

	Request for Proposal Solicitation No. BPM002338 Description: Software Value-Added Reseller (VAR)	Arizona Department of Administration State Procurement Office 100 N 15th Ave., Suite 402 Phoenix, AZ 85007
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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	<i>Part_1_BPM002338_OPEN_FIRST_Software VAR.PDF (or as amended)</i>
Part 2	Section 2-A: Scope of Work	<i>Part_2_BPM002338_RFP__Software VAR.PDF (or as amended)</i>
	Section 2-B: Pricing Document	
	Section 2-C: Special Terms and Conditions	
	Section 2-D: Uniform Terms and Conditions	
Part 3	Section 3-A: Instructions to Offerors	

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	Section 3-B: Offer forms	<i>Part_3_BPM002338_Offer_Forms_Software VAR.DOC (or as amended)</i>
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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 Code consists 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

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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

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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.

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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.

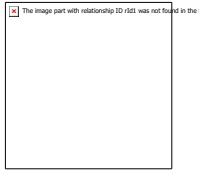
2.1.1.2 *Tier 2 - Other Itemized Publishers:* The products of the Publishers in this category represent a high level of sales volume as identified for this solicitation. This category may include a Participating Entity's high-

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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.

<u>KEY ITEMIZED PUBLISHERS</u> Certification of Direct Reseller status required, except in the case where certain Publishers do not sell directly through Resellers	<u>OTHER ITEMIZED PUBLISHERS</u> Certification of Direct Reseller status desirable. If not certified, the percentage rate should be no greater than Non-Itemized Rate	<u>NON-ITEMIZED PUBLISHERS</u>
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	



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	INFORMATICA	
	IVANTI	
	KNOWBE4	
	MCAFEЕ	
	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

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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

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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.

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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.

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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.

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- 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.

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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 Service
- 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

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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

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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.

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- 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;

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- 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

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- 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.

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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.

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- 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

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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;

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- 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.

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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.

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- 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

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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

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- 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 webpage, 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.

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- 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

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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.

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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 1, 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

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For Category 1, 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.

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- 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

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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.

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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

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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:

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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

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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	■

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Extended pricing	■
Taxes <i>(as a separate invoice line item)</i>	■
Upcharge shipping/freight, etc. <i>(as a separate invoice line item)</i>	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.

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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

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SECTION 2-C: Special Terms and Conditions

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

1.0 Definition of Terms

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

1.1 Acceptance	“Acceptance” means the document headed “Offer and Acceptance Form” bearing the State contract number once Procurement Officer has signed it to signify (1) State’s formal acceptance of the Accepted Offer and (2) the formation of the Contract. For clarity of intent, the foregoing is not to be confused with the term “acceptance” used throughout the Contract in the context of delivery, inspection, etc., with respect to Materials or Services. “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 <u>Instructions to Offerors</u>.
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: - the Solicitation required Offeror to submit as part of the relevant Offer (e.g., Initial Offer, Revised Offer, or BAFO); - was attached to an Offer when submitted; and - 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

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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 <u>Special Terms and Conditions</u> 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 <u>Special Terms and Conditions</u> 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

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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 <u>Section 2-B of Part 2 of the Solicitation Documents</u> , 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.

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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 <i>Technical Bulletin No. 020, The State's e-Procurement System – The Official State eProcurement System</i>. 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.

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2.0 Contract Interpretation

2.1 Usage

Where the Contract:

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

2.2 Contract Order of Precedence

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

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- (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.

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| 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

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|--------------------------------|---|
| 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 | <p>3.3.1 TO CONTRACTOR. Purchasing Entity shall:</p> <ul style="list-style-type: none"> (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. <p>3.3.2 TO PURCHASING ENTITY. Contractor shall :</p> <ul style="list-style-type: none"> (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

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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: - extension of the term of the Contract within the maximum aggregate term; - revision to Procurement Officer appointment or contact information; or - 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 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.

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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.

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- 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.

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**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.

**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

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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.

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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 Statutes Titles 35 and 41. Unless and then only to the extent expressly stated otherwise in the Pricing Document, State shall make payment in full for Materials that have been delivered and accepted and Services that have been performed and accepted within the time specified in A.R.S. § 35-342 after both of the following become true: (a) all of the Materials being invoiced have been delivered or installed (as applicable) and accepted and all of the Services being invoiced have been performed and accepted; and (b) Contractor has provided a complete and accurate invoice in the form and manner called for in the Pricing Document, provided that, State will not make or be liable for any payments to Contractor until Contractor has registered properly in The State's e-Procurement System and provided a current IRS Form W-9 to State unless excused by law from providing one.
- 4.1.2 PAYMENTS ONLY TO CONTRACTOR.** Unless compelled otherwise by operation of law or order of a court of competent jurisdiction, State will only make payment to Contractor under the federal tax identifier indicated on the Accepted Offer.

4.2 Applicable Taxes

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

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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.

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

2. Business Automobile Liability

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

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

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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

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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 "Indemnatee") 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 Indemnatee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnatee, 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

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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.

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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.
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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 <u>Scope of Work</u> 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.
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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.
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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.
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7.4 Licenses and Permits	Contractor warrants that it will maintain all licenses required under paragraph 3.7 [<i>Contractor Licenses</i>] and all required permits valid and in force.
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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 [<i>Assignment and Delegation</i>] that expressly recognizes the event.
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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 [<i>Force Majeure</i>] 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.
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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.
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(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 warrants 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

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	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 <u>Commercial Document</u> 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. 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.
11.9 Forced Substitutes	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.
11.10 Recalls	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 <u>Commercial Document</u> , all Materials prices set forth therein are FCA (seller's dock) Incoterms®2010, with "seller's dock" meaning the last place

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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

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

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

11.12 Delivery Time

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;

11.13 Delivery Locations

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

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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

11.16 Acceptance

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.

11.17 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

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.

11.19 Order Cancellations

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;

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(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 cancellation 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

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

11.20 Product Safety

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

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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. Contractor shall provide to State a report detailing the identified cause and setting out its detailed corrective action plan promptly after the date the failure occurred (or the date when the failure first became apparent, if it was not apparent immediately after occurrence).

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

13.0 Data and Information Handling

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| 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 | <p>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:</p> <ol style="list-style-type: none"> 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. | <p>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.</p> <p>For purposes of this paragraph:</p> <ol style="list-style-type: none"> 1. PII has the meaning given in the [federal] Office of Management and Budget (OMB) <i>Memorandum M-17-12 Preparing for and Responding to a Breach of Personally Identifiable Information</i>, 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) <i>Directive CIO P 2180.1 GSA Rules of Behavior for Handling Personally Identifiable Information</i>. <p>NOTE (1): For convenience of reference only, the OMB memorandum is available at:
 https://dpcl.dod.mil/Privacy/Authorities-and-Guidance/</p> <p>NOTE (2): For convenience of reference only, the GSA directive is available at:
 http://www.gsa.gov/portal/directive/d0/content/658222</p> |
| 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: |

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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

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

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

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

14.7 First Party Liability Limitation

14.7.1 LIMIT. Subject to the provisos that follow below and unless stated otherwise in the Special Terms and Conditions, State's and Contractor's respective first party liability arising from or related to the Contract is limited to the greater of \$1,000,000 (one

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	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 <u>Scope of Work</u> 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.

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

14.9 Specific Remedies

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

14.10 Section 508 Compliance

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

14.11 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

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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.

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**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:

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- 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 Incident 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.

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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.

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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.

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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

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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:

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| 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 of 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

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| 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 |
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	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

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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.

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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.

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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;
- 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

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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

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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,

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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