submitting pricing for only one model may prevent y
encouraged to submit pricing for both models if possible.

NOTE: Any formulas entered into this form have been entered as a COURTESY ONLY, and it is solely the responsibilit
this spreadsheet--including mathematical calculations--are complete and accurate.

	OPTIONAL SERVICES
	Optional Discount- and/or Markup-based Services
1	[Enter service here. Insert rows as necessary.]
2	[Enter service here. Insert rows as necessary.]
3	[Enter service here. Insert rows as necessary.]
4	[Enter service here. Insert rows as necessary.]
5	[Enter service here. Insert rows as necessary.]
	Optional Fixed Rate-based Services
6	[Enter service here. Insert rows as necessary.]
7	[Enter service here. Insert rows as necessary.]
8	[Enter service here. Insert rows as necessary.]
9	[Enter service here. Insert rows as necessary.]
10	[Enter service here. Insert rows as necessary.]

LER (SVAR)
38
ACLE ONLY

ponse to all questions and criteria related to this category in tab.

ed in this tab will not be evaluated for purposes of awarding a cipating addendum and which services to include. You may tail Price (MSRP), or 3) both, but YOU MUST BE CONSISTENT IN ory and a Minimum Discount for the other half). As some you from doing business with certain entities, and resellers are

y of each Offeror to ensure that all information entered into

MAXIMUM MARKUP ON RESELLER'S INVOICED COST	MINIMUM DISCOUNT OFF MANUFACTURER'S SUGGESTED RETAIL PRICE (MSRP)
HOURLY RATE	
$0.00	
$0.00	
$0.00	
$0.00	
$0.00	

Best and Final

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