



# Request for Proposal

Solicitation No.

**BPM000937**

Description:

**Internal Control System**

Arizona Department of

Administration

State Procurement Office

100 N. 15<sup>th</sup> Ave., Ste. 402

Phoenix, AZ 85007

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

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### SECTION 2-A: Scope of Work

#### 1.0 Purpose and Background

- 1.1 **Purpose:** The Contractor shall provide an Internal Control System and related support services to independently monitor and verify draw gaming system transactions per Multi-State Lottery Association (MUSL) rules. The system shall be flexible, able to grow, and tailorable to the business needs and rules of the Arizona Lottery. This includes, but is not limited to:
- 1.1.1 Development and implementation of an ICS comprised of four identical, independent sub-systems:
    - 1.1.1 (a) AZICS01 - Production
    - 1.1.1 (b) AZICS02 - Production
    - 1.1.1 (c) AZICS03 - Production
    - 1.1.1 (d) AZICSTest – Test
  - 1.1.2 All necessary software to run and support the four systems.
  - 1.1.3 General system support, including technical and programming support.
  - 1.1.4 Maintenance, upgrades, and updates of ICS software, including, but not limited to:
    - 1.1.4 (a) Implementation and testing of new games
    - 1.1.4 (b) Game changes such as matrix changes
    - 1.1.4 (c) Additions of promotions and changes to promotions
    - 1.1.4 (d) Any changes necessary for MUSL compliance
    - 1.1.4 (e) Quarterly updates/patches to mitigate risk.
  - 1.1.5 Initial and ongoing training.
- 1.2 **Background.** The mission of the Arizona Lottery (Lottery) is to support Arizona programs for the public benefit by maximizing net revenue in a responsible manner. With a governor-appointed Commission and Executive Director overseeing operations, the Lottery works with a retailer network to provide players with innovative and entertaining games.
- 1.2.1 Scientific Games International is the current contractor for the Lottery's Draw Games and Instant Ticket gaming system. The Scientific Games gaming system is the system of record for all sales, validation and inventory transactions for Draw Games and Instant Tickets.
  - 1.2.2 Pollard Banknote Limited is the current contractor for the Lottery's Instant Ticket Warehouse and Distribution system. Instant ticket order and inventory transactions



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generated on the Pollard system are imported into the Scientific Games gaming system via a near-real time transaction data feed.

- 1.2.3 The Lottery's system contracts with Scientific Games and Pollard Banknote end on August 31, 2026.

## 2.0 Definitions

- 2.1 Acceptance Testing. An extensive verification process to ensure that all Contractor standards are in strict compliance with Lottery requirements during initial and post implementation.
- 2.2 UAT. User Acceptance Testing.
- 2.3 Calendar Day. A period of twenty-four hours starting at midnight.
- 2.4 Conversion. Implementation activity during which the existing ICS used by the Arizona Lottery is replaced.
- 2.5 Critical Period. The period of time beginning one hour before each scheduled Powerball and Mega Millions draw until one hour after the draw.
- 2.6 Draw Game. When referring to games or tickets, tickets that are generated through the terminal.
- 2.7 Draw Break. The set period of time during which a Gaming System prevents creation of new wagers for a game. Each game has its own independently defined Draw Break.
- 2.8 Gaming System. The entire infrastructure, including all computer hardware, software, terminals, networks, and equipment, supplies, and services, used to operate the Draw and Instant Games of the LotteryHash. Hash refers to a cryptographically secure hash algorithm approved by MUSL. MUSL approved hash algorithms are generally determined by the list of hash algorithms approved by the US National Institute of Standards and Technology (NIST). A hash algorithm is a one-way function that is infeasible to reverse. For example, given input A, hash function H, and output  $B=H(A)$ , it is easy to verify B given A, but infeasible to determine A given B since there is no inverse hash algorithm or function.
- 2.9 ICS. Internal Control System.
- 2.9.1 AZICS01. Internal Control System at Iron Mountain Data Center
- 2.9.2 AZICS02. Internal Control System at the Lottery's Tucson office/Involta Data Center.
- 2.9.3 AZICS03. Internal Control System at Lottery Phoenix Location
- 2.9.4 AZICSTest at IMDC. Identical in hardware, software, and configuration to the production AZICS01, AZICS02 and AZICS03, to be used for Lottery Quality Assurance (QA) activities.
- 2.10 ICS Operator. A Lottery staff person authorized to perform production tasks on the ICS system.
- 2.11 Implementation. The set of activities, including but not limited to planning, delivery, installation, configuration, testing, and cutover, whose goal and end is placement of the new system into production.



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- 2.12 Instant Games. Scratch or pull-tab tickets that are not generated through a terminal.
- 2.13 Key Employee or Key Staff. Contractor Employees who shall be responsible and accountable to the Contractor for full and complete performance of this Contract
- 2.14 MUSL. Multi-State Lottery Association. An organization of which the Lottery is currently a member.
- 2.15 Out-of-Balance. Any difference in the transaction counts of dollar amounts between the ICS and the Lottery gaming system.
- 2.16 Principle of Least Privilege. The practice of limiting access to the minimal level that will allow normal functioning. Applied to employees, the Principle of Least Privilege translates to giving people the lowest level of user rights that they can have and still do their jobs.
- 2.17 Promotional Transaction. Limited time special offers supported by the Gaming System which include, but are not limited to: free plays, cross promotions, multiple drawings per day of the same game; bonus drawings; bonus winner payoffs; sampler tickets; retailer clerk incentives; external coupons, and Gaming System generated coupons.
- 2.18 QA. Quality Assurance.
- 2.19 Real Time/Near Real Time. Little or no noticeable delay between the original transaction and its processing by the ICS.
- 2.20 Retailer. A business contracted with the Lottery to sell, validate, and when appropriate pay prizes on Draw tickets.
- 2.21 Transactions. Events typically involving exchange of value or communication of information and mediated or facilitated or recorded by the Gaming System including but not limited to wagers, scans of tickets, voids, payments, account adjustments, money transfers.

### 3.0 General Requirements

- 3.1 The ICS must support all Lottery products and must be flexible, scalable, and tailored to the business needs and rules of the Arizona Lottery.
- 3.2 The ICS must be capable of receiving data from the gaming system in near real-time for processing, without impact to any and all other functionality (e.g. balancing, auditing, reporting, etc.).
  - 3.2.1 The ICS shall be able to accept transactions from the Lottery's gaming system at a rate of 10,000 tickets per minute and 2,000 combined winning ticket validations per minute, concurrently.
  - 3.2.2 The ICS shall receive data from the gaming system in accordance with the Arizona Lottery approved protocols, which shall include, but are not limited to, daily sales, validation, inventory, claims, retailer management, and accounting activity.
  - 3.2.3 The ICS shall be capable of receiving data from multiple concurrent and / or independent data sources. The current ICS configuration requires connection only to the Scientific Games gaming system. Future business or system changes may



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require the ICS to connect to and process transactions from additional independent systems operated by other vendors.

- 3.3 The ICS shall verify the correctness of the gaming system independently by reprocessing transactions, allowing auditing of the daily transactions, winner selection/verification, prize payout calculations, sales summaries, and various inquiry and reconciliation activities.
- 3.4 The Contractor shall cooperate fully with the gaming system contractor(s) and provide any necessary resources to maintain the linkage between the ICS and the gaming system(s).
- 3.5 Production ICS. The Contractor shall furnish, install, and maintain the production ICS application software. The production ICS shall be comprised of three identical systems, AZICS01, AZICS02 and AZICS03, operating simultaneously and independently, that will accept and process transactions in real, or near real-time, from the Lottery's gaming system.
- 3.6 Test ICS. The Contractor shall furnish, install, and maintain a test ICS (AZICSTest) to be used for Lottery quality assurance (QA) activities. The test ICS shall be identical in every manner to the production ICS and shall be available for use by the Lottery, with full support from the Contractor. AZICSTest shall be able to be updated and activated for production in the event of failure of AZICS01, AZICS02 or AZICS03.
- 3.7 All four ICS must be of exclusive use for the Arizona Lottery.
  - 3.7.1 The Contractor must not conduct software development or its own quality assurance activities on any of these three ICS, but rather must employ its own separate development system or testing system at a location of their choice. To ensure compatibility upon release for acceptance testing, any system used by the Contractor shall employ the same architecture and capacity as the Lottery's active production ICS.
- 3.8 ICS Locations. Contractor shall install and maintain the four ICS at the following locations:
  - 3.8.1 AZICS01 – Iron Mountain Data Center (IMDC): 615 N 48th St., Phoenix, AZ 85008
  - 3.8.2 AZICS02 – Involta Data Center: 1215 E Pennsylvania St., Tucson, AZ 85714
  - 3.8.3 AZICS03 – Main Phoenix office: 4740 E. University Dr., Phoenix, AZ 85034
  - 3.8.4 AZICSTEST - Iron Mountain Data Center (IMDC): 615 N 48th St., Phoenix, AZ 85008
- 3.9 The ICS shall have the capacity in all software aspects to expand support of transactions from the current three thousand (3000) retailers up to ten thousand (10,000) active retailers; shall be able to support one hundred (100) concurrent draw games, a sales day of at least fifty million dollars; and a draw jackpot over one billion dollars.

## 4.0 Out-of-Balance Conditions

- 4.1 The ICS must provide automated balancing between itself and the gaming system. The Contractor must identify and resolve any out-of-balance situations between the ICS and the gaming system as quickly as possible.
- 4.2 Any out of balance conditions or abnormal ICS operations (including causes such as communication difficulties, ICS hardware, operating system errors, etc.) shall be reported as an



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immediate alert to the appropriate Lottery employees and gaming system employees as follows:

- 4.2.1 Notification within fifteen (15) minutes of the occurrence to the IT Director or authorized designee.
  - 4.2.1 (a) The Lottery shall determine how notification will be made (email, phone, etc.) and will provide the Contractor with appropriate contact information.
- 4.2.2 Written notification within one (1) business day to the Chief of Security Operations or authorized designee.
- 4.3 Contractor must have written procedures to identify and resolve out-of-balance situations between the gaming system, AZICS01, AZICS02, and AZICS03 and must provide these procedures to the Arizona Lottery upon request.
- 4.4 The Contractor shall provide support to help resolve out-of-balance conditions and maintain compatibility with the gaming system.
- 4.5 Upon notification from the Lottery, the Contractor shall immediately investigate any out-of-balance condition, identify all data that is affected, and provide recommendations to the Lottery for promptly resolving the out-of-balance condition. The Contractor must communicate the results of the investigation and any proposed solutions in writing to the Lottery. The Lottery will assess the impact on Lottery operations and make the final decision on any actions to be taken before normal processing is resumed.
- 4.6 The Contractor shall provide the Lottery with a written incident report each time an out-of-balance or error condition occurs. The report is due no later than the close of business the first working day after the out-of-balance or error condition occurs.

## 5.0 Software

- 5.1 The ICS shall be able to independently process all Gaming System transactions, including but not limited to daily sales, wagers, cancels, validations, claims, inventory, coupons, draw management commands and retailer management and accounting activities for online transactions to ensure the integrity of the transactions processed.
- 5.2 The Lottery and the MUSL Product Group must approve the ICS software before use, and the ICS must adhere to all requirements as outlined in:
  - 5.2.1 MUSL Confidential Minimum Game Security Standards, version 03/20/17 or later.
    - 5.2.1 (a) The ICS must remain compliant with future versions.
  - 5.2.2 MUSL Rule 2, Version 10/28/19 or later.
    - 5.2.2 (a) The ICS must remain compliant with future versions.
- 5.3 The AZICS01, AZICS02, and AZICS03 shall import and process all online transaction data directly from the computer gaming system in real time.



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- 5.4 All systems in the ICS configuration must have a time synchronizing mechanism to ensure consistent time recording and reporting for events and transactions. Synchronization with an external time standard is required.
- 5.4.1 The specific synchronization method must be reviewed and approved by the Lottery.
- 5.5 The ICS must accommodate near twenty-four (24) hour-a-day sales operations as required by the Lottery. Current operating hours are 4:00AM through midnight for selling, and 4:00AM through midnight for validations (MST).
- 5.6 The AZICS01, AZICS02, and AZICS03 shall check that all wagers shall be applied to the appropriate drawing(s).
- 5.7 The ICS shall process all data and produce balancing reports within twenty (20) minutes after the draw break.
- 5.8 The processes and activities to identify winners for a draw shall be completed within thirty (30) minutes after entry of the winning numbers for each drawing.
- 5.9 The ICS shall perform the following balancing procedures:
- 5.9.1 Reprocess all Transactions for each drawing.
- 5.9.2 Produce and compare end-of-day reports. At minimum, counts and amounts of all financial activity by game and Retailer shall be balanced daily, as well as balancing total validations and outstanding prize liability by game and draw.
- 5.9.3 Verify sales by game and by drawing for each retailer.
- 5.9.4 Verify the number of prize winners at each prize level for each game.
- 5.9.5 Confirm validation and outstanding prize liabilities for each game and each drawing.
- 5.9.6 Verify deferred revenue – including future sales.
- 5.9.7 Verify purged tickets.
- 5.9.8 Produce reports that are automatically balanced against reports produced by the gaming system to verify the above items.
- 5.10 The ICS shall process and recognize promotional transactions. These transactions include, but are not limited to: free plays, cross promotions, multiple drawing per day of the same game, bonus drawings, bonus winner payoffs, sampler tickets, retailer clerk incentives, external coupons, and gaming system generated coupons.
- 5.11 Weekly (based on accounting week), the ICS shall be capable of recalculating retailer accounting information to compare to the gaming system for accuracy.
- 5.12 The ICS shall support the MUSL approved lockdown alternative technology as described in MUSL Rule 2:
- 5.12.1 A secured file transport protocol (FTP) server can be used to transfer the CGS-recorded and ICS-recorded transactions are copied to a lottery-security controlled computer. Connections must be secured, for example by either SSH or SSL, and must include traffic encryption and connection authentication. The FTP server must



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automatically verify the integrity of the data and send notifications to lottery-security staff confirming successful transfer or an error.

- 5.13 ICS draw processing shall allow the manual entry of winning numbers for games not drawn by the Arizona automated drawing machines (e.g., Powerball), and the ability to accept winning numbers passed from the gaming system in the transaction stream directed to the ICS.
- 5.14 Real-time monitoring of communications between the ICS and the gaming system shall be provided. The ICS servers must generate an alert in the event that connectivity to the gaming system is lost and is not re-established within a period of two minutes.
- 5.15 The ICS shall support backup and restore functionality of critical files, software, and back-up data, and processes to test backup and restore procedures (e.g., the Lottery may restore a backup file to a testing system to ensure viability).
- 5.16 All ICS servers should be updated with latest upgrades and patches on quarterly basis to mitigate risk.

## 6.0 Hardware

- 6.1 The Lottery will be responsible for providing and supporting all ICS hardware, however, the Contractor must ensure that the ICS system software is compatible.
- 6.2 The ICS hardware is comprised of four Lenovo ThinkServer SR650 servers (three production + one test), each with the following specifications:
  - 6.2.1 Two Intel Xeon Silver 4110 2.10GHz 8-core processors
  - 6.2.2 64GB DDR4 RAM
  - 6.2.3 128GB SSD RAID 1 storage array (operating system); 5TB SSD RAID 6 general storage array (9 each 960GB SSD, expandable to 24 total drives)
  - 6.2.4 Redundant power supplies
- 6.3 If the Lottery changes or upgrades the ICS hardware, the Contractor will be consulted to ensure continued compatibility.

## 7.0 Network Connectivity

- 7.1 The AZICS01, AZICS02, AZICS03, and AZICSTest shall interface to the gaming system using Ethernet / TCP/IP network connections provided by the Lottery and the draw system contractor. The Lottery and draw system contractor will provide firewall protection for these network connections.
- 7.2 The ICS shall import a near-real time feed of gaming transactions from the gaming system contractor over the network connections described.
- 7.3 The ICS systems shall be capable of connecting to multiple gaming system host servers. In the event network connectivity to a gaming system host server is lost, the ICS shall automatically attempt to connect to alternate servers in order to re-establish connectivity.



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- 7.4 In the event that the network connectivity to the gaming system fails, the ICS shall import transaction data transferred from physical media (USB or optical disk) from the Lottery's gaming system as a source of ICS data and operate in a standalone mode.
- 7.5 Each ICS shall be configured to securely support remote connections from the Contractor for system support.

## 8.0 Support

- 8.1 The Contractor shall provide programming and software application support which includes all application development and software modifications required as a result of changes to the gaming system, Lottery internal systems, or MUSL requirements at no additional cost.
- 8.2 Software upgrades and updates shall be available to the Lottery at no additional cost.
- 8.3 The Contractor shall provide programming and software application support (including all application development and software modifications) to support to ensure ICS compatibility with changes made to the Lottery's system (e.g., new games) and ICS requirements.
- 8.4 The Contractor shall maintain the ICS software, including updating the application software whenever the Lottery implements a new game, makes changes to a game that would affect ICS processing, or updating the operating system. Written prior approval is required from the Lottery before making any enhancement or modification to any software.
- 8.5 The Contractor shall provide on-call and/or on-site system support services, twenty-four (24) hours a day, seven (7) days a week, 365 days a year. The availability and reliability of the ICS is crucial.
- 8.6 Support response time requirements are as follows:
- 8.6.1 Time to provide remote support during Critical Period: within 15 minutes
  - 8.6.2 Time to provide remote support during all other times: within 60 minutes
  - 8.6.3 Time to provide on-site staff support, if requested by the Lottery: within 24 hours or as soon as commercial transportation accommodations can be made.
  - 8.6.4 Time to provide a fully functioning replacement AZICS01, AZICS02, AZICS03, or AZICSTest: within 30 days.
- 8.7 The ICS shall be delivered with a full set of tools for its operation and administration. Authorized Lottery staff shall have the ability to perform user account administration.
- 8.8 The Contractor shall perform administration and maintenance tasks as part of its support obligation. ICS administration and maintenance responsibilities include, but are not limited to, operating system, security vulnerability assessment and management; coordination and fulfillment of all hardware maintenance; and licensing maintenance. Application responsibilities relate to all installed software components including third-party applications.
- 8.9 Documentation of all ICS administration and maintenance events shall be maintained by the Contractor and be made available for Lottery review as requested.



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- 8.10 The Contractor shall operate under well-defined change control and configuration management practices. Contractor shall perform in accordance with the principles of configuration management.
- 8.10.1 The Contractor shall ensure through procedural and ICS controls that only Lottery approved changes, on an approved schedule, can be made. Reports and displays shall be available to Lottery to review all related change and configuration management activities.
- 8.10.2 Each release of the software for testing by Lottery shall be accompanied by release notes. The release notes shall evidence good configuration management practices; namely, each release shall be identified by a version number, and the changes shall be defined.
- 8.10.3 All changes to the ICS shall first be completed on a related QA system. All changes approved and completed for production systems shall be completed on all four (4) systems (AZICS01, AZICS02, AZICS03, AZICSTest).
- 8.10.4 Hash files are required for software at the time it is released for Lottery QA, and shall be available at any time.
- 8.10.5 ICS components shall be documented with version and release numbers/patch versions, or model and serial numbers.
- 8.10.6 The Contractor shall track all changes made to the ICS components, provide reports showing when and by whom a change was made and for what purpose, and shall avoid multiple update conflicts. Change logs shall reference associated planning documents and approvals.
- 8.10.7 The Contractor shall have the ability to produce a configuration status report identifying the current configuration of any ICS component as well as an inventory report including all ICS components.
- 8.10.8 For each ICS, a backup of the current configuration is required to ensure these components can be restored quickly and limit the time period where the ICS would be operating in a non-redundant configuration in the case of an ICS or device failure.
- 8.10.9 The Contractor shall provide and maintain comprehensive ICS documentation for Lottery including but not limited to: security standards and processes, Multi-jurisdictional security standards compliance documents, change control processes and procedures, daily balancing procedures, draw balancing, data dictionaries, third-party licensing documentation, etc.

## 9.0 Reporting

- 9.1 The ICS shall generate paper and electronic reports as directed by the Lottery.
- 9.2 A process shall exist for the Lottery ICS operators to copy all ICS reports to removable media (e.g., secure flash drive, CD/DVD).
- 9.3 The ICS shall generate reports which allow the Lottery to balance system totals, game totals, and retailer activity totals against the gaming system. Examples include, but are not limited, to the following:



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- 9.3.1 Winners by game or drawing
  - 9.3.2 Drawing sales by draw or game
  - 9.3.3 Validations by game and prize type
  - 9.3.4 Daily sales activity and totals by retailer (sales, cancels, validations)
  - 9.3.5 Daily sales totals by game or products
  - 9.3.6 Liability reports by drawing, showing won, paid, outstanding, and purged
  - 9.3.7 Unclaimed prizes
  - 9.3.8 Promotional reporting for free tickets, coupons, etc.
- 9.4 The Lottery shall determine final report specifications with the Contractor.
- 9.5 As requested by the Lottery, the Contractor shall develop new reports to serve operational needs.

## 10.0 Security

- 10.1 Security requirements apply to all systems in the Contractor's configuration.
- 10.2 All security controls shall be subject to Lottery approval.
- 10.3 The Lottery and the MUSL Product Group must approve the ICS software before use, and the ICS must adhere to all requirements as outlined in:
  - 10.3.1 MUSL Rule 2 and Addendum, last amended 10/28/19 or later.
  - 10.3.2 MUSL Confidential Minimum Game Security Standards, updated March 20, 2017 or later.
- 10.4 The ICS shall be compliant with all security and fault tolerance requirements accepted as operating principles promulgated by any multi-jurisdictional organization of which the Lottery may be a member (e.g., MUSL).
- 10.5 Written approval is required from Chief of Security Operations before making any enhancement or modification to any software.
- 10.6 Contractor shall have neither logical nor physical access to the ICS except with Lottery approval.
  - 10.6.1 All systems and users requiring access to the ICS shall be approved by the Lottery.
  - 10.6.2 ICS users shall be granted access only to the operating system functions and file systems needed to perform their job functions (Principle of Least Privilege).
- 10.7 The ICS shall support controls and procedures that allow the Lottery to audit all system access.
- 10.8 The Contractor shall ensure that the ICS is not vulnerable to unauthorized access or malware.
- 10.9 All operator commands and management workstation modifications executed on the ICS and any ICS warning or problem messages shall be logged on non-volatile media available to the Lottery which may, at its sole discretion, process and review the logs for auditing purposes.



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- 10.10 Hash files are required for executable programs on the ICS for auditing purposes. Hash files shall be available on all ICS systems whenever the Lottery chooses to request them from the Contractor, or to generate them.

## 11.0 Implementation & Conversion

- 11.1 The Conversion shall occur on or before a date established by the Lottery no later than June 6, 2021.
- 11.2 The Lottery requires the Contractor to conduct a seamless conversion methodology with no interruption to sales and services. The Contractor shall provide a detailed implementation plan within thirty (30) days of Contract award for Lottery approval.
- 11.2.1 The implementation plan shall provide conversion details, project personnel, and a timeline (GANTT chart).
- 11.3 The Contractor will be required to participate in meetings for the successful implementation of the Contract and to facilitate a transition from the previous contractor to the Contractor, if necessary. The Contractor will be notified in advance of the meeting(s) time, frequency, and locations to ensure all appropriate Contractor staff and representatives attend.
- 11.4 The Contractor shall cooperate with the outgoing contractor, the gaming system contractor and the Lottery to ensure a successful implementation and conversion.
- 11.5 A production ICS or development version shall be available for interface testing with the gaming system at least three months prior to conversion date.
- 11.6 The State reserves the right to permit the previous contractor to complete necessary work or tasks currently in progress to aid in the transition process.
- 11.7 Acceptance Testing: The Arizona Lottery will conduct the internal acceptance testing in a production like test environment. Testing is performed to verify whether Product meets customer requirements for acceptability
- 11.8 Training: The Contractor shall provide ICS system documentation with basic design, data process flow, report layout. A demo session shall be set up and present to the Lottery IT team either in person or through a conference call.

## 12.0 End-of-Contract Transition Period

- 12.1 Upon termination of this Contract there shall be a transition of service period. During this period, the existing Contractor shall work closely with the new contractor's personnel and/or staff to ensure a smooth and complete transfer of duties and responsibilities.
- 12.2 All transition activities will be coordinated by the Lottery's authorized representative. A transition plan as approved by the Lottery will be developed in conjunction with the Contractor to assist the new contractor to implement the transfer of duties.



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- 12.3 The Contractor shall prepare, at no cost, in a format that is acceptable to the Lottery, all data for transfer to the new contractor. All historical data shall be available for transfer no later than two (2) months prior to the termination of the Contract.

### 13.0 Service Level Agreement

- 13.1 The Contractor shall provide on-call and/or on-site system support services, twenty-four (24) hours a day, seven (7) days a week, 365 days a year. The availability and reliability of the ICS is crucial.
- 13.2 If Contractor does not meet response times as listed below, payment deductions will be made from the corresponding month's invoice.
- 13.3 Contractor is responsible for tracking SLA performance. Contractor shall submit a monthly detailed SLA performance report with the invoice for each corresponding month.
- 13.4 SLA Payment Deductions shall not be prorated.

Description	Response Time	Payment Deduction
Time to provide remote support	Within 15 minutes	\$1000 for each 30 minutes past established SLA Response Time.
Time to provide remote support during all other times	Within 60 minutes	\$100 for each 30 minutes past established SLA Response time.
Time to provide on-site staff support, if requested by the Lottery	Within 24 hours or as soon as commercial transportation accommodations can be made.	\$50 for each hour past established SLA Response time.
Time to provide a fully functioning replacement of AZICS01, AZICS02, AZICS03, or AZICSTest	Within thirty days	\$100 for each day past established SLA response time.

- 14.0 Invited Option.** The following service is not required; however, the Lottery may wish to utilize this service during the term of the Contract. Offerors shall price the services below if they are available. Pricing for invited options is to be separate from the base contract. Pricing shall apply only if the service is ordered and used. The Lottery may accept or reject such options. With respect to advances in the industry, the Lottery reserves the right to amend the resulting contract consistent with these services described below. If there is an additional charge for the option, it must be specified in the pricing section. Offerors must state their ability to provide these services.

- 14.1 **Instant Ticket Balancing**



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- 14.1.1 Contractor must incorporate instant ticket balancing into the services specified in the base contract.
- 14.1.2 The ICS system must support three hundred (300) concurrent Instant Games in any status (e.g., loaded, distributed, sold, validated, closed out).
- 14.1.3 The ICS shall perform the following balancing procedures:
  - 14.1.3 (a) Verify commissions, promotion credits, returns, return commissions, cancellations, unclaimed prizes, and adjustments.

**End of Section 2-A**



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### SECTION 2-B: Pricing Document

#### 1.0 Compensation

##### 1.1 COMPENSATION METHOD

Contractor will be compensated based on the pricing provided for satisfactorily carrying out its obligations under the Contract. Pricing shall be defined by prices and discounts set in Attachment 4 – Pricing Sheet.

Payment obligations to the Contractor will commence upon Conversion.

#### 2.0 Pricing

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

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

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

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

##### 2.2 PRICING-ALL-INCLUSIVE

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

##### 2.3 PRICE INCREASES

2.3.1 The State may review a fully documented request for a price increase. The requested increase shall be in writing and be based upon a cost increase to the contractor that was clearly unpredictable at the time of the offer and is directly correlated to the price of the product concerned. Contractor must provide conclusive evidence of a need for any price increases such as being substantiated by the Producer Price Index, Consumer Price Index, or similar pricing guide.

(a) Initial Contract prices will be honored for one year after award of Contract.

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



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(c) All price adjustments will be implemented by a formal contract change order. State shall determine whether the requested price increase or an alternate option is in the best interest of State.

## 2.4 PRICE REDUCTIONS

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

## 2.5 ADDITIONAL CHARGES

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

## 3.0 Funding

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

## 4.0 Invoicing

4.1 INVOICES GO TO BUYING ENTITY. Contractor shall submit all billing notices or invoices to [apinvoices@azlottery.gov](mailto:apinvoices@azlottery.gov)

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

Item	Required
Bill-to name and address	●
Contractor name and contact information	●
Remit-to address	●
State contract number	●
Order number (typically the APP PO #)	●
Invoice number and date	●
Date the items shipped or services performed	●
Applicable payment terms	●
Detailed description of service performed or item delivered	●
Quantity delivered or service performed	●
Line item unit of measure	●
Item price	●
Extended pricing	●
Discount off list or catalog	●



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Taxes ( <i>as a separate invoice line item</i> )	●
Upcharge shipping/freight, etc. ( <i>as a separate invoice line item, if allowed by contract</i> )	Materials only
Total invoice amount due	●
SLA Performance Report (on a separate page or attachment)	●

- 4.3 NO INVOICE WITHOUT AUTHORIZATION. Contractor shall not seek payment for any:
1. Materials or Services that have not been authorized on an acknowledged Order;
  2. Expediting, overtime, premiums, or upcharges absent State’s express prior approval; or
  3. Materials or Services that are the subject of a Contract Amendment or Change Order that has not been fully signed.
- 4.4 PRE-INVOICE REVIEW. Shortly before Contractor is scheduled to submit each invoice, the parties’ representatives shall meet informally to review any issues relevant to that upcoming invoice so that the formal invoice process is thereby facilitated and made more efficient.
- 4.5 SUBMITTING INVOICES. Contractor shall submit an invoice to the ordering Eligible Agency using the form and/or process provided or required by the ordering Eligible Entity/Customer (Eligible Agency). Every invoice must be signed by Contractor’s authorized representative and accompanied by all supporting information and documentation required by the Contract and applicable laws.
- 4.6 DEFECTIVE INVOICES. Without prejudice to its other rights under the Contract or further obligation to Contractor, the ordering Eligible Entity/Customer (Eligible Agency) may, at its discretion, reject any materially defective invoice.
- 4.6.1 The ordering Authorize Entity/Customer (Eligible Agency) shall notify Contractor within 5 (five) business days after receipt if it determines an invoice to be materially defective.
  - 4.6.2 Invoices will be deemed automatically rejected upon delivery if they:
    - (a) are sent to an incorrect address;
    - (b) do not reference the correct State contract number; or
    - (c) are payable to any Person other than the Contractor.
  - 4.6.3 The ordering Eligible Entity/Customer (Eligible Agency) will have no obligation to pay against a defective invoice unless and until Contractor has re-submitted it free of defects.

## 5.0 Payments

- 5.1 PAYMENT. The applicable Eligible Agency shall pay undisputed amounts due to Contractor within the time period specified in Section 4.0 Costs and Payments of the Uniform Terms and Conditions.
- 5.2 JOINT CHECKS OR DIRECT PAY. Applicable Eligible Agency may, but is under no obligation to, pay by joint check or to pay directly to any Subcontractor or other creditor to whom any portion of Contractor’s requested payment is owed.
- 5.3 RECOVERY OF OVER-PAYMENT. If applicable Eligible Agency determines that an over-payment has been made to Contractor on any prior invoice, it shall inform Contractor of the amount and date of the over-payment and may deduct the over-paid amount from amounts then or thereafter due to Contractor.
- 5.4 PAYMENTS TO SUBCONTRACTORS. Contractor shall make payment of all undisputed amounts due to Subcontractors within thirty (30) days of receipt of funds from applicable Eligible Agency for their services.



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- 5.5 PURCHASING CARD. Applicable Eligible Agency may pay invoices for some or all Orders using a purchasing card. Any and all fees related to payment using a Purchasing Card are the responsibility of Contractor. Unless otherwise stated in the Contract there will be no additional fees or increase in prices associated with this method of payment.
- 5.6 AUTOMATED CLEARING HOUSE. Applicable Eligible Agency may pay invoices for some or all Orders through an Automated Clearing House (ACH). In order to receive payments in this manner from Eligible Agencies, Contractor must complete an ACH Vendor Authorization Form (form GAO-618) within 30 (thirty) days after the effective date of the Contract. The form is available online at: <https://gao.az.gov/afis/vendor-information>
- 5.7 Contractor shall cooperate with the State by providing the State information including, but not limited to, Contractor's bank information to support the State's selected means of payment. The Contractor shall not charge the State an amount to recover any convenience fee, discount fee, processing fee or service fee related to the acceptance of the State's payment.
- 5.8 Unless otherwise specified in the Contract, the Contractor shall offer as standard payment terms a discount of 2% for payments made within 10 days and full payment due in 30 days (generally referred to as "2/10, net 30").

End of Section 2-B



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## SECTION 2-C: Special Terms and Conditions

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

### 1.0 Definition of Terms

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

- 1.1 Acceptance** "Acceptance" means the document headed "Offer and Acceptance Form" bearing the State contract number once Procurement Officer has signed it to signify (1) State's formal acceptance of the Accepted Offer and (2) the formation of the Contract. For clarity of intent, the foregoing is not to be confused with the term "acceptance" used throughout the Contract in the context of delivery, inspection, etc., with respect to Materials or Services.
- 1.2 Accepted Offer** If State did not request a Revised Offer, then "Accepted Offer" means the Initial Offer.  
If State did request a Revised Offer but not a Best and Final Offer, then "Accepted Offer" means the latest Revised Offer.  
If State requested a Best and Final Offer, then "Accepted Offer" means the Best and Final Offer.
- 1.3 Arizona Procurement Code; A.R.S.; A.A.C.** "Arizona Procurement Code," "A.R.S.," and "A.A.C." are each defined in the Instructions to Offerors.
- 1.4 Arizona TPT** "Arizona TPT" means Arizona Transaction Privilege Tax. For information, refer to the Arizona Department of Revenue (DOR) website at:  
<https://www.azdor.gov/business/transactionprivilegetax.aspx>.
- 1.5 Attachment** "Attachment" means any item that:
  - 1. the Solicitation required Offeror to submit as part of the relevant Offer (e.g., Initial Offer, Revised Offer, or BAFO);
  - 2. was attached to an Offer when submitted; and
  - 3. was included in the Accepted Offer.
- 1.6 Pricing Document** "Pricing Document" means Section 2-B of Part 2 of the Solicitation Documents, provided that, if there is no such Section in the Contract, then "Pricing Document" is to be construed as referring to whatever item in the Contract contains the contracted pricing and payment provisions.
- 1.7 Contract Amendment** "Contract Amendment" means a document signed by Procurement Officer that has been issued for the purpose of making changes to the Contract after execution. The term "Change Order" in APP is to be construed as being synonymous with "Contract Amendment".
- 1.8 Contract Terms and Conditions** "Contract Terms and Conditions" means the Special Terms and Conditions and these Uniform Terms and Conditions taken collectively.
- 1.9 Contractor** "Contractor" means the Person identified on the Accepted Offer who has entered into the Contract with State.
- 1.10 Contractor Indemnitor** "Contractor Indemnitor" means Contractor or any of its owners, officers, directors, agents, employees, or Subcontractors.



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**1.11 Co-Op Buyer**

“Co-Op Buyer” means a member of the State Purchasing Cooperative that has entered into a “Cooperative Purchasing Agreement” with the Arizona Department of Administration State Procurement Office under A.R.S. § 41-2632. Unless there is an applicable Cooperative Purchasing Agreement in effect at the time, a State Purchasing Cooperative member cannot be a Co-Op Buyer. For reference, “Co-Op Buyer” is to be construed as encompassing “eligible procurement unit” under A.A.C. R2-7-101(23).

NOTE: Membership in the State Purchasing Cooperative is open to all Arizona political subdivisions, including cities, counties, school districts, and special districts. Membership is also available to non-profit organizations, other state governments, the federal government and tribal nations. For reference, “non-profit organizations” are defined in A.R.S. § 41-2631(4) as any nonprofit corporation as designated by the IRS under section 501(c)(3) through 501(c)(6) of the tax code.

**1.12 Eligible Agency**

This Contract shall be for the exclusive use of the Arizona Lottery.

**1.13 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.

**1.14 Instructions to Offerors**

“Instructions to Offerors” is Section 3-a of Part 3 of the Solicitation Documents.

**1.15 Order**

“Order” means the instrument by which State authorizes Contractor to perform some or all of the Work. Whether the Contract will have one Order or many Orders depends the scope of the Contract and how State will use it. The Special Terms and Conditions provide that information. Any of the following is to be construed as being an “Order”:

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

**1.16 Arizona Procurement Portal (APP)**

“APP” means State’s official electronic procurement system, established pursuant to A.A.C. R2-7-201 as set forth in the Arizona Department of Administration State Procurement Office policy document *Technical Bulletin No. 020, The State’s e-Procurement System – The Official State eProcurement System*.

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

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

Note (2): The URL for APP is <https://app.az.gov/>

**1.17 State**

With respect to the Contract generally, “State” means the State of Arizona and its department, agency, university, commission, or board that has executed the Contract. With respect to administration or rights, remedies, obligations and duties under the Contract for a given Order, “State” means Eligible Agency who has issued the Order.

**1.18 State Indemnitees**

“State Indemnitees” means, collectively, the State of Arizona, its departments, agencies, universities, commissions, and boards and, and their respective officers, agents, and employees.

**1.19 Subcontractor**

“Subcontractor” has the meaning given in A.R.S. § 41-2503(38), which, for convenience of reference only, is “... a person who contracts to perform work or render service to ... [C]ontractor or to another [S]ubcontractor as a part of a contract with a state governmental unit . . .”. The Contract is to be construed as “a contract with a state governmental unit” for purposes of the definition. For clarity of intent, a Person carrying out any element of the Work is a Subcontractor from the moment they first carry out that element of the Work regardless of whether or not a Subcontract exists then or subsequently.



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## 1.20 Work

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

## 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) Contract Amendments;
- (b) the final Solicitation Documents, in the order:



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

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

**2.3 Independent Contractor**

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

**2.4 Complete Integration**

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

## 3.0 Contract Administration and Operation

**3.1 Term of Contract**

The term of the Contract will commence on the date indicated on the Acceptance, unless rejected by the Lottery Commission at a meeting held within 14 calendar days after the award is communicated to the Commissioners. The Contract will continue for one (1) year unless canceled, terminated, or permissibly extended.

**3.2 Contract Extensions**

State may at its discretion extend the initial Contract term in increments of one or more months and do so one or more times, provided that, the maximum aggregate term of the Contract including extensions cannot exceed August 31, 2026.

**3.3 Notices and Correspondence**

3.3.1 TO CONTRACTOR. State shall:

- (a) address all Contract correspondence other than formal notices to the email address indicated as "Default for Type" for "General Mailing Address" in Contractor's corresponding APP Vendor Profile; and
- (b) address any required notices to Contractor to the "Contact Name and Title" at the "Mailing Address" indicated on the Accepted Offer, as that address might have been amended during the term of the Contract.

3.3.2 TO STATE. Contractor shall:

- (a) address all Contract correspondence other than format notices to the email address indicated in "Contact Instructions" in the APP Summary for State; and
- (b) address any required notices to State to Procurement Officer identified as "Contract Owner" in APP at the following mailing address:



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

### 3.4 Signing of Contract Amendments

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

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

In every case other than those listed in (1), (2), and (3) above, both parties’ signature – or “approval” in APP, in the case of a Change Order – 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.

If the Contract is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for a period of five years from the date of any resulting final settlement.

Records which relate to appeals, litigation or the settlement of claims arising out of the performance of the Contract, or cost and expenses of the Contract as to which exception has been taken by the Lottery, shall be retained by the Contractor until such appeals, litigation, claims or exceptions have been resolved. The provisions of this section shall be applicable to and included in each subcontract hereunder.

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.

3.6.4 CONFIDENTIALITY. The Contractor shall establish and maintain procedures and controls approved by the Lottery for the purpose of ensuring that no information contained in



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its records or obtained from the Lottery or from others in carrying out its functions under the Contract shall be used or disclosed by it, its agents, officers, or employees, except as required to efficiently perform duties. Persons requesting such information should be referred to the Lottery.

### 3.7 Contractor Licenses

Contractor shall maintain current all federal, state and local licenses and permits required for the operation of its business in general, for its operations under the Contract, and for the Work itself.

### 3.8 Inspection and Testing

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

### 3.9 Ownership of Intellectual Property

3.9.1 RIGHTS IN WORK PRODUCT. All intellectual property originated or prepared by Contractor pursuant to the Contract, including but not limited to, inventions, discoveries, intellectual copyrights, trademarks, trade names, trade secrets, technical communications, records reports, computer programs and other documentation or improvements thereto, including Contractor's administrative communications and records relating to the Contract, are considered work product and Contractor's property, provided that, State has Government Purpose Rights to that work product as and when it was delivered to State.

(a) "Government Purpose Rights" are:

- i. the unlimited, perpetual, irrevocable, royalty free, non-exclusive, worldwide right to use, modify, reproduce, release, perform, display, sublicense, disclose and create derivatives from that work product without restriction for any activity in which State is a party;
- ii. the right to release or disclose that work product to third parties for any State government purpose; and
- 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;



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- (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 does not preclude Contractor from developing competing materials outside the Contract, irrespective of any similarity to materials delivered or to be delivered to State hereunder.

### 3.10 Subcontracts

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

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

3.10.3 FLOW-DOWN. Contractor shall incorporate the provisions, terms, and conditions of the Contract into every Subcontract by inclusion or by reference, as appropriate. When making any post-execution consent requests, Contractor shall include its warrant that it will do the same for the pending Subcontracts covered by the request. Entering into Subcontracts will not relieve Contractor of any of its obligations or duties under the Contract, including, among other things, the duty to supervise and coordinate the work of Subcontractors. Nothing contained in any Subcontract will create or is to be construed as creating any contractual relationship between State and the Subcontractor.

### 3.11 Offshore Performance of Certain Work Prohibited

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

### 3.12 Orders

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

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

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



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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 APP as something other than a "Master/ Blanket" type.
- 3.12.5 NO MINIMUMS OR COMMITMENTS. (a) Contractor shall not impose any minimum dollar amount, item count, services volume, or services duration on Orders; (b) State makes no commitment of any kind concerning the quantity or monetary value of activity actually initiated or completed during the term of the Contract; (c) Contractor shall only deliver or perform as authorized by Orders; and (d) State is not limited as to the number of Orders it may issue for the Contract. For clarity of intent, the foregoing applies equally whether an Eligible Agency issues the Order or, if applicable, a Co-Op Buyer issues it.
- 3.12.6 NON-CONTRACTED MATERIALS OR SERVICES. Any attempt to knowingly represent for sales, marketing, or related purposes that goods or services not specifically awarded are under a State contract is a violation of the Contract and law.

### 3.13 Multiple-Use Provisions

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

### 3.14 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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**3.15 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].

**3.16 Contractor’s Employees and Subcontractors**

The Contractor agrees and understands that the Lottery’s agreement to the contract is predicated, in part and among other considerations, on the utilization of the specific individual(s) and personnel qualification(s) as identified or described in the Contractor’s proposal. The Contractor agrees that no substitution of such specified individuals shall be made without the prior written approval of the Lottery.

The Lottery reserves the right to conduct a security background check on key personnel. The Contractor agrees to cooperate with such requests.

The Contractor shall actively and directly supervise all staff consistent with the terms of the Contract.

Pursuant to A.R.S. § 5-567, the Contractor’s personnel (including partners, temporary employees, subcontractors, and consultants) involved in the performance of this Contract, including members of the households, shall be prohibited from purchasing any Arizona Lottery tickets, including on-line games and/or entering any Lottery promotions during the term of this Contract. No Lottery prize shall be paid to any of the above persons. The Contractor shall ensure that this requirement is made known to all personnel involved in the performance of this Contract.

The Lottery shall have final determination of resource sufficiency and may require the Contractor to provide additional staffing to meet agreed-upon production schedules. In the event the Contractor is unable to provide sufficient resources, the Lottery reserves the right to obtain these services from another source. The Contractor shall be responsible for all costs associated with the Lottery’s acquisition of these services.

**3.17 Contractor Cooperation**

The Contractor and the Lottery agree to cooperate fully, to work in good faith and mutually assist each other in the performance of the Contract. All parties will meet to resolve problems associated with the Contract. Neither party will unreasonably withhold its approval of any act or request of the other to which approval is necessary or desirable.

Should the Lottery obtain systems, equipment, materials or processes from another source other than the Contractor, which would require the Contractor to cooperate or make changes in order to permit compatibility, the Contractor shall cooperate with the Lottery. In that event, the Lottery and the Contractor shall negotiate a just and equitable compensation.

**3.18 Technology Changes**

Recognizing that the lottery industry is dynamic and that technology will change; the Lottery and the Contractor will, on a continuing basis, evaluate the most cost-effective, reliable, and secure operations.

During the life of the Contract the Lottery shall have access to the same technology and product options the Contractor may offer to other clients. For any additional new technology or systems



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required by the Lottery, which are measures beyond the then prevailing standards for lottery products in the United States, the Lottery and the Contractor shall negotiate a just and equitable compensation.

### 3.19 Audit Requirements

ISO Certification

The Contractor shall be ISO 9001:2015 or equivalent compliant and be certified under the standards of ISO 9001 during the entirety of the Contract period.

The Contractor shall obtain ISO certification renewals at the regular intervals defined by the certification body as long as this Contract is in force.

Evidence of ISO certification shall be forwarded to the Lottery.

## 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 APP and provided a current IRS Form W-9 to State unless excused by law from providing one.

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

### 4.2 Applicable Taxes

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

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

## 5.0 Contract Changes

### 5.1 Contract Amendments

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

### 5.2 Assignment and Delegation

5.2.1 IN WHOLE. Contractor shall not assign in whole its rights or delegate in whole its duties under the Contract without Procurement Officer's prior written consent, which consent Procurement Officer may withhold at his or her discretion. If Contractor's proposed assignment or delegation stems from a split, sale, acquisition, or other non-merger change in control, then no such consent will be given in any event without the assignee



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

### 6.2 Contractor Insurance

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

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

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

#### 1. Commercial General Liability (CGL) – Occurrence Form

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

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

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

#### 2. Business Automobile Liability



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

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

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

### 3. Worker's Compensation and Employers' Liability

Workers' Compensation.....Statutory

Employers' Liability

Each Accident \$1,000,000

Disease – Each Employee \$1,000,000

Disease – Policy Limit \$1,000,000

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

### 4. Technology Errors & Omissions Insurance

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.

### 5. Network Security (Cyber) and Privacy Liability

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



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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 departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

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

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

**NOTICE OF CANCELLATION:** Applicable to all insurance policies required within the Insurance Requirements of this Contract, Contractor's insurance shall not be permitted to expire, be suspended, be canceled, or be materially changed for any reason without thirty (30) days prior written notice to the State of Arizona. Within two (2) business days of receipt, Contractor must provide notice to the State of Arizona if they receive notice of a policy that has been or will be suspended, canceled, materially changed for any reason, has expired, or will be expiring. Such notice shall be sent directly to the Arizona Lottery and shall be mailed, emailed, hand delivered to the Arizona Lottery, Procurement, 4740 E. University Dr., Phoenix, AZ 85034 or [procurement@azlottery.gov](mailto:procurement@azlottery.gov).

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

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

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



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

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

**SUBCONTRACTORS:** Contractor's certificate(s) shall include all subcontractors as insureds under its policies or Contractor shall be responsible for ensuring and/or verifying that all subcontractors have valid and collectable insurance as evidenced by the certificates of insurance and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum Insurance Requirements identified above. The Department reserves the right to require, at any time throughout the life of this contract, proof from the Contractor that its subcontractors have the required coverage.

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

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

### 6.3 Indemnification

To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless the State of Arizona, and its departments, agencies, boards, commissions, universities, and any jurisdiction or agency issuing permits for any work included in the project, and their respective directors, officers, officials, agents and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, costs, losses, or expenses, (including reasonable attorney's fees), (hereinafter collectively referred to as "Claims") arising out of actual or alleged bodily injury or personal injury of any person (including death) or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Contractor or any of Contractor's directors, officers, agents, employees, volunteers or subcontractors. This indemnity includes any claim or amount arising or recovered under the Workers' Compensation Law or arising out of the failure of Contractor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Contractor from and against any and all Claims. It is agreed that Contractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. This indemnification will survive the termination of the above listed contract with the Contractor.

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

### 6.4 Patent and Copyright Indemnification

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

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



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

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

## 6.5 Force Majeure

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

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

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

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

## 6.6 Third Party Antitrust Violations

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

## 7.0 Warranties

### 7.1 Conformity to Requirements

Contractor warrants that, unless expressly provided otherwise elsewhere in the Contract, the Materials and Services will for 1 (one) year after acceptance and in each instance: (1) conform to the requirements of the Contract, which by way of reminder include without limitation all



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

**7.2 Contractor Personnel**

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

**7.3 Intellectual Property**

Contractor warrants that the Materials and Services do not and will not infringe or violate any patent, trademark, copyright, trade secret, or other intellectual property rights or laws, except only to the extent the Specifications do not permit use of any other product and Contractor is not and cannot reasonably be expected to be aware of the infringement or violation.

**7.4 Licenses and Permits**

Contractor warrants that it will maintain all licenses required under paragraph 3.7 [*Contractor Licenses*] and all required permits valid and in force.

**7.5 Operational Continuity**

Contractor warrants that it will perform without relief notwithstanding being sold or acquired; no such event will operate to mitigate or alter any of Contractor's duties hereunder absent a consented delegation under paragraph 5.32 [Assignment and Delegation] that expressly recognizes the event.

**7.6 Performance in Public Health Emergency**

Contractor warrants that it will:

1. have in effect promptly after commencement a plan for continuing performance in the event of a declared public health emergency that addresses, at a minimum: (a) identification of response personnel by name; (b) key succession and performance responses in the event of sudden and significant decrease in workforce; and (c) alternative avenues to keep sufficient product on hand or in the supply chain; and
2. provide a copy of its current plan to State within 3 (three) business days after State's written request. If Contractor claims relief under paragraph 6.5 [*Force Majeure*] for an occurrence of force majeure that is a declared public health emergency, then that relief will be conditioned on Contractor having first implemented its plan and exhausted all reasonable opportunity for that plan implementation to overcome the effects of that occurrence, or mitigate those effects to the extent that overcoming entirely is not practicable.

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

**7.7 Lobbying**

**7.7.1 PROHIBITION.**

(a) Contractor warrants that:

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



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(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 RESERVED

## 12.0 General Provisions for Services

### 12.1 Applicability

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

### 12.2 Comprehensive Services Offering

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

### 12.3 Additional Services

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

### 12.4 Off-Contract Services

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



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### 12.5 Removal of Personnel

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

### 12.6 Transitions

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

### 12.7 Accuracy of Work

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

### 12.8 Requirements at Services Location

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

### 12.9 Services Acceptance

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

### 12.10 Corrective Action Required

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

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



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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

### 13.1 Applicability

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

### 13.2 Data Protection and Confidentiality of Information

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

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

### 13.3 Personally Identifiable Information.

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

For purposes of this paragraph:

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

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

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

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

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



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### 13.4 Protected Health Information

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

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

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

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

## 14.0 Information Technology Work

### 14.1

#### Applicability

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

### 14.2 Background Checks

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

### 14.3 Information Access

- 14.3.1 SYSTEM MEASURES. Contractor shall employ appropriate system management and maintenance, fraud prevention and detection, and encryption application and tools to any systems or networks containing or transmitting State’s proprietary data or confidential information.
- 14.3.2 INDIVIDUAL MEASURES. Contractor personnel shall comply with applicable State policies and procedures regarding data access, privacy, and security, including prohibitions on remote access and obtaining and maintaining access IDs and passwords. Contractor is responsible to State for ensuring that any State access IDs and passwords are used only by the person to whom they were issued. Contractor shall ensure that personnel are only provided the minimum only such level of access necessary to perform his or duties. Contractor shall on request provide a current register of the access IDs and passwords and corresponding access levels currently assigned to its personnel.
- 14.3.3 ACCESS CONTROL. Contractor is responsible to State for ensuring that hardware, software, data, information, and that has been provided by State or belongs to or is in the custody of State and is accessed or accessible by Contractor personnel is only used in connection with carrying out the Work, and is never commercially exploited in any manner whatsoever not expressly permitted under the Contract. State may restrict



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access by Contractor personnel, or instruct Contractor to restrict access their access, if in its determination the requirements of this subparagraph are not being met.

## 14.4 Pass-Through Indemnity

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

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

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

## 14.5 Systems and Controls

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

## 14.6 Redress of Infringement.

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

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

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

- (a) for any software created for State under the Contract, the amount State paid to 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:



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

## 14.7 First Party Liability Limitation

- 14.7.1 LIMIT. Subject to the provisos that follow below and unless stated otherwise in the Special Terms and Conditions, State's and Contractor's respective first party liability arising from or related to the Contract is limited to the greater of \$1,000,000 (one million dollars) or 3 (three) times the purchase price of the specific Materials or Services giving rise to the claim.
- 14.7.2 PROVISOS. This paragraph 14.7 limits liability for first party direct, indirect, incidental, special, punitive, and consequential damages relating to the Work regardless of the legal theory under which the liability is asserted. This paragraph 14.7 does not limit liability arising from any:
- (a) Indemnified Claim against which Contractor has indemnified State Indemnitees under paragraph 6.3;
  - (b) claim against which Contractor has indemnified State Indemnitees under paragraph 6.4; or
  - (c) provision of the Contract calling for liquidated damages or specifying amounts or percentages as being at-risk or subject to deduction for performance deficiencies.
- 14.7.2 PURCHASE PRICE DETERMINATION. If the Contract is for a single-agency and a single Order (or if no Order applies), then "purchase price" in Subparagraph 14.7.1 above means the aggregate Contract price current at the time of Contract expiration or earlier termination, including all change orders or other forms of Contract Amendment having an effect on the aggregate price through that date. In all other cases, "purchase price" above means the total price of the Order for the specific equipment, software, or services giving rise to the claim, and therefore a separate limit will apply to each Order.
- 14.7.3 NO EFFECT ON INSURANCE. This paragraph does not modify the required coverage limits, terms, and conditions of, or any insured's ability to claim against, any insurance that Contractor is required by the Contract to provide, and Contractor shall obtain express endorsements that it does not.

## 14.8 Information Technology Warranty

- 14.8.1 SPECIFIED DESIGN. Where the Scope of Work for information technology Work provides a detailed design specification or sets out specific performance requirements, Contractor warrants that the Work will provide all functionality material to the intended use stated in the Contract, provided that, the foregoing warranty does not extend to any portions of the Materials that are:
- (a) modified or altered by anyone not authorized by Contractor to do so;
  - (b) maintained in a way inconsistent to any applicable manufacturer recommendations; or
  - (c) operated in a manner not within its intended use or environment.
- 14.8.2 COTS SOFTWARE. With respect to Materials provided under the Contract that are commercial-off-the-shelf (COTS) software, Contractor warrants that:
- (a) to the extent possible, it will test the software before delivery using commercially available virus detection software conforming to current industry standards;
  - (b) the COTS software will, to the best of its knowledge, at the time of delivery be free of viruses, backdoors, worms, spyware, malware, and other malicious code that could hamper performance, collect unlawfully any personally identifiable



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

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

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

### 14.9 Specific Remedies

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

### 14.10 Section 508 Compliance

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

### 14.11 Cloud Applications

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

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

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

End of Section 2-B



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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:

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

## 2.0 Contract Interpretation

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



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Solicitation No.

**BPM000937**

Description:

**Internal Control System**

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State Procurement Office

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Phoenix, AZ 85007

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

**2.2 Implied Terms**

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

**2.3 Contract Order of Precedence**

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

2.3.1. Special Terms and Conditions;

2.3.2. Uniform Terms and Conditions;

2.3.3. Statement or Scope of Work;

2.3.4. Specifications;

2.3.5. Attachments;

2.3.6. Exhibits;

2.3.7. Documents referenced or included in the Solicitation.

**2.4 Relationship of Parties**

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

**2.5 Severability**

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

**2.6 No Parole Evidence**

This Contract is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade 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.



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**3.5 Notices**

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

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

The Contractor shall not use, advertise or promote information for commercial benefit concerning this Contract without the prior written approval of the Procurement Officer.

**3.7 Property of the State**

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

**3.8 Ownership of Intellectual Property**

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

**3.9 Federal Immigration and Nationality Act**

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

**3.10 E-Verify Requirements**

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

**3.11 Offshore Performance of Work Prohibited.**

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



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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 be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes acts of God; acts of the public enemy; war; riots; strikes; mobilization; labor disputes; civil disorders; fire; flood; lockouts; injunctions-intervention-acts; or failures or refusals to act by government authority; and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence.

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

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

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

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



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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 license and permit requirements.

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

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

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

## 8.0 State's Contractual Remedies

**8.1 Right to Assurance**

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

**8.2 Stop Work Order**

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



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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.



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The Contractor shall be entitled to receive just and equitable compensation for work in progress, work completed and materials accepted before the effective date of the termination. The cost principles and procedures provided in A.A.C. R2-7-701 shall apply.

**9.5 Termination for Default**

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

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

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

**9.6 Continuation of Performance Through Termination**

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

## 10.0 Contract Claims

**10.1 Contract Claims**

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

## 11.0 Arbitration

**11.1 Arbitration**

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

## 12.0 Comments Welcome

**12.1 Comments Welcome**

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

End of Section 2-D

End of Part 2