Subject: Re: Public Records Request (AZ-ADOA-22-0812)
Date: Friday, August 19, 2022 at 9:45:55 AM Mountain Daylight Time
From: Megan Rose
To: AO Records
Attachments: CTR060262_Transportation_AMI_executed_5_5_22-_MR_Redactions_Redacted_gm.pdf

EXTERNAL SENDER

Hello! Please see attached records responsive to your request. This closes out your request to ADOA.

Megan Rose

Assistant Director, Statewide Communications

ADOA | State of Arizona

100 North 15th Avenue, Suite 302, Phoenix, AZ 85007

m: 602-826-5406 | megan.rose@azdoa.gov

http://doa.az.gov

On Thu, Aug 18, 2022 at 1:51 PM AO Records <records@americanoversight.org> wrote:

> Greetings,
>
> It appears there was an error in the below request. Please see attached updated request.
>
> Thank you!
>
> --
>
> Marwah Adhoob
>
> Pronouns: she/her
>
> Paralegal
>
> American Oversight
>
> records@americanoversight.org
>
> www.americanoversight.org | @weareoversight

AMERICAN OVERSIGHT

PRR: AZ-ADOA-22-0812

From: AO Records <records@americanoversight.org>
Date: Tuesday, August 16, 2022 at 10:34 AM
To: Megan.rose@azdoa.gov <Megan.rose@azdoa.gov>
Subject: Public Records Request (AZ-ADOA-22-0804)

Dear Public Records Officer:

Please find attached a request for records under Arizona's Public Records Law.

Sincerely,

--

--

Marwah Adhoob

Pronouns: she/her

Paralegal

American Oversight

records@americanoversight.org

www.americanoversight.org | @weareoversight

PRR: AZ-ADOA-22-0804

	Direct Contract Contract #: **CTR060262** Description: **Transportation of Asylum Seekers**	Arizona Department of Administration State Procurement Office 100 N 15th Avenue Phoenix, AZ 85007

Table of Contents

Offer and Acceptance 2

Scope of Work 3

Special Terms and Conditions

Uniform Terms and Conditions

Boycott of Israel Form

AMERICAN OVERSIGHT

Direct Contract

Contract #: **CTR060262**
Description: **Transportation of Asylum Seekers**

Arizona Department of Administration
State Procurement Office
100 N 15th Avenue
Phoenix, AZ 85007

Offer and Acceptance

TO THE STATE OF ARIZONA:
The Undersigned hereby offers and agrees to furnish the material, service or construction in compliance with all the terms, conditions noted in the contract.

AMI Expeditionary Healthcare LLC	[signature]
Contractor company name	Signature of person authorized to sign Offer
12030 Sunrise Valley Drive, Suite 250	**Michael Smith, EVP-US Clinical Services**
Address	Printed name and title
Reston, VA 20191	**Michael Smith, EVP-US Clinical Services**
City | State | ZIP	Contact name and title
66-0745549	**Mike.smith@ami.health** 202-812-6960
Federal tax identifier (EIN or SSN)	Contact Email Address / Contact phone number

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

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

ACCEPTANCE OF OFFER: Offeror is now bound (as Contractor) to carry out the Work under the attached Contract, of which the Accepted Offer forms a part. Contractor is cautioned not to commence any billable work or to provide any material or perform any service under the Contract until Contractor receives the applicable Order or written notice to proceed from the Procurement Officer.

State's Contract Number is: CTR060262 **Contract Effective Date:** 5/5/2022

[signature] 5/6/2022	Stephen Nettles Senior Group Manager
Procurement Officer Signature / Award Date	Procurement Officer Name / Title

AMERICAN OVERSIGHT

Scope of Work

1.0 Purpose and Background

1.1 The Arizona Department of Emergency & Military Affairs (AZDEMA) has been tasked with providing voluntary transportation to Asylum Seekers (AS) crossing the US Southern Border into the State. AZDEMA has determined to transport these people from designated locations within the State to some other designated location where they may be housed and cared for under the auspices of a Non-Governmental Organization (NGO).

The State of Arizona's Department of Administration plans to award a Contract to a qualified Contractor to support AZDEMA for the purpose of safely and humanely transporting the AS to a designated location (Destination) and transferring them to the care of a designated NGO. The current Destination is Washington, DC, but may change based on direction from AZDEMA.

1.2 Definitions/Acronyms used in this Scope of Work and related documents, unless otherwise defined:

1.2.1 "**Asylum Seeker**" (AS) is defined as a foreign national entering the United States via Arizona's southern border, to seek asylum in the United States.

1.2.2 "**Arizona Department of Emergency & Military Affairs (AZDEMA)**" coordinates the State of Arizona's emergency preparedness, response and recovery efforts in order to reduce the impact of emergencies and disaster on people and property in the Whole Community.

1.2.3 The **"Incident Command System (ICS)"** is a standardized approach to the command, control, and coordination of emergency response providing a common hierarchy within which responders from multiple agencies can be effective.

1.2.4 "**Non-Governmental Organization (NGO)**" is a voluntary group or institution with a social mission, which operates independently from the government.

1.2.5 "**Regional Center for Border Health (RCBH)**" is a 501(c)(3) non-profit headquartered in Somerton, AZ whose mission is to improve the quality of life of residents along the southwest border by increasing access to quality training and accessible healthcare.

1.2.6 "**Sanitary Supplies**" means toilet paper, paper towels, hand sanitizer, disinfectant sprays (bleach based or otherwise), disinfecting wipes, and sanitary napkins or tampons.

AMERICAN OVERSIGHT

2.0 Scope of Work

2.1 General Requirements: The Contractor shall

2.1.1 Take full responsibility for accepting the AS from designated locations within the State and delivering them to their final Destination in a safe, humane fashion.

2.1.2 Deploy personnel and equipment sufficient to conduct staging operations in [redacted], [redacted], and/or [redacted], AZ, and provide ground travel to Destination.

2.1.3 Have translation services available to effectively communicate to the AS

2.1.4 ***Transportation***

2.1.4.1 Provide ground transportation via motorcoach (bus) to a designated Destination.

a. The bus shall be equipped with appropriate amenities including toilets, sanitary supplies, climate control and passenger Wi-Fi access.
b. The bus shall support up to forty (40) AS, not less than thirty (30) unless directed by AZDEMA.
c. Contractor shall supply two (2) to three (3) buses per week.
d. Each bus shall meet all licensing requirements for road safety, hygiene and driver training. Additionally, each bus shall have an active operating authority registration must be granted by Federal Motor Carrier Safety Administration (FMCSA) before you can transport passengers for hire in interstate commerce.
e. Any planned route deviations need to be communicated and approved by Contractor and AZDEMA

2.1.4.2 Bus drivers will be changed per protocol to maintain safety and support for the duration of travel.

2.1.4.3 Provide three (3) meals a day of food and water to the AS during the trip such as prepared boxed meals, water and snacks while on the bus to Destination.

2.1.4.4 In no way act as custodians/guardians of the AS; during this transportation process, all AS are traveling at their own free will and therefore they are free to de-board prior to arrival in Destination.

a. The receipt of AS shall only be done at specific locations coordinated by Regional Center for Border Health (RCBH) and the Contractor, and not at any other point along the route.

AMERICAN OVERSIGHT

2.1.5 ***Staffing***. Staffing for this service shall include

2.1.5.1 **Chief Nursing Officer** in Arizona

a. The Chief Nursing Officer shall have a Bachelor Degree in Nursing
b. Will be responsible for ensuring that the NGO screening process is completed on all AS and certified that they are ready to travel.
c. Ready traveler information will be used to create the manifest.

2.1.5.2 **Program Manager** in Arizona

a. Will acts as the primary point-of-contact at the project level and is responsible for all day-to-day operational activities and issues.
b. AZDEMA will have access to the PM on a 24/7 basis.
c. Shall be trained in Incident Command System (ICS), and have oversight of the project deliverables.

2.1.5.3 **One Logistician** per departure/arrival point

a. Logistician is responsible for manifest verification, distribution of wristbands to identify confirmed individuals on the manifest, and distribution of provisions.
b. The logistician will provide a hand-off to the EMTs of the manifest prior to departure.

2.1.5.4 **Two Paramedics/Emergency Medical Technicians (EMT)** per transportation vehicle

a. They shall possess one of the following certifications: Emergency Medical Responder, Emergency Medical Technician, Advanced EMT, or Paramedic.
b. The two medical personnel shall be trained in Incident Command System (ICS), which will allow them to evaluate and differentiate basic first aid from the need to initiate emergency medical services. ICS training will allow for de-escalation of potentially volatile situations that may arise.
c. EMT will be changed per protocol to maintain safety and support for the duration of travel.
d. Every time AS board/deboard the bus, they are checked against the manifest. If a AS, chooses not to reboard transportation, the departure will be documented and reported to AZDEMA.
e. Take appropriate escalation actions and documentation as needed and communicate issues with AZDEMA.

2.2 Specific Requirements. The Contractor shall

AMERICAN OVERSIGHT

2.2.1 ***Planning***: Work with the State of Arizona (working with RCBH and other NGO partners) to identify voluntary asylum seekers for transport, ensure individuals have the appropriate DHS processed paperwork, and provide a manifest of individuals for transport.

2.2.1.1 Will make all reasonable efforts to ensure that AS are medically screened by Customs and Border Protection or by the NGO. If no evidence of medically screening by Customs and Border Protection or NGO, then AS will not be allowed to board the bus and be transported

2.2.1.2 Ensure that AS have a signed consent form to be transported to the Destination, but they may de-board prior to arrival

2.2.1.3 Coordinate/communicate with AZDEMA, RCBH and other NGO partners.

2.2.1.4 Ensure that an NGO is ready to receive the AS at Destination, to include emergency assistance such as needed:
a. Housing
b. Meals, and
c. Communications with family or other care-givers

2.2.1.5 Have knowledge of the AS special needs before they board the bus, including but not limited to:
a. Medical, disability, maternal or childcare needs;
b. Food allergies;
b. Special language requirements; and
c. Need for interpreter services.

2.2.1.6 Have a State-approved press statement prepared and ready for delivery to all Contractor personnel involved.

2.2.1.7 Provide action readiness report as directed by AZDEMA

2.2.2 ***Mobilization***

2.2.2.1 Deploy Chief Nursing Officer and Program Manager to Yuma, AZ to coordinate with RCBH for initial coordination. Deployment location may change based on direction from AZDEMA

2.2.2.2 The RCBH AND OTHER NGO PARTNERS shall provide the staging area for the pre-boarding process.

2.2.2.2 Finalize plan to receive asylum seekers and prepare to receive them

AMERICAN OVERSIGHT

2.2.2.3 Conduct final coordination for transportation, communications and feeding

2.2.2.4 Brief AZDEMA on communications plan and coordinate access to common operating picture for duration of trip from Arizona to Destination area

2.2.2.5 Provide action readiness report as directed by AZDEMA

2.2.3 ***Execution***

2.2.3.1 At the point of departure, the Logistician is responsible for manifest verification, distribution of wristbands to identify confirmed individuals on the manifest, and distribution of provisions. The logistician will provide a hand-off to the EMTs of the manifest prior to departure.

a. Every time passengers board/deboard the bus, they shall be checked against the manifest. As transportation is voluntary, there is a risk of individuals choosing not to reboard transportation during routine stops. Instances of passenger departures will be documented and reported to AZDEMA, and the agency (RBCH or others) that directed the passenger to the Contractor.

2.2.3.2 The Contractor shall conduct multiple ground transportation events for up to 40 asylum seekers from locations specified in State

a. Provide two Paramedics/EMTs per bus
b. Offer all AS three nutritional meals per day as well as snacks and water throughout the entirety of the trip.
c. Provide basic sanitary supplies to AS while on the bus.

2.2.3.3 For the duration of the trip, two Paramedics/EMTs will check the manifest during any disembarkation and embarkation of passengers and will be prepared to provide basic first aid and support, initiate emergency medical services as indicated per protocol local 911. They will provide situational updates to the Contractor and AZDEMA.

2.2.3.4 The anticipated route and rest stop are as follows, as may be amended:

a. [redacted] AZ – [redacted] AZ: [redacted] hours
b. [redacted] AZ – [redacted] TX: [redacted] hours
c. [redacted] TX – [redacted] TX: [redacted] hours
d. [redacted] TX – [redacted] TX: [redacted] hours
e. [redacted] TX – [redacted] AR: [redacted] hours
f. [redacted] AR – [redacted] TN: [redacted] hours
g. [redacted] TN – [redacted], VA: [redacted] hours
h. [redacted] VA – Washington, DC: [redacted] hours

2.2.3.5 Provide a Situation Report every four hours; plus during/after rest stops, to the Contractor and AZDEMA

a. Redundant communications systems shall be on the bus, and will

AMERICAN OVERSIGHT

include cell phones, onboard internet connectivity, and satellite phones.

2.2.4 ***Demobilization***

2.2.4.1 Cease operations and redeploy personnel

2.2.4.2 Provide after action report to AZDEMA

2.2.4.3 The Contractor's responsibility ends when asylum seekers are delivered to the NGO in Washington, DC.

3.0 Reporting. The Contractor shall provide:

3.1 Status reports every four hours from the time of departure by delivering situation reports with the following information:
a. Current number of asylum seekers onboard
b. Any health/security issues
c. Transportation and road condition barriers

3.2 Contractor shall provide status reports of the Operation activities as directed AZDEMA

4.0 Pricing

4.1 Priced as two separate Contract Line Item Number:

4.1.1 Contract Line Item Number 0001: Total Cost per Bus Transport

Contract Line Item Number 0001:	
Labor	$13,417
ODC (Other Direct Charges)	$30,086
Bus Rental	$38,643
Total Cost per bus	$82,146

4.1.2 Contract Line Item Number 0002 Optional: Bus Failure Contingency

To support the contingency, if a bus failure occurs, then it may require a replacement vehicle, that requires 24 hours to replace a bus for continuation of transport. This is only exercised for such failure, covering hoteling and per diem for Contractor personnel and asylum seekers.

Contract Line Item Number 0002 (Optional):	
Bus Failure Contingency	
ODC adder per bus	$12,331.85

AMERICAN OVERSIGHT

4.2 All Other Direct Charges (ODC) include AMI travel costs, lodging, meals and incidental expenses, medical equipment including sanitary inventory, and connectivity for emergency services.

4.2.1 Travel includes both getting available Contractor personnel to Arizona and return from final Destination

4.2.2 Include Contractor personnel as stated in the staffing model in the CONOP Volume as well as HQ PMO to support the effort.

4.2.3 Bus rental consists of 47% of total price to the government.

AMERICAN OVERSIGHT

Pricing

1.0 Compensation method

Contractor will be compensated based on the final detailed written quote approved by the Customer.

2.0 Pricing

2.1 Contractor's Best Pricing. Supplier warrants that, for the term of the Contract, the prices and discounts 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 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 Increase. 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.

2.3.1 Initial Contract prices will be honored for one year after award of Contract.

AMERICAN OVERSIGHT

2.3.2 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 the 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.

2.3.3 All price adjustments will be implemented by a formal contract amendment. State shall determine whether the requested price increase or an alternate option is in the best interest of the State.

2.4 Price Reductions. 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. The 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. Any charges or fees not delineated in the Contract may not be added, billed, or invoiced under the Contract.

2.6 Travel. Contractor shall get written approval prior to any travel under the Contract in which reimbursement of expenses will be requested. Contractor will be reimbursed for actual expenses incurred in accordance with the current rates specified in the State's Travel Policy. Contractor shall itemize all per diem and lodging charges. State Travel Policy, including State rates, may be located at https://gao.az.gov/travel. The Agency shall reject any claim for travel reimbursement without prior written approval.

3.0 Funding

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

4.0 Invoicing

4.1 Invoices Go To Buying Entity. Contractor shall submit all billing notices or invoices to the address indicated on the applicable Order document or by utilizing the Buying Entity's purchasing tool/process.

4.2 Minimum Invoice Requirements. Every invoice must include the following information:

4.2.1 Bill-to name and address

4.2.2 Contractor name and contact information

AMERICAN OVERSIGHT

4.2.3 Remit-to address

4.2.4 Invoice number and date

4.2.5 State contract number

4.2.6 Order number (APP PO number)

4.2.7 Date the services performed

4.2.8 Applicable payment terms

4.2.9 Material or Service description (Itemized)

4.2.10 Quantity delivered or performed

4.2.11 Line item unit of measure

4.2.12 Item price

4.2.13 Extended pricing

4.2.14 Taxes (as a separate invoice line item)

4.2.15 Mailing fees (if applicable)

4.2.16 Total invoice amount due

4.3 No Invoice Without Authorization. Contractor shall not seek payment for any:

4.3.1 Materials or Services that have not been authorized on an acknowledged Order;

4.3.2 Expediting, overtime, premiums, or upcharges absent State's express prior approval; or

4.3.3 Materials or Services that are the subject of a Contract Amendment that has not been fully signed.

4.4 Submitting Invoices. Contractor shall submit an invoice to the ordering Agency using the form and/or process provided or required by the ordering 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.

4.5 Defective Invoices. Without prejudice to its other rights under the Contract or further obligation to Contractor, the Agency may at its discretion, reject any materially defective invoice.

AMERICAN OVERSIGHT

4.5.1 The ordering Agency shall notify the Contractor within 5 (five) business days after receipt if it determines an invoice to be materially defective.

4.5.2 Invoices will be deemed automatically rejected upon delivery if they:

4.5.2.1 are sent to an incorrect address;

4.5.2.2 do not reference the correct State contract or APP Order number; or

4.5.2.3 are payable to any Person other than the Contractor.

4.5.3 The ordering 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 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. The 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 overpayment. If applicable the 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 overpayment and may deduct the overpaid amount from amounts then or thereafter due to Contractor.

5.4 Payment to subcontractors. Contractor shall make payment of all undisputed amounts due to Subcontractors within thirty (30) days of receipt of funds from the Agency applicable to their services.

5.5 Purchasing card. The 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 the 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. The 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, the 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**

AMERICAN OVERSIGHT

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: The document titled "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 Arizona Procurement Code, Arizona Revised Statutes (A.R.S.) and Arizona Administrative Code (A.A.C.) are each defined in the Instructions to Offerors.

1.3 Arizona Transaction Privilege Tax (TPT): For information, refer to the Arizona Department of Revenue (DOR) website at: https://www.azdor.gov/business/transactionprivilegetax.aspx

1.4 Attachment. Any item that:

1.4.1 Was attached to an Offer when submitted; and

1.4.2 Was included in the Accepted Offer.

1.5 Pricing Document. Whatever item in the Contract contains the contracted pricing and payment provisions.

1.6 Contract Amendment. A document signed by the Procurement Officer that has been issued for the purpose of making changes to the Contract after execution.

1.7 Contract Terms and Conditions. The Special Terms and Conditions and the Uniform Terms and Conditions taken collectively.

1.8 Contractor. The Person identified on the Accepted Offer who has entered into the Contract with the State.

1.9 Contractor Indemnitor. Contractor or any of its owners, officers, directors, agents, employees, or Subcontractors.

1.10 Indemnified Basic Claims. "Indemnified Basic Claims" means any and all claims, actions, liabilities, damages, losses, or expenses, including court costs, attorneys'

AMERICAN OVERSIGHT

fees, 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.

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

1.11.1 "Release" or "Release Purchase Order: in The State's e-Procurement System;

1.11.2 "task order," "service order," or "job order" when a Release Purchase Order for Services has already been created in The State's e-Procurement System; or

1.11.3 "purchase order" for buying by Co-Op Buyers, if co-op buying applies

1.12 The State's e-Procurement System. The 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. Technical Bulletin No. 020 is available online at: https://spo.az.gov/sites/default/files/documents/files/TB_020_APP_20181024.pdf

1.13 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.

1.14 State Indemnitees. Collectively, the State of Arizona, its departments, agencies, universities, commissions, and boards and, and their respective officers, agents, and employees.

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

1.16 Work**.** 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 Interpretations

AMERICAN OVERSIGHT

2.1 Usage. Where the Contract:

2.1.1 Assigns obligations to Contractor, any reference to "Contractor" is to be construed to be a reference to the 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 Subcontractor's respective agents, representatives, and employees in every instance unless the context plainly requires that it is a reference only to Contractor as apart from Subcontractors.

2.1.2 Uses the permissive "may" with respect to a party's actions, determinations, etc., the terms 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.

2.1.3 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.

2.1.4 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;

2.1.5 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

2.1.6 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

2.2.1 ***Complementary Documents***. All of the documents forming the Contract are complementary. If certain work, requirements, obligations, or duties are set out only in one but not in another, Contractor shall carry out the Work as though the relevant Work, requirements, obligations, or duties had been fully described in all, consistent with the other documents forming the Contract

AMERICAN OVERSIGHT

and as is reasonably inferable from them as being necessary to produce complete results.

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

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 the employee or agent of the other party, and no action, inaction, event, or circumstance will be grounds for deeming it to be so.

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

3.0 Contract Administration and Operation

3.1 Term of Contract. The term of the Contract will commence on the date indicated on the Acceptance and continue for twelve (12) months 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 the maximum aggregate term of one (1) year.

3.3 Notices and Correspondence

3.3.1 ***To Contractor***. State shall 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 State’s e-Procurement System Vendor Profile; and 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 address all Contract correspondence other than format notices to the email address indicated in “Contact Instructions” in the State’s e-Procurement System Summary for State; and address any required notices to State to the Procurement Officer identified as “Purchaser” in the State’s e-Procurement System Summary at the following mailing address:

AMERICAN OVERSIGHT

Arizona Department of Administration
State Procurement Office
100 N 15th Avenue
Phoenix, AZ 85007

3.3.3 ***Changes***. State may change the designated Procurement Officer, update contact information, or change the applicable mailing address.

3.4 Signing of Contract Amendments. Contractor's counter-signature – or "approval" in The State's e-Procurement System, in the case of an amendment, – is not required to give effect if the Contract Amendment only covers either:

3.4.1 Extension of the term of the Contract within the maximum aggregate term;
3.4.2 Revision to Procurement Officer appointment or contact information; or
3.4.3 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' signatures – or "approval" in The State's e-Procurement System, in the case of an Amendment – are required to give it effect.

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

3.6 Books and Records

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

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

AMERICAN OVERSIGHT

statute and those retained books and records are subject to audit by State during that period.

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

3.7 Contractor Licenses. Contractor shall maintain current 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 Contractors' 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 reinspection or retesting 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.

3.9.1.1 "Government Purpose Rights" are:

1) 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;
2) the right to release or disclose that work product to third parties for any State government purpose; and

AMERICAN OVERSIGHT

3) 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.

3.9.1.2 "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:

3.9.3.1 any derivative works of such pre-existing material or elements thereof that are created pursuant to the Contract are part of that work product;
3.9.3.2 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
3.9.3.3 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 Subcontract

3.10.1 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 the Attachment Proposed Subcontractors 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

AMERICAN OVERSIGHT

information he or she determines is necessary to assess the submittal, and may withhold consent pending it.

3.10.2 ***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 Orders

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

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

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

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

3.11.5 ***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..

AMERICAN OVERSIGHT

3.11.6 ***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.

3.12 Reserved

3.13 Multiple-Use Provisions. The Agency may issue Orders for Services in several forms, all of which become final and effective by a "Release Purchase Order" in The State's e-Procurement System. Orders 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:

3.13.1 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 the Contractor.

3.13.2 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.

3.13.3 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.

3.13.4 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.

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 to impose an unreasonable burden on any one of them.

3.15 Work on State Premises

AMERICAN OVERSIGHT

3.15.1 ***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.

3.15.2 ***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 in a timely manner, State will be entitled to exercise its remedies under paragraph 8.5 of the Uniform Terms and Conditions [Right of Offset].

4.0 Costs and Payments

4.1 Payments

4.1.1 ***Payment Deadline***. State shall make payments in compliance with Arizona Revised Statutes Titles 35 and 41. Unless and then only to the extent expressly stated otherwise in the Pricing Document, State shall make payment in full for Materials that have been delivered and accepted and Services that have been performed and accepted within the time specified in A.R.S. § 35-342 after both of the following become true: (a) all of the Materials being invoiced have been delivered or installed (as applicable) and accepted and all of the Services being invoiced have been performed and accepted; and (b) Contractor has provided a complete and accurate invoice in the form and manner called for in the Pricing Document, provided that, State will not make or be liable for any payments to Contractor until Contractor has registered properly in The State's e-Procurement System and provided a current IRS Form W-9 to State unless excused by law from providing one.

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

AMERICAN OVERSIGHT

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 will not relieve the Contractor of any obligation to remit sales or use taxes that are due under the Contract or laws. Unless stated otherwise in the Pricing Document, all prices therein include Arizona TPT as well as every other manner of transaction privilege or sales/use tax that is due to a municipality or another state or its political subdivisions. Contractor shall pay all federal, state, and local taxes applicable to its operations and personnel.

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

5.0 Contract Changes

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

5.2 Assignment and Delegation.

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

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

AMERICAN OVERSIGHT

6.0 Risk and Liability

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

6.2 Contractor Insurance

6.2.1 ***Indemnification Clause***

6.2.1.1 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, officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Contractor or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of, or recovered under, the Workers' Compensation Law or arising out of the failure of such 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. In consideration of the award of this contract, the Contractor agrees to waive all rights of subrogation against the State of Arizona, its officers, officials, agents, and employees for losses arising from the work performed by the Contractor for the State of Arizona.

6.2.1.2 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.

AMERICAN OVERSIGHT

6.2.2 ***Insurance Requirements***

6.2.2.1 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.

6.2.2.2 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.

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

6.2.3.1 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 $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 include coverage for Sexual Abuse and Molestation (SAM). This coverage may be sub-limited to no less than $500,000. The limits may be included within the General Liability limit or provided by separate endorsement with its own limits. If you are unable to obtain SAM coverage under your General Liability because the insurance market will not support it, it should it be included with the Professional Liability.
b. Contractor must provide the following statement on their Certificate(s) of Insurance: “Sexual Abuse and Molestation coverage is included” or “Sexual Abuse and Molestation coverage is not excluded.”
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 liability arising out of the activities performed by or on behalf of the Contractor.

AMERICAN OVERSIGHT

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.

6.2.3.2 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) $5,000,000

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.

6.2.3.3 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).

AMERICAN OVERSIGHT

6.2.4 ***Additional Insurance Requirements***
The policies shall include, or be endorsed to include, as required by this written agreement, the following provisions:

6.2.4.1 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).

6.2.4.2 Insurance provided by the Contractor shall not limit the Contractor's liability assumed under the indemnification provisions of this Contract.

6.2.5 ***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. 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).

6.2.6 ***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.

6.2.7 ***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) evidencing that Contractor has the insurance as required by this Contract. An authorized representative of the insurer shall sign the certificates.

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

6.2.7.2 Each insurance policy required by this Contract must be in effect at, or prior to, commencement of work under this Contract. Failure

AMERICAN OVERSIGHT

to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.

6.2.7.3 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.

6.2.8 ***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 the Contract, proof from the Contractor that its subcontractors have the required coverage.

6.2.9 ***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.

6.2.10 ***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

6.3 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:

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

6.3.2 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;

AMERICAN OVERSIGHT

6.3.3 State may elect to participate in such action at its own expense; and

6.3.4 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.

6.4 Force Majeure

6.4.1 ***Definition.*** For this paragraph, "force majeure" means an occurrence that is

6.4.1.1 beyond the control of the affected party,

6.4.1.2 occurred without the party's fault or negligence, and

6.4.1.3 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 7.6 [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.

6.4.2 ***Relief From Performance***. Except 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

AMERICAN OVERSIGHT

by Contract Amendment for a period equal to the time that the results or effects of the delay prevented the delayed party from performing.

6.4.3 ***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.

6.4.4 ***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.

7.0 Warranties

7.1 Conformity to Requirements. Contractor warrants that, unless expressly provided otherwise elsewhere in the Contract, the Materials and Services will for 1 (one) year after acceptance and in each instance: (1) conform to the requirements of the Contract, which by way of reminder include without limitation all descriptions, specifications, and drawings identified in the Scope of Work and any Contractor affirmations included as part of the Contract; (2) be free from defects of material and workmanship; (3) conform to or perform in a manner consistent with current industry standards; and (4) be fit for the intended purpose or use described in the Contract. Mere delivery or performance does not substitute for express acceptance by the 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.

AMERICAN OVERSIGHT

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 [Assignment and Delegation] that expressly recognizes the event.

7.6 Performance in Public Health Emergency. Contractor warrants that it will:

7.6.1 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:

7.6.1.1 identification of response personnel by name;

7.6.2.1 key succession and performance responses in the event of sudden and significant decrease in workforce; and

7.6.1.3 alternative avenues to keep sufficient product on hand or in the supply chain.

7.6.2 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.

7.6.3 A request from the State related to this Section does not necessarily indicate that there has been an occurrence of force majeure, and the Contractor will not be entitled to any additional compensation or extension of time by virtue of having to implement a plan.

7.6.4 Failure to have or implement an appropriate plan will be a material breach of contract.

7.7 Lobbying

7.7.1 ***Prohibition***. Contractor warrants that it will not engage in lobbying activities, as defined in 40 Code of Federal Regulations (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 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. Contractor shall implement and maintain adequate controls to assure compliance with (a) above. Contractor shall obtain an equivalent warranty from all

AMERICAN OVERSIGHT

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

8.0 This section intentionally left blank.

9.0 This section intentionally left blank.

10.0 This section intentionally left blank.

11.0 **General Provisions for Materials**

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

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

11.3 Compensation for Late Deliveries**.** Contractor shall have clear, published policies in place regarding late delivery, order cancelation, discounts, or rebates given to compensate for late deliveries, etc., and make them readily available the Agency

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

11.5 Current Products**.** Contractor shall keep all products being offered under the Contract: (a) in current and ongoing production; (b) in its advertised product lines;

AMERICAN OVERSIGHT

(c) as models or types that are actively functioning in other paying customer environments; and (d) in conformance to the requirements of the Contract.

11.6 Maintain Comprehensive Selection**.** Contractor shall provide at all times the comprehensive selection of products for which a price is established in the Commercial Document for ordering by the Agency

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

11.8 Discontinued Products**.** If a product or groups of products covered by the Contract are discontinued by the manufacturer, Contractor shall notify State within 5 (five) business days after receiving the manufacturer's notification. State, at its discretion, will either allow Contractor to provide substitutes for the discontinued products or delete the products from the scope of the Contract, both of which will be accomplished by Contract Amendment. Contractor shall then update all applicable catalogs and price lists and make them available to all affected entities at no additional cost. The parties shall negotiate in good faith a fair price for any substitute product, but State may elect to delete the products from the scope of the Contract if no agreement is reached on substitute pricing in a timely manner. When notifying State of the discontinuance, Contractor shall provide: (a) manufacturer's announcement or documentation stating that the products have been discontinued, with identification by model/part number; (b) documentation demonstrating that the substitute products meet or exceed the specifications for the discontinued products while remaining in the same product groups as were the discontinued ones; and (c) documentation demonstrating that the proposed price for the substitute products is both fair and reasonable and at the same level of discount relative to market price as were the discontinued ones.

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

AMERICAN OVERSIGHT

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

11.11 Delivery

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

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

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

11.12 Delivery Time. Unless stated otherwise in the Purchase Order, Contractor shall make delivery within 2 (two) business days after receiving each Order.

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

11.13.1 if the Contract is for a single State agency in a single area, then Contractor shall deliver to any agency location in that area;

11.13.2 if the Contract is for a single State agency in all its locations, then Contractor shall deliver to any of that agency's location in Arizona;

11.14 Conditions at Delivery Location. Contractor shall verify receiving hours and conditions (i.e. height/weight restrictions, access control, etc.) with the relevant purchaser for the receiving site before scheduling or making a delivery. State will neither allow extra charges for wait time, comebacks, or the like nor excuse late delivery if Contractor has failed to make the verification or comply with the applicable conditions. Contractor shall make each delivery to the specific location indicated in the Order, which Contractor acknowledges might be inside an industrial

AMERICAN OVERSIGHT

building, institutional building, low-rise office building, or high-rise office building instead of a normal receiving dock. Contractor might be required to make deliveries to locations inside a secured perimeter at certain institutional facilities such as prisons where prior clearances are required for each delivery and driver individually. Contractor shall contact each such facility directly to confirm its most-current security clearance procedures, allowable hours for deliveries, visitor dress code, and other applicable rules. State will neither allow extra charges for wait time, comebacks, or the like nor excuse late delivery if Contractor has failed to make the confirmation or comply with the applicable conditions.

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

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

11.16.1 Contractor shall be solely responsible for the cost of any associated cutting and patching, temporary protection measures, packing and crating, hoisting and loading, transportation, unpacking, inspection, repacking, reshipping, and reinstallation if installation is within the scope of the Contract.

11.16.2 If Contractor fails to do so in a timely manner, State will be entitled to exercise its remedies under paragraph 8.5 [*Right of Offset*] of the Uniform Terms and Conditions.

11.16.3 Whether State will permit Contractor to repair in place or demands that Contractor remove and replace is at State's discretion in each instance, provided that, State shall not apply that discretion punitively if repair in place is practicable and doing so would not create safety hazards, put property at risk, unreasonably interfere with operations, create public nuisance, or give rise to any other reasonable concern on State's part.

11.17 Returns**.** State may, at its discretion, return for full credit and with no restocking charges any delivered. Materials unused in the original packaging, including any instruction manuals or other incidental item that accompanied the original shipment,

AMERICAN OVERSIGHT

within thirty (30) days after receipt. If State elects to return delivered Materials, then State shall pay all freight, delivery, and transit insurance costs to return the products to the place from which Contractor shipped them, provided that, if State returns delivered Materials because they are defective or non-conforming or for any other reason having to do with Contractor fault or error, then State will not be responsible for paying freight, delivery, or transit insurance costs to return the products and may, at its discretion, either have those billed directly to Contractor or offset them under paragraph 8.5 [*Right of Offset*] of the Uniform Terms and Conditions.

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

11.18.1 Pay Contractor for any portion of the Materials and Services from that Order that have been properly delivered or performed as of the cancellation effective date plus one (1) additional business day.

11.18.2 Reimburse Contractor for:

11.18.2.1 its actual, documented costs incurred in fulfilling the Order up to the cancellation effective date plus one (1) additional business day;

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

11.18.2.3 Contractor shall not charge or be entitled to charge State for any new costs it incurs after receiving the cancellation notice. By way of reminder, State is not liable for any products that were produced, shipped, or delivered or any services that were performed before Contractor had acknowledged the corresponding Order

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

11.20 Hazardous Materials**.** Contractor shall timely provide State with any “Safety Data Sheets” (SDS) and any other hazard communication documentation required under the US Department of Labor’s Occupational Safety and Health Administration (OSHA) “Hazard Communication Standard” (often referred to as the “HazCom 2012 Final Rule”) that is reasonably necessary for State to comply with regulations when it or its other contractors install, handle, operate, repair, maintain or remove any

AMERICAN OVERSIGHT

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

12.0 General Provisions for Services

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

12.2 Comprehensive Services. Contractor shall provide the comprehensive range of services for which a price is established.

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

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

12.5 Removal of Personnel. Notwithstanding that Contractor is in every circumstance responsible for hiring, assigning, directing, managing, training, disciplining, and rewarding its personnel, State may at its discretion and without the obligation to demonstrate cause instruct Contractor to remove any of its personnel from State's

AMERICAN OVERSIGHT

facilities or from further assignment under the Contract. In such cases, Contractor shall promptly replace them with other personnel having equivalent qualifications, experience, and capabilities.

12.6 Transitions**.** During commencement, Contractor shall attend transition meetings with any outgoing vendors to coordinate and ease the transition so that the effect on State's operations is kept to a minimum. State may elect to have outgoing vendors complete some or all of their work or 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**.** 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 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 unaccepted 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

AMERICAN OVERSIGHT

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.

12.10.1 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).

12.10.2 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.

12.10.3 Contractor shall take the necessary action(s) 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:

13.2.1 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 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

13.2.2 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

AMERICAN OVERSIGHT

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:

13.3.1 PII has the meaning given in the [federal] Office of Management and Budget (OMB) *Memorandum M-17-12 Preparing for and Responding to a Breach of Personally Identifiable Information, January 3, 2017*; and

13.3.2 "protect" means taking measures to safeguard personally identifiable information and prevent its breach that are functionally equivalent to those called for in that OMB memorandum and elaborated on in the [federal] General Services Administration (GSA) *Directive CIO P* 2180*.1 GSA Rules of Behavior for Handling Personally Identifiable Information*.

NOTE (1): For convenience of reference only, the OMB memorandum is available at:
https://dpcld.defense.gov/Privacy/Authorities-and-Guidance/
NOTE (2): For convenience of reference only, the GSA directive is available at:
https://www.gsa.gov/directive/gsa-rules-of-behavior-for-handling-personally-identifiable-information-(pii)-

13.4 Protected Health Information. Contractor warrants that, to the extent performance under 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:

13.4.1 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 CFR45-160(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;

13.4.2 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

13.4.3 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.

AMERICAN OVERSIGHT

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. §18-101 - 6 "…all 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 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 identity 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 identifications (IDs) and passwords. Contractor is responsible to State for ensuring that any State access IDs and passwords are used only by the person to whom they were issued. Contractor shall ensure that personnel are only provided the minimum only such level of access necessary to perform his or duties. Contractor shall on request, provide a current register of the access IDs and passwords and corresponding access levels currently assigned to its personnel.

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

AMERICAN OVERSIGHT

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:

14.4.2.1 State reserves the right to elect to participate in the action at its own expense;

14.4.2.2 State reserves the right to approve or reject any settlement or compromise on reasonable grounds and if done so timely; an

14.4.2.3 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:
14.6.1.1 replace any infringing items with non-infringing ones;

14.6.1.2 obtain for State the right to continue using the infringing items; or

AMERICAN OVERSIGHT

14.6.1.3 modify the infringing items so that they become non-infringing, so long as they continue to function as specified following the modification.

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

14.6.2.1 for any software created for State under the Contract, the amount State paid to Contactor for creating it;

14.6.2.2 for all other Materials, the net book value of the product provided according to generally accepted accounting principles; and

14.6.2.3 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:

14.6.3.1 modification or use of Materials other than as contemplated by the Contract or expressly authorized or proposed by a Contractor Indemnitor;

14.6.3.2 operation of Materials with any operating software other than that supplied by Contractor or authorized or proposed by a Contractor Indemnitor; or

14.6.3.3 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 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 does not limit liability arising from any:

AMERICAN OVERSIGHT

14.7.2.1 Indemnified Claim against which Contractor has indemnified State Indemnitees under paragraph 6.3;

14.7.2.2 claim against which Contractor has indemnified State Indemnitees under paragraph 6.4; or

14.7.2.3 provision of the Contract calling for liquidated damages or specifying amounts or percentages as being at-risk or subject to deduction for performance deficiencies.

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

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

14.8 Information Technology Warranty

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

14.8.1.1 modified or altered by anyone not authorized by Contractor to do so;

14.8.1.2 maintained in a way inconsistent to any applicable manufacturer recommendations; or

14.8.1.3 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:

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

14.8.2.2 the COTS software will, to the best of its knowledge, at the time of delivery be free of viruses, backdoors, worms, spyware, malware,

AMERICAN OVERSIGHT

and other malicious code that could hamper performance, collect unlawfully any personally identifiable information, or prevent products from performing as required by the Contract; and

14.8.2.3 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 that was first called for. For clarification of intent, the foregoing obligations are limited by the limitation of liability in paragraph 14.7. If none of the forgoing options can reasonably be effected, or if the use of the materials by State is made impractical by the nonconformance, then State may seek any remedy available to it under law.

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

14.11 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.

14.11.1 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.

14.11.2 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.

AMERICAN OVERSIGHT

14.11.3 Contractor must submit a copy of system logs from the cloud system to the State of Arizona security team on a regular basis to be added to the State SIEM (Security Information Event Monitor) or IDS (Intrusion Detection System).

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

AMERICAN OVERSIGHT

Uniform Terms and Conditions

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.

AMERICAN OVERSIGHT

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 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

AMERICAN OVERSIGHT

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 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. 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

AMERICAN OVERSIGHT

the State and shall take no affirmative actions that might have the effect of vesting all or part of the Intellectual Property in any entity other than the State. The Intellectual Property shall not be disclosed by contractor or its subcontractor(s) to any entity not the State without the express written authorization of the agency, department, division, board or commission of the State of Arizona requesting the issuance of this contract.

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

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

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

4. 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.

AMERICAN OVERSIGHT

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. 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.

AMERICAN OVERSIGHT

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 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:

AMERICAN OVERSIGHT

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

6.4.2.2. Late performance by a subcontractor unless the delay arises out of a force majeure occurrence in accordance with this force majeure term and condition; or

6.4.2.3. Inability of either the Contractor or any subcontractor to acquire or maintain any required insurance, bonds, licenses or permits.

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

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

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

7. 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.

AMERICAN OVERSIGHT

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, 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.

AMERICAN OVERSIGHT

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.

8.2.3. Non-exclusive Remedies. The rights and the remedies of the State under this Contract are not exclusive.

8.3. 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.

8.4. 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 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

AMERICAN OVERSIGHT

activity, including but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body. Submittal of an offer or execution of a contract shall attest that the contractor is not currently suspended or debarred. If the contractor becomes suspended or debarred, the contractor shall immediately notify the State.

9.4. Termination for Convenience. The State reserves the right to terminate the Contract, in whole or in part at any time when in the best interest of the State, without penalty or recourse. Upon receipt of the written notice, the Contractor shall stop all work, as directed in the notice, notify all subcontractors of the effective date of the termination and minimize all further costs to the State. In the event of termination under this paragraph, all documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the State upon demand. The Contractor shall be entitled to receive just and equitable compensation for work in progress, work completed and materials accepted before the effective date of the termination. The cost principles and procedures provided in A.A.C. R2-7-701 shall apply.

9.5. Termination for Default.

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

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

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

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

10. 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

AMERICAN OVERSIGHT

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, Phoenix, Arizona, 85007.

Boycott of Israel Disclosure

All materials submitted are subject to Arizona public records law and will be disclosed if there is an appropriate public records request at the time of or after the award of the contract. Recently legislation has been enacted to prohibit the state from contracting with companies currently engaged in a boycott of Israel. To ensure compliance with A.R.S. §35-393.01. This form must be completed and returned with the contract and any supporting information to assist the State in making its determination of compliance

As defined by A.R.S. §35-393.01:

1. "Boycott" means engaging in a refusal to deal, terminating business activities or performing other actions that are intended to limit commercial relations with Israel or with persons or entities doing business in Israel or in territories controlled by Israel, if those actions are taken either:
   (a) In compliance with or adherence to calls for a boycott of Israel other than those boycotts to which 50 United States Code section 4607(c) applies.
   (b) In a manner that discriminates on the basis of nationality, national origin or religion and that is not based on a valid business reason.
2. "Company" means a sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company or other entity or business association, and includes a wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate.
3. "Direct holdings" means all publicly traded securities of a company that are held directly by the state treasurer or a retirement system in an actively managed account or fund in which the retirement system owns all shares or interests.
4. "Indirect holdings" means all securities of a company that are held in an account or fund, including a mutual fund, that is managed by one or more persons who are not employed by the state treasurer or a retirement system, if the state treasurer or retirement system owns shares or interests either:
   (a) together with other investors that are not subject to this section.
   (b) that are held in an index fund.
5. "Public entity" means this State, a political subdivision of this State or an agency, board, commission or department of this State or a political subdivision of this State.
6. "Public fund" means the state treasurer or a retirement system.
7. "Restricted companies" means companies that boycott Israel.
8. "Retirement system" means a retirement plan or system that is established by or pursuant to title 38.

All offerors must select one of the following:

X_____ My company **does not** participate in, and agrees not to participate in during the term of the contract, a boycott of Israel in accordance with A.R.S. §35-393.01. I understand that my entire response will become public record in accordance with A.A.C. R2-7-C317.

AMERICAN OVERSIGHT

	Direct Contract Contract #: **CTR060262** Description: **Transportation of Asylum Seekers**	Arizona Department of Administration State Procurement Office 100 N 15th Avenue Phoenix, AZ 85007

_____ My company **does** participate in a boycott of Israel as defined by A.R.S. §35-393.01.

By submitting this response, proposer agrees to indemnify and hold the State, its agents and employees, harmless from any claims or causes of action relating to the State's action based upon reliance on the above representations, including the payment of all costs and attorney fees incurred by the State in defending such an action.

AMI Expeditionary Healthcare LLC
Company Name

12030 Sunrise Valley Drive, Suite 250
Address

Reston, VA 20191
City State Zip

Signature of Person Authorized to Sign

Michael Smith
Printed Name

EVP, US Clinical Services
Title

AMERICAN OVERSIGHT