

PARTICIPATING ADDENDUM
(hereinafter "Addendum")

NASPO VALUEPOINT
Software Value Added Reseller (SVAR)
Administered by the State of Arizona (hereinafter "Lead State")

MASTER AGREEMENT
SHI International Corp.
Master Agreement No: ADSP016-130651
(hereinafter "Contractor")

And
State of Arizona
(hereinafter "Participating State/Entity/Customer")

1. **Scope:** This addendum covers the *Software Value Added Reseller* contract led by the State of Arizona for use by state agencies and other entities located in the Participating State *[or State Entity]* authorized by that state's statutes to utilize State contracts with the prior approval of the state's chief procurement official.
2. **Participation:** Use of specific NASPO ValuePoint cooperative contracts by agencies, political subdivisions and other entities (including cooperatives) authorized by an individual state's statutes to use State contracts are subject to the prior approval of the respective State Chief Procurement Official. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official.
3. **Participating State Modifications or Additions to Master Agreement:** *(These modifications or additions apply only to actions and relationships within the Participating Entity.)*

The following changes are modifying or supplementing the Master Agreement terms and conditions.

1. **Pricing:** Pricing associated with Markup/Markdowns for the resultant Addendum shall be in accordance with **Exhibit A**, Price List.
2. **Professional Services:** The available Professional Services, as defined herein are more fully described and priced in accordance with Exhibit D. Professional Services shall be subject to the applicable Task Order Process as described in Section EE of Exhibit B. All Professional Services should be facilitated by the Contractor on behalf of the Customer. A direct agreement between the 3rd Party and the Customer shall not be allowed. If necessary, the Contractor, Customer and 3rd Party may enter into an underlying agreement governed by this Participating Addendum.
3. **Direct Negotiations:** In the event that the Customer negotiates and agrees with a Publisher directly on pricing, Contractor shall pass through the negotiated rates and terms to the customer through this Addendum.
4. **Purchasing Card (PCARD) Purchases:** The Contractor shall accept Purchasing Cards as a form of payment and may charge a fee for the purchase as follows: (a) For transactions of \$10,000.00 or less, the Contractor shall not charge a credit card fee. (b) For transactions greater than \$10,000, the Contractor may charge a credit card fee that shall not exceed 2.5%, and (c) If a fee is to be charged, it shall be reflected as a separate line item on the invoice.

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5. **Master Exceptions:** Contractor agrees to remove original exceptions which were submitted to the Master for the sake of the State of Arizona's Addendum.
6. **Participating Addendum Order of Precedence:** The order of precedence is as follows:
- 6.1 State of Arizona Participating Addendum
 - 6.1.1 **Exhibit B:** State of Arizona Special Terms and Conditions;
 - 6.1.2 **Exhibit C:** State of Arizona Uniform Terms and Conditions;
 - 6.1.3 **Exhibit D:** Executed Task Order under this Participating Addendum;
 - 6.2 State of Arizona NASPO ValuePoint Master Agreement;
 - 6.3 The Solicitation including all Addenda; and
 - 6.4 Contract Vendors response to the Solicitation
 - 6.5 Any 3rd Party Agreements as facilitated by the Contractor
7. **Exhibit B:** State of Arizona Special Terms and Conditions.
8. **Exhibit C:** State of Arizona Uniform Terms and Conditions.

4. Reserved

5. **Primary Contacts:** The primary contact individuals for this Participating Addendum are as follows (or their named successors):

Contractor

Name	Amelia Jakubczyk
Address	290 Davidson Ave., Somerset, NJ 08873
Telephone	(847)419-7542
Fax	NA
E-mail	Amelia_jakubczyk@shi.com

Participating Entity

Name	Eric Bell
Address	100 North 15 th Ave, Suite 201 Phoenix, AZ 85007
Telephone	(602)542-8921
Fax	NA
E-mail	Eric.bell@azdoa.gov

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7. Orders: Any order placed by a Participating Entity or Purchasing Entity for a product and/or service available from this Master Agreement shall be deemed to be a sale under (and governed by the prices and other terms and conditions) of the Master Agreement unless the parties to the order agree in writing that another contract or agreement applies to such order.

IN WITNESS WHEREOF, the parties have executed this Addendum as of the date of execution by both parties below.

The Contractor is now bound to sell the materials or services listed by the attached contract and based upon the solicitation, including all terms, conditions, specifications, amendments, etc., and the Contractor's Offer as accepted by the State. The Contractor is cautioned not to commence any billable work or to provide any material or service under this contract until Contractor receives purchase order, contract release document or written notice to proceed.

This Contract shall henceforth be referred to as Contract No. CTR046099. The effective date of the Contract is September 9, 2019.

Participating State: State of Arizona	Contractor: SHI International Corp.
Signature: 	Signature: 
Name: Stephen Nettles	Name: Natalie Castagno
Title: Sr. Manager - SPO	Title: Director of Contracts & RFPs
Date: 9/10/2019	Date: 9/9/19

By signature in the Offer section above, the Offeror certifies:

1. The submission of the Offer did not involve collusion or other anticompetitive practices.
2. The Offeror shall not discriminate against any employee or applicant for employment in violation of Federal Executive Order 11246, State Executive Order 2009-9 or A.R.S. §§ 41-1461 through 1465.
3. The Offeror has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted offer. Failure to provide a valid signature affirming the stipulations required by this clause shall result in rejection of the offer. Signing the offer with a false statement shall void the offer, any resulting contract and may be subject to legal remedies provided by law.

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4. The Offeror certifies that the above referenced organization ___ IS/ X_ IS NOT a small business with less than 100 employees or has gross revenues of \$4 million or less.

For questions on executing a participating addendum, please contact:

NASPO ValuePoint
Cooperative Development Coordinator
Telephone
Email

Ted Fosket
(907) 723-3360
tfosket@naspovaluepoint.org

PLEASE EMAIL FULLY EXECUTED PDF COPY OF THIS DOCUMENT TO
PA@naspovaluepoint.org TO SUPPORT DOCUMENTATION OF PARTICIPATION AND POSTING IN
APPROPRIATE DATA BASES

Exhibit A – Pricing
PARTICIPATING ADDENDUM
State of Arizona Contract Number: CTR046099

Publishers:

Proposer must be certified as a direct reseller for all Key Itemized publishers. Direct reseller certification is preferred for Other Itemized publishers.

Markup/Down:

The price to Authorized Purchaser (AP) is calculated using the following formula:
"Reseller Cost" + ("Reseller Cost" x "Markup/Down")

Key Itemized	Markup/Down
Adobe	1.30%
Citrix	1.55%
Microsoft	1.25%
Novell	1.25%
Symantec	1.30%
VMWare	1.55%

Other Itemized	Markup/Down
AI SQUARED	1.80%
AIRWATCH MOBILE DEVICE MANAGEMENT	1.55%
VMWARE	
ALLIANCE ENTERPRISES	2.30%
APPLE	1.80%
ATTACHMATE – MICROFOCUS	1.80%
AUTODESK	1.80%
AUTONOMY – HP	1.80%
BAKBONE – DELL	2.30%
BARRACUDA	1.50%
BOMGAR REMOTE SOFTWARE	1.80%
CA TECHNOLOGIES	2.30%
CISCO	2.30%
COMPUTRONIX USA	1.80%
COMPUWARE	2.30%
COREL	1.50%
DOUBLETAKE	1.80%
EMC	2.30%
ENCHOICE	1.80%
ESET	1.80%
ESRI	1.50%
FREEDOM SCIENTIFIC	1.80%
GUARDIAN EDGE – SYMANTEC	1.30%
GW MICRO	1.80%
IBM	1.80%
ICM CONVERSIONS	1.80%
INFOR	1.80%
INTERMEDIX EMSYSTEMS	2.30%
HP	1.80%
HUMANWARE	1.80%
INFORMATION BUILDERS	1.80%
KRONOS SOFTWARE	2.30%

Exhibit A – Pricing
PARTICIPATING ADDENDUM
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LANDESK	2.30%
LASERFISCHE	1.80%
LIQUIDWARE STATUSPHERE	1.80%
MICROFOCUS INC	2.30%
MINJET	1.80%
MPS	1.80%
MQSOFTWARE – BMC SOFTWARE	2.30%
NCIRCLE	1.80%
NETOP	1.80%
NUANCE	2.30%
ORACLE	2.00%
OSAM	2.30%
PASSPORT	1.80%
PATCHLINK	1.80%
PROOFPOINT	2.30%
RSA SECURITY	2.30%
REFERENCIA SYSTEMS	1.80%
SAP AMERICA	2.30%
SAS	2.30%
SOLUTIONS SOFTWARE	1.80%
SOPHOS	2.30%
SPLUNK SOFTWARE	2.30%
STASEEKER NETWORK INFRASTRUCTURE MONITORING	1.80%
STELLEMENT – ORACLE	2.30%
SUNGUARD	1.80%
SYBASE	1.80%
TECHSMITH	1.80%
TREND MICRO	2.30%
TRUSTWARE	2.30%
ULTRABAC	1.80%
VORMETRIC	1.80%
WEBSense	2.30%
Any other non-listed publisher	2.80%

Exhibit B – State of Arizona Special Terms and Conditions
PARTICIPATING ADDENDUM
State of Arizona Contract Number:

A. Purpose

Pursuant to provisions of the Arizona Procurement Code, A.R.S. 41-2501 Et Seq., the State of Arizona intends to establish a Contract (Participating Addendum, PA) for the materials or services as listed herein in service to the State.

B. Term of Contract

The term of this Contract shall commence upon date of last signature and shall continue through April 7, 2021, unless terminated or canceled as otherwise provided herein.

C. Contract Extensions

The Contract may not be extended beyond the Term of Contract stated above via a Contract Amendment.

D. Contract Type –

1. Fixed Price, Percentage Markup/Markdowns;
2. Fixed Price, Task Order based Professional Services;
3. Time and Materials, Task Order based Professional Services;
4. Or any combination of the above.

E. Eligible Agencies (STATEWIDE)

This Contract shall be for the use of all State of Arizona departments, agencies, commissions and boards. In addition, eligible State Purchasing Cooperative members may participate at their discretion. In order to participate in this contract, a cooperative member shall have entered into a Cooperative Purchasing Agreement with the Department of Administration, State Procurement Office as required by Arizona Revised Statutes § 41-2632.

Membership in the State Purchasing Cooperative is available to all Arizona political subdivisions including cities, counties, school districts, and special districts. Membership is also available to all non-profit organizations, as well as State governments, the US Federal Government and Tribal Nations. Non-profit organizations are defined in A.R.S. § 41-2631(4) as any nonprofit corporation as designated by the internal revenue service under section 501(c)(3) through 501(c)(6).

F. Licenses

The Contractor shall maintain in current status, all federal, state and local licenses and permits required for the operation of the business conducted by the Contractor.

G. Volume of Work

The State does not guarantee a specific amount of work either for the life of the Contract or on an annual basis.

H. Key Personnel

It is essential that the Contractor provide adequate experienced personnel, capable of and

Exhibit B – State of Arizona Special Terms and Conditions
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State of Arizona Contract Number:

devoted to the successful accomplishment of work to be performed under this Contract. The Contractor must agree to assign specific individuals to the key positions if required.

1. The Contractor agrees that, once assigned to work under this Contract, key personnel shall not be removed or replaced without written notice to the State.
2. Key personnel who are not available for work under this Contract for a continuous period exceeding thirty (30) calendar days, or are expected to devote substantially less effort to the work than initially anticipated, the Contractor shall immediately notify the State, and shall, subject to the concurrence of the State, replace such personnel with personnel of substantially equal ability and qualifications.

I. Changes

The State may at any time make changes within the general scope of this Contract. The Contractor shall respond to the Change Order with a proposal. If any such change causes an adjustment in the cost of, or the time required for the performance of any part of the work under this Contract, whether changed or not changed by the Change Order, the Procurement Officer shall modify the Contract in writing via a bilateral Contract Amendment.

J. Price Adjustment

Any price adjustment shall be within the confines of the awarded contract, or as negotiated in service to this Contract. Any negotiated price adjustments for this Contract shall be documented via a bilateral Contract Amendment.

K. Payment Procedures

The State will not make payments to any Entity, Group or individual other than the Contractor with the Federal Employer Identification (FEI) Number identified in the Contract. Contractor invoices requesting payment to any Entity, Group or individual other than the contractually specified Contractor shall be returned to the Contractor for correction.

The Contractor shall review and insure that the invoices for services provided show the correct Contractor name prior to sending them for payment.

If the Contractor Name and FEI Number change, the Contractor must complete an "Assignment and Agreement" form transferring contract rights and responsibilities to the new Contractor. The State must indicate consent on the form. A written Contract Amendment must be signed by both parties and a new W-9 form must be submitted by the new Contractor and entered into the system prior to any payments being made to the new Contractor.

L. Information Disclosure

The Contractor shall establish and maintain procedures and controls that are acceptable to the State for the purpose of assuring that no information contained in its records or obtained from the state 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 under the Contract. Persons requesting such information should be referred to the State. The Contractor also agrees that any information pertaining to individual persons shall not be divulged other than to employees or officers of the Contractor as needed for the performance of duties under the Contract, unless otherwise agreed to in writing by the State.

M. Employees of the Contractor

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All employees of the Contractor employed in the performance of work under the Contract shall be considered employees of the Contractor at all times, and not employees of the State. The Contractor shall comply with the Social Security Act, Workman's Compensation laws and Unemployment laws of the State of Arizona and all State, local and Federal legislation relevant to the Contractor's business.

N. Warranty

All services supplied under a Task Order to this Contract shall be fully guaranteed by the Contractor for a minimum period of ninety (90) days from the date of acceptance by the State. Any defects of design, workmanship, or delivered materials that would result in non-compliance shall be fully corrected by the Contractor without cost to the State.

O. Compliance with Applicable Laws

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

Contractor represents and warrants to the State that Contractor has the skill and knowledge possessed by members of its trade or profession and Contractor will apply that skill and knowledge with care and diligence so Contractor and Contractor's employees and any authorized subcontractors shall perform the Services described in this Contract in accordance with the Task Order.

Contractor represents and warrants that the Materials provided through this Contract and Task Order shall be free of viruses, backdoors, worms, spyware, malware and other malicious code that will hamper performance of the Materials, collect unlawful personally identifiable information on Users or prevent the Materials from performing as required under the terms and conditions of this Contract. Further, Contractor represents and warrants that it will not introduce any viruses, backdoors, worms, spyware, malware and/or other malicious code that will hamper performance of Products, collect unlawful personally identifiable information on Users or prevent any User's use of the Products as required under the terms and conditions of this Contract. Any similar warranty on the Products from the Software Publisher should be addressed in the Software Publisher's end user license agreement between the User and Publisher.

P. Non-Exclusive Contract

Any Contract resulting from this solicitation shall be awarded with the understanding and agreement that it is for the sole convenience of the State of Arizona. The State reserves the right to obtain like goods or services from another source when necessary, or when determined to be in the best interest of the State.

Q. Administrative Fee/Usage Reports

1. In accordance with ARS § 41-2633 the Department of Administration, State Procurement Office includes an Administrative Fee, in the majority of its Statewide contracts – multiple agency, multiple government, cooperative contracts. The Administrative Fee is used by the State to defray the additional costs associated with soliciting, awarding and administering statewide contracts.

In addition to the State agencies, boards and commissions, statewide contracts are available to members of the State Purchasing Cooperative including cities, counties, school districts, special districts, other state governments, agencies of the federal

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government, tribal nations, schools, medical institutions, and nonprofit organizations.

The Administrative Fee is the responsibility of the contractor. The Administrative Fee is a part of the contractor's unit prices and is not to be charged directly to the customer in the form of a separate line item. In accordance with Section 26 of the NASPO ValuePoint Master Agreement Terms and Conditions, the 0.25% NASPO ValuePoint Administrative fee shall be incorporated into the Offerors base price. Other states, including the State of Arizona, may negotiate additional Administrative Fees in their Participating Addenda following award of a Master Agreement.

Further, Statewide contracts maintain one set of pricing for all customers and not separate prices for State agency customers and State Purchasing Cooperative customers.

2. State of Arizona Fee Amount:

Unless defined differently within the contract, the Statewide Contracts Administrative Fee shall be one percent (1.0%) of quarterly sales receipts under an active Statewide contract, transacted by only the members of the State Purchasing Cooperative, minus any taxes or regulatory fees, minus any returns or credits, and minus any shipping charges not already included in the unit prices. The Administrative Fee percentage is only applicable to amounts actually received by the contractor during the quarter and is not applicable to amounts ordered by customers but not yet paid for. The administrative fee is not paid on transactions with state agency customers.

3. Method of Assessment

At the completion of each quarter, the contractor reviews all sales under their contract in preparation for submission of their Usage Report. The contractor identifies all sales receipts transacted by members of the State Purchasing Cooperative and assesses one percent (1.0%) of this amount in their Usage Report. An updated list of State Purchasing Cooperative members may be found at: <https://spo.az.gov/state-purchasing-cooperative> . At its option, the State may expand or narrow the applicability of this fee. The State shall provide thirty (30) written notice prior to exercising or changing this option. The contractor shall summarize all sales, along with all assessed Administrative Fee amounts within their Usage Report, including total amounts for the following:

- Total sales receipts from State agencies, boards and commissions;
- Total sales receipts from members of the State Purchasing Cooperative; and
- Total Administrative Fee amount based on one percent (1.0%) of the sales receipts from members of the State Purchasing Cooperative.

4. Submission of Reports and Fees. Within thirty (30) days following the end of the quarter, the contractor submits their Usage Report and if applicable, a check in the amount of one percent (1%) of their sales receipts from members of the State Purchasing Cooperative, to the Department of Administration, State Procurement Office. Contractors are required to use the State's current report templates unless you have authorization from your contract officer to use a different format. You need to complete Form 799, which is a cover letter that gives the totals of your transactions; and Form 801, which is an Excel spreadsheet that details your transactions. Sales to state agencies and the cooperative members are to be totaled separately. The most current forms can be downloaded at <https://spo.az.gov/statewide-contracts-administrative-fee>.

- 4.1 The submission schedule for Administrative Fees and Usage reports shall be as follows:

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FY Q1, July through September	Due October 30
FY Q2, October through December	Due January 30
FY Q3, January through March	Due by April 30
FY Q4, April through June	Due by July 30

4.2 Usage Reports and Administrative Fees shall be submitted through the SPO Website at <https://spo.az.gov/invoiceusage>.

5. The Administrative Fee shall be a part of the Contractor's unit prices and is not to be charged directly to the customer in the form of a separate line item. Statewide contracts shall not have separate prices for State Agency customers and State Purchasing Cooperative customers.
6. Contractor's failure to remit administrative fees in a timely manner consistent with the contract's requirements may result in the State exercising any recourse available under the contract or as provided for by law.

R. Acceptance

Determination of the acceptability of services shall be made by the sole judgment of the State. Acceptance shall be in writing, verbal acceptance will not be allowed. Services shall be completed in accordance with the Scope of Work, agreed to and accepted schedules, plans, and agreed to performance standards. Acceptance shall be one hundred percent (100%) functionality, which will be reasonably determined by the State. Acceptance criteria shall include, but not be limited to conformity to the scope of work, quality of workmanship and successfully performing all required Tasks. Nonconformance to any of the stated acceptance and performance criteria of both services and or products as required shall result in a delay for payment. Payment shall not be made until nonconformance to the criteria is corrected as determined by the State.

S. Order of Precedence

See Arizona Uniform Terms and Conditions, Section 2.3 "Contract Order of Precedence" below.

T. Performance

Contractor agrees that, from and after the date that the applicable services commence, its performance of the Scope of Services will meet or exceed industry best practices subject to the limitations and in accordance with the provisions set forth in this Contract or the applicable Task Order. If the Services provided pursuant to this Contract are changed, modified or enhanced (whether by Change Order or through the provision of new Services), The State and the Contractor will review the current performance experience and will in good faith determine whether such experience should be adjusted and whether additional services should be implemented or whether services be removed. The following requirements shall also apply:

1. Failure to Perform

If Contractor fails to complete any deliverable, then Contractor shall:

- 1.1 Promptly perform a root-cause analysis to identify the cause of such failure;

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- 1.2 Use commercially reasonable efforts to correct such failure and to begin meeting the requirements as promptly as practicable;
- 1.3 Provide the State with a report detailing the cause of, and procedure for correcting, such failure; and
- 1.4 If appropriate under the circumstances, take action to avoid such failure in the future.

2. Root-Cause Analysis

In the event of the Contractor's failure to perform required services or meet agreed upon service levels or other Contractor service standards as required by the State under this Contract, the Contractor shall perform an analysis of the cause of the service level problem and implement remediation steps as appropriate. The State shall have the right to review the analysis and approve the remediation steps prior to or subsequent to their implementation, as deemed appropriate by the State, if the remediation steps impact State assets or operational processes.

U. Compensation

Should the Contractor fail to provide all required services or deliver work products, as agreed upon by State and the Contractor, and has not remedied such failure within ten (10) business days of notification from the State, the State shall be entitled to invoke applicable remedies, including but not limited to, withholding payment to the Contractor and declaring the Contractor in material breach of the Contract. If the Contractor is in any manner in default of any obligation or the Contractor's work or performance is determined by the State to be defective, sub-standard, or if audit exceptions are identified, the State may, in addition to other available remedies, either adjust the amount of payment or withhold payment until satisfactory resolution of the default, defect, exception or sub-standard performance or terminate the Task Order immediately, and be entitled to a refund of any pre-paid fees under the applicable Task Order. The Contractor shall reimburse the State on demand, or the State may deduct from future payments, any amounts paid for work products or performance which are determined to be an audit exception, defective or sub-standard performance. The Contractor shall correct its mistakes or errors without additional cost to the State. The State shall be the sole determiner as to defective or sub-standard performance.

The Contractor shall fulfill their contractual requirements including the Deliverables identified in any Task Order issued under this PA and fulfill the roles and responsibilities described in the Task Order for a firm fixed price, inclusive of travel and travel-related expenses unless otherwise requested by the Customer. A Time and Materials engagement may be utilized upon request by the Customer. For any Time and Materials engagement the hourly rates shall not exceed the hourly rates as listed in Exhibit D. Lower hourly rates may be negotiated for each engagement. Travel and travel-related expenses for any Time and Materials engagement shall be pre-approved in writing by the Customer. All travel shall be made in accordance with the State of Arizona GAO Travel Policy (see <https://gao.az.gov/publications/saam>). The fixed amount shall be inclusive of any fees for the use of any Third Party Products or Services required for use in the performance of this Contract

V. Contractor Performance Reports

Program management shall document Contractor performance, both exemplary and needing improvements where corrective action is needed or desired. Copies of corrective action reports will be forwarded to the Procurement Office for review and any necessary follow-up.

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The Procurement Office may contact the Contractor upon receipt of the report and may request corrective action. The Procurement Office shall discuss the Contractor's suggested corrective action plan with the Procurement Specialist for approval of the plan.

W. Offshore Performance of Work Prohibited

Due to security and identity protection concerns, direct services under this contract shall be performed within the borders of the United States. Any services that are described in the specifications or scope of work that directly serve the State of Arizona or its clients and may involve access to secure or sensitive data or personal client data or development or modification of software for the State shall be performed within the borders of the United States. Unless specifically stated otherwise in the specifications, this definition 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.

X. Indemnification and Insurance

1.1 Indemnification Clause

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.

1.2 Insurance Requirements

1.2.1 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.

1.2.2 The Insurance Requirements herein are minimum requirements for this

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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.

1.3 Minimum Scope and Limits of Insurance

Contractor shall provide coverage with limits of liability not less than those stated below.

1.3.1 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	\$2,000,000
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.

1.3.2 Business Automobile Liability

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

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

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

1.3.3 Workers' 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).

1.3.4 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 services under this contract.
- b. Coverage shall include or shall not exclude settlement and/or defense of claims involving intellectual property, including but not limited to patent or copyright infringement.
- 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.

1.3.5 Network Security (Cyber) and Privacy Liability Insurance

- | | |
|--------------|-------------|
| • Each Claim | \$2,000,000 |
|--------------|-------------|

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- Annual Aggregate \$2,000,000

- a. Such insurance shall include, but not be limited to, coverage for third party claims and losses with respect to network risks (such as data breaches, unauthorized access or use, ID theft, theft of data) and invasion of privacy regardless of the type of media involved in the loss of private information, crisis management and identity theft response costs. This should also include breach notification costs, credit remediation and credit monitoring, defense and claims expenses, regulatory defense costs plus fines and penalties, cyber extortion, computer program and electronic data restoration expenses coverage (data asset protection), network business interruption, computer fraud coverage, and funds transfer loss.
- b. In the event that the Network Security and Privacy Liability insurance required by this Contract is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of this Contract and, either continuous coverage will be maintained, or an extended discovery period will be exercised for a period of two (2) years beginning at the time work under this Contract is completed.
- c. The policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to vicarious liability of the insured arising out of the activities performed by or on behalf of the Contractor.
- d. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

1.3.6 Media Liability Coverage

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

- a. Such insurance shall cover any and all errors and omissions or negligent acts in the production of content, including but not limited to plagiarism, defamation, libel, slander, false advertising, invasion of privacy, and infringement of copyright, title, slogan, trademark, service mark and trade dress.
- b. In the event that the Media 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,

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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.

1.4 Additional Insurance Requirements

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

- 1.4.6** 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).
- 1.4.7** Insurance provided by the Contractor shall not limit the Contractor's liability assumed under the indemnification provisions of this Contract.

1.5 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, except in the case of cancellation for insurance premium non-payment, in which case the State shall be notified ten days prior to such cancellation. Within two (2) business days of receipt, Contractor must provide notice to the State of Arizona if they receive notice of a policy that has been or will be suspended, canceled, materially changed for any reason, has expired, or will be expiring. Such notice shall be sent directly to the Department and shall be mailed, emailed, hand delivered or sent by facsimile transmission to (State Representative's Name, Address & Fax Number).

1.6 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.

1.7 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) as required by this Contract. An authorized representative of the insurer shall sign the certificates.

- 1.7.6** All certificates and endorsements, as required by this written agreement, are to be received and approved by the State of Arizona before work commences. 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

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material breach of contract.

- 1.7.7** 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.

1.8 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.

1.9 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.

1.10 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.

Y. Data Privacy and Security

Contractor shall treat all non-public information obtained through performance of the contract, as confidential or sensitive information consistent with State and federal law and State Policy. Contractor or its agents shall not use any data obtained in the performance of the contract in any manner except as necessary for the proper discharge of its obligations and protection of its rights related to this agreement. Contractor shall establish and maintain procedures and controls acceptable to the State for the purpose of assuring that data in its or its agents' possession is not mishandled, misused, released, disclosed, or used in an inappropriate manner in performance of the contract. This includes data contained in Contractor's records obtained from the State or others, necessary for contract performance. Contractor and its agents shall take all reasonable steps and precautions to safeguard this information and data and shall not divulge the information or data to parties other than those needed for the performance of duties under the contract.

Z. Data Privacy/Security Incident Management

Contractor and its agents shall cooperate and collaborate with appropriate State personnel to

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identify and respond to an information security or data privacy incident, including a security breach.

1. Threat of Security Breach

Contractor(s) agrees to notify the State Chief Information Officer (CIO), the State Chief Information Security Officer (CISO) and other key personnel as identified by the State of any discovered threats placing the supported infrastructure and/or applications in danger of breach of security. The speed of notice shall be at least commensurate with the level of threat, as perceived by the Contractor(s). The State agrees to provide contact information for the State CIO, CISO and key personnel to the Contractor(s).

2. Discovery of Security Breach

Contractor agrees to promptly notify the State CIO, the CISO and key personnel as identified by the State no more than forty-eight (48) hours of a discovered breach of security. The State agrees to provide contact information for the State CIO, the CISO and key personnel.

AA. Security Requirements for Contractor Personnel

Each individual proposed to provide services through this contract agrees to security clearance and background check procedures, including fingerprinting, as defined by the Arizona Department of Administration in accordance with Arizona Revised Statutes §41-710. The results of the individual's background check procedures must meet all HIPAA and law enforcement requirements. Contractor is responsible for all costs to obtain security clearance for their consultants providing services through this contract. Contractor personnel, agents or sub-contractors that have administrative access to the State's networks may be subject to any additional security requirements of the State as may be required for the performance of the contract, when specified in the applicable Task Order. The Contractor, its agents and sub-contractors shall provide documentation to the State confirming compliance with all such additional security requirements for performance of the contract. Additional security requirements include but are not limited to the following:

1. Identity and Address Verification – that verifies the individual is who he or she claims to be including verification of the candidate's present and previous addresses;
2. UNAX/confidentiality Training;
3. HIPAA Privacy and Security Training; and
4. Information Security Training.

BB. Access Constraints and Requirements

Contractor access to State facilities and resources shall be properly authorized by State personnel, based on business need and will be restricted to least possible privilege. Upon approval of access privileges, the Contractor shall maintain strict adherence to all policies, standards, and procedures. Policies / Standards, ADOA/ASET Policies / Procedures, and Arizona Revised Statutes (A.R.S.) §28-447, §28-449, §38-421, §13-2408, §13-2316, §41-770.

Failure of the Contractor, its agents or subcontractors to comply with policies, standards, and procedures including any person who commits an unlawful breach or harmful access (physical or virtual) will be subject to prosecution under all applicable state and / or federal laws.

Any and all recovery or reconstruction costs or other liabilities associated with an unlawful

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breach or harmful access shall be paid by the Contractor.

CC. Health Insurance Portability and Accountability Act of 1996

The Contractor warrants that it is familiar with the requirements of HIPAA, as amended by the Health Information Technology for Economic and Clinical Health Act (HITECH Act) of 2009, and accompanying regulations and will comply with all applicable HIPAA requirements in the course of this Contract. Contractor warrants that it will cooperate with the State in the course of performance of the Contract so that both the State and the Contractor will be in compliance with HIPAA, including cooperation and coordination with the Arizona Strategic Enterprise Technology (ASET) Group, Statewide Information Security and Privacy Office (SISPO), Chief Privacy Officer and HIPAA Coordinator and other compliance officials required by HIPAA and its regulations. Contractor will sign any documents that are reasonably necessary to keep the State and Contractor in compliance with HIPAA, including but not limited to, business associate agreements.

If requested, the Contractor agrees to sign a "Pledge to Protect Confidential Information" and to abide by the statements addressing the creation, use and disclosure of confidential information, including information designated as protected health information and all other confidential or sensitive information as defined in policy. In addition, if requested, Contractor agrees to attend or participate in reasonable job related HIPAA training that is: (1) intended to make the Contractor proficient in HIPAA for purposes of performing the services required and (2) presented by a HIPAA Privacy Officer or other person or program knowledgeable and experienced in HIPAA and who has been approved by the ASET/SISPO Chief Privacy Officer and HIPAA Coordinator.

Suggested References:

<https://www.cms.gov/Regulations-and-Guidance/HIPAA-Administrative-Simplification/HIPAAGenInfo/downloads/hipaalaw.pdf>

<http://www.hhs.gov/ocr/privacy/hipaa/understanding/>

DD. Compliance Requirements for A.R.S. § 41-4401, Government Procurement: E-Verify Requirement

1. The 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. (That subsection reads: "After December 31, 2007, every employer, after hiring an employee, shall verify the employment eligibility of the employee through the E-Verify program.")
2. A breach of a warranty regarding compliance with immigration laws and regulations shall be deemed a material breach of the Contract and the Contractor may be subject to penalties up to and including termination of the Contract.
3. Failure to comply with a State audit process to randomly verify the employment records of Contractors and subcontractors shall be deemed a material breach of the Contract and the Contractor may be subject to penalties up to and including termination of the Contract.
4. The State Agency retains the legal right to inspect the papers of any employee who works on the Contract to ensure that the Contractor or subcontractor is complying with the warranty under paragraph One (1).

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EE. Task Orders for Professional Services

1. Each Task Order shall be governed under the Terms and Conditions of this PA.
2. Each Task Order shall be limited in scope to under five million dollars (\$5,000,000.00). The Customer shall follow all required approval processes as necessary (PIJ, ITAC, etc).
3. Task Order Process
 - 3.1 Task Order Request shall include the following at a minimum:
 - 3.1.1 Deliverable and Services to be provided, to include as applicable on-going maintenance and support, extended warranty, training;
 - 3.1.2 Implementation schedule for the Deliverables and Services, as applicable;
 - 3.1.3 Applicable technical standards required by the Customer, as applicable;
 - 3.1.4 Customer's policies and procedures applicable to the Task Order;
 - 3.1.5 Documentation required from the Contractor (e.g. reports, manuals, analysis, or other documentation as required by the Customer);
 - 3.1.6 Evaluation, testing and acceptance requirements, as applicable;
 - 3.1.7 Customer's requirements for status reporting, as applicable;
 - 3.1.8 Hours, schedule, location of workplace;
 - 3.1.9 Due date for submission of the Task Order Proposal; and,
 - 3.1.10 To whom the Task Order Proposal is to be submitted.
 - 3.2 Task Order Proposal shall include the following at a minimum:
 - 3.2.1 Position Title and name of Contractor's Resources performing under the Task Order.
 - 3.2.2 Proposed Milestones/Deliverables with:
 - a. A description of the deliverables for each milestone; and,
 - b. Period of time and number of hours for delivery/completion of each Milestone;
 - 3.2.3 Description of how the requested Services are to be delivered, to include how technical requirements shall be met.
 - 3.2.4 Proposed Product and Pricing Schedule for a Firm, Fixed Price engagement shall include an all- inclusive, not to exceed, project cost (A Time and Materials engagement shall include a not to exceed limit) for Deliverable(s) and Service(s) including, but not limited to, any or all of the following that are needed to ensure completion and on-going performance of the Task Order activities/functions:
 - On-going maintenance and support;
 - Estimated Customer resources needed;
 - Software, Equipment, Services, Agreements (e.g. Licensing, Hosting, Maintenance, Support, Services)

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Copy(ies) of said Agreement(s) shall be submitted with the proposal.

3.2.5 Contractor shall offer volume discounts when submitting proposal

3.3 Task Order Implementation

3.3.1 Contractor shall not begin work until an authorized representative from both the Customer and the Contractor have signed and received an executed (signed by both parties) copy of the accepted Task Order and Purchase Order.

3.3.2 Customer reserves the right to accept or reject Contractor's proposal, personnel and/or project cost estimates. Task Order pricing is negotiable, but not to exceed approved Hourly Rates under this Master Contract.

3.3.3 Revisions to a Task Order shall be mutually agreed upon in writing via a Change Order and shall be signed by an authorized representative of the Customer and all other parties to the Task Order.

3.3.4 Once a Task Order has been accepted, the Contractor shall not exceed the approved timeline or costs without a Change Order.

3.3.5 If timelines are not met and the Contractor does not advise the Customer of the delay prior to the due date and receives permission, via a Change Order, then the customer may assess a penalty not to exceed ten percent (10%) of the approved cost of the task order.

3.3.6 In the event that either the Customer or Contractor requires any change to the Project Plan, the requesting party shall notify the other party in writing. The Contractor shall submit a revised project cost estimate to the customer, within a mutually agreed upon timeframe, which includes any and all items of the Task Order which are affected by the requested revision.

3.3.7 Revisions which are outside the original scope of the Task are not allowed. A new Task Order must be submitted and approved in writing by all parties.

FF. Delegated Procurement Authority – 3rd Party Agreements

1. As stated on Page 1 of this Participating Addendum, A direct agreement between the 3rd Party and the Customer shall not be allowed. If necessary, the Contractor, Customer and 3rd Party may enter into an underlying agreement governed by this Participating Addendum.
2. In the event an underlying agreement is utilized, the participating Customer (State Agency) needs to have an authorized Delegated Authority to enter into said agreement. If the Customer does not have the appropriate Delegated Authority to enter into the agreement they shall not sign the Agreement. The Customer shall have the Agreement signed by the State Procurement Office (or other applicable Authorized Entity). Any signed agreement that is in violation of a Customer's Delegated Authority shall be deemed to be invalid.

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1. Definition of Terms

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

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

2. Contract Interpretation

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

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this Contract are a part of this Contract as if fully stated in it.

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

3. Contract Administration and Operation

- 3.1. Records. Under A.R.S. § 35-214 and § 35-215, the Contractor shall retain and shall contractually require each subcontractor to retain all data and other "records" relating to the acquisition and performance of the Contract for a period of five years after the completion of the Contract. All records shall be subject to inspection and audit by the State at reasonable times. Upon request, the Contractor shall produce a legible copy of any or all such records.
- 3.2. Non-Discrimination. The Contractor shall comply with State Executive Order No. 2009-09 and all other applicable Federal and State laws, rules and regulations, including the Americans with Disabilities Act.
- 3.3. Audit. Pursuant to ARS § 35-214, at any time during the term of this Contract and five (5) years thereafter, with reasonable prior written notice to Contractor, 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

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

- 3.5. Notices. Notices to the Contractor required by this Contract shall be made by the State to the person indicated on the Offer and Acceptance form submitted by the Contractor unless otherwise stated in the Contract. Notices to the State required by the Contract shall be made by the Contractor to the Solicitation Contact Person indicated on the Solicitation cover sheet, unless otherwise stated in the Contract. An authorized Procurement Officer and an authorized Contractor representative may change their respective person to whom notice shall be given by written notice to the other and an amendment to the Contract shall not be necessary.
- 3.6. Advertising, Publishing and Promotion of Contract. The Contractor shall not use, advertise or promote information for commercial benefit concerning this Contract without the prior written approval of the Procurement Officer.
- 3.7. Property of the State. Any materials, including reports, computer programs and other deliverables, created under this Contract are the sole property of the State. The Contractor is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. The Contractor shall not use or release these materials without the prior written consent of the State.
- 3.8. Ownership of Intellectual Property. Unless otherwise agreed in a Task Order, 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

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contractor.

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

- 3.11 Offshore Performance of Work Prohibited.

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

4. Costs and Payments

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

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

- 4.3. Applicable Taxes.

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

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

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

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

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

- 4.5. Availability of Funds for the current State fiscal year. Should the State Legislature enter

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

- 4.5.1. Accept a decrease in price offered by the contractor;
- 4.5.2. Cancel the Contract; or
- 4.5.3. Cancel the contract and re-solicit the requirements.

5. Contract Changes

- 5.1. Amendments. This Contract is issued under the authority of the Procurement Officer who signed this Contract. The Contract may be modified only through a Contract Amendment within the scope of the Contract. Changes to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by a person who is not specifically authorized by the procurement officer in writing or made unilaterally by the Contractor are violations of the Contract and of applicable law. Such changes, including unauthorized written Contract Amendments shall be void and without effect, and the Contractor shall not be entitled to any claim under this Contract based on those changes.
- 5.2. Subcontracts. The Contractor shall not enter into any Subcontract under this Contract for the performance of this contract without the advance written approval of the Procurement Officer. The Contractor shall clearly list any proposed subcontractors and the subcontractor's proposed responsibilities. The Subcontract shall incorporate by reference the terms and conditions of this Contract.
- 5.3. Assignment and Delegation. The Contractor shall not assign any right nor delegate any duty under this Contract without the prior written approval of the Procurement Officer. The State shall not unreasonably withhold approval.

6. Risk and Liability

- 6.1. Risk of Loss: The Contractor shall bear all loss of conforming material covered under this Contract until received by authorized personnel at the location designated in the purchase order or Contract. Mere receipt does not constitute final acceptance. The risk of loss for nonconforming materials shall remain with the Contractor regardless of receipt.
- 6.2. Indemnification
 - 6.2.1. Contractor/Vendor Indemnification (Not Public Agency) The parties to this contract agree that the State of Arizona, its departments, agencies, boards and commissions shall be indemnified and held harmless by the contractor for the vicarious liability of the State as a result of entering into this contract. However, the parties further agree that the State of Arizona, its departments, agencies, boards and commissions shall be responsible for its own negligence. Each party to this contract is responsible for its own negligence.
 - 6.2.2. Public Agency Language Only Each party (as 'indemnitor') agrees to indemnify, defend, and hold harmless the other party (as 'indemnitee') from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as 'claims') arising out of bodily injury of any person (including death) or property damage but only to the extent that such claims which result in vicarious/derivative liability to the indemnitee, are caused by the act, omission, negligence, misconduct, or other

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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. In addition, with respect to claims arising from computer hardware or software manufactured or developed solely by a third party. Contractor shall pass through to the State such indemnity rights as it receives from such third party (the "Third Party Obligation") and will cooperate in enforcing them; provided, however, that (i) if the third party manufacturer fails to honor the Third Party Obligation, or (ii) the Third Party Obligation is insufficient to fully indemnify the State; Contractor shall indemnify, defend and hold harmless the State against such claims in their entirety or for the balance of any liability not fully covered by the Third Party Obligation.
- 6.4. Force Majeure.
- 6.4.1 Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of force majeure. The term "*force majeure*" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes acts of God; acts of the public enemy; war; riots; strikes; mobilization; labor disputes; civil disorders; fire; flood; lockouts; injunctions-intervention-acts; or failures or refusals to act by government authority; and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence.
- 6.4.2. Force Majeure shall not include the following occurrences:
- 6.4.2.1. Late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, or an oversold condition of the market;
- 6.4.2.2. Late performance by a subcontractor unless the delay arises out of a force majeure occurrence in accordance with this force majeure term and condition; or
- 6.4.2.3. Inability of either the Contractor or any subcontractor to acquire or maintain any required insurance, bonds, licenses or permits.
- 6.4.3. If either party is delayed at any time in the progress of the work by force majeure, the delayed party shall notify the other party in writing of such delay, as soon as is practicable and no later than the following working day, of the commencement thereof and shall specify the causes of such delay in such notice. Such notice shall be delivered or mailed certified-return receipt and shall make a specific reference to this article, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by Contract Amendment for a period of time equal to the time that results or effects of such delay prevent the delayed party

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from performing in accordance with this Contract.

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

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

7. Warranties

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

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

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

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

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

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

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

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

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

7.5. Compliance With Applicable Laws. The materials and services supplied under this Contract shall comply with all applicable Federal, state and local laws, and the Contractor shall maintain all applicable license and permit requirements.

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

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

7.6.2. Purchase Orders. The Contractor shall, in accordance with all terms and conditions of the Contract, fully perform and shall be obligated to comply with all purchase orders received by the Contractor prior to the expiration or termination hereof, unless otherwise directed in writing by the Procurement Officer,

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including, without limitation, all purchase orders received prior to but not fully performed and satisfied at the expiration or termination of this Contract.

8. State's Contractual Remedies

- 8.1. Right to Assurance. If the State in good faith has reason to believe that the Contractor does not intend to, or is unable to perform or continue performing under this Contract, the Procurement Officer may demand in writing that the Contractor give a written assurance of intent to perform. Failure by the Contractor to provide written assurance within the number of Days specified in the demand may, at the State's option, be the basis for terminating the Contract under the Uniform Terms and Conditions or other rights and remedies available by law or provided by the contract.
- 8.2. Stop Work Order.
- 8.2.1. The State may, at any time, by written order to the Contractor, require the Contractor to stop all or any part, of the work called for by this Contract for period(s) of days indicated by the State after the order is delivered to the Contractor. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage.
- 8.2.2. If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the Contractor shall resume work. The Procurement Officer shall make an equitable adjustment in the delivery schedule or Contract price, or both, and the Contract shall be amended in writing accordingly.
- 8.3. Non-exclusive Remedies. The rights and the remedies of the State under this Contract are not exclusive.
- 8.4. Nonconforming Tender. Materials or services supplied under this Contract shall fully comply with the Contract. The delivery of materials or services or a portion of the materials or services that do not fully comply constitutes a breach of contract. On delivery of nonconforming materials or services, the State may terminate the Contract for default under applicable termination clauses in the Contract, exercise any of its rights and remedies under the Uniform Commercial Code, or pursue any other right or remedy available to it.
- 8.5. Right of Offset. The State shall be entitled to offset against any sums due the Contractor, any expenses or costs incurred by the State, or damages assessed by the State concerning the Contractor's non-conforming performance or failure to perform the Contract, including expenses, costs and damages described in the Uniform Terms and Conditions.

9. Contract Termination

- 9.1. Cancellation for Conflict of Interest. Pursuant to A.R.S. § 38-511, the State may cancel this Contract within three (3) years after Contract execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of the State is or becomes at any time while the Contract or an extension of the Contract is in effect an employee of or a consultant to any other party to this Contract with respect to the subject matter of the Contract. The

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cancellation shall be effective when the Contractor receives written notice of the cancellation unless the notice specifies a later time. If the Contractor is a political subdivision of the State, it may also cancel this Contract as provided in A.R.S. § 38-511.

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

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

10. Contract Claims

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

11. Arbitration

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

12. Comments Welcome

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

Exhibit D – Professional and Third Party Products and Services
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Definitions:

1. **“Professional Services”**– (meaning consulting, training, customization, configuration, implementation, design and engineering pertaining to COTS and services for legacy COTS and other services performed by Contractor or its subcontractors, including any Third Party Services Providers) for Arizona as described generally in this Agreement and as more particularly described in the Task Order Process as described in Section EE of Exhibit B.
2. **“Task Order” or “TO”** – meaning a document in electronic or written form that is signed and delivered by each of the Parties for the performance of Professional Services as the same may be amended or modified from time to time and that incorporates the terms and conditions of this PA.
3. **“Third Party Service Provider”**- meaning any consultant, agent, advisor, or independent contractor who renders Services as a subcontractor to the Contractor, on a Task Order for the SVAR, a Subsidiary, or an Affiliate.

Professional Services Pricing Table

Title	Rate	UoM
Sr. Services Provider – In-scope Software Services	\$220.00	Hourly
Services Provider – In-scope Software Services	\$182.00	Hourly
Sr. Project Manager – Software	\$220.00	Hourly
Project Manager - Software	\$182.00	Hourly
Sr. Engagement Manager - Software	\$220.00	Hourly
Publisher Provided – In-scope Software Services	As established by the Software Publisher, depending on services required. Services performed by a Software Publisher may require the involvement of an SHI Project Manager. Final Services pricing will be supplied by SHI, and will be inclusive of contract administrative fees and any applicable Project Management fees in relation to the Task Order.	TBD (may be hourly, annually, per project, or other according to Publisher's offerings)
Third Party Provided – In-scope Software Services	As established by the Third 3 rd Party Services Provider, depending on services required. Services performed by a Software Publisher may require the involvement of an SHI Project Manager. Final Services pricing will be supplied by SHI, and will be inclusive of contract administrative fees and any applicable Project Management fees in relation to the Task Order.	TBD (may be hourly, annually, per project, or other according to Third 3 rd Party Provider's offerings)