



**STATE OF ARIZONA**  
**Department of Health Services**  
**NOTICE OF INVITATION FOR BID**

**ARIZONA DEPARTMENT OF  
HEALTH SERVICES**  
150 North 18<sup>th</sup> Avenue, Suite 530  
Phoenix, Arizona 85007

**SOLICITATION NUMBER:**

**BPM002909**

**SOLICITATION DUE DATE/TIME:**

**October 9, 2020 at 3:00:00 pm Local Arizona Time**

**SUBMITTAL LOCATION:**

<https://appstate.az.gov/page.aspx/en/usr/login>

**DESCRIPTION:**

**HIV Rapid Test Kits**

**PRE-BID CONFERENCE**

**Pre-Bid Conference will not be held.**

In accordance with Arizona Revised Statute (A.R.S.) § 41-2533, competitive sealed bids for the services specified will be received by the Arizona Department of Health Services (ADHS) online in the State of Arizona's online procurement system APP, at <https://app.az.gov>. Bids received by the due date and time will be opened. The name of each Bidder will be publicly available. Bids must be submitted in the State of Arizona's Procurement Portal on or prior to the date and time indicated. Late Bids will not be considered. It is the responsibility of the bidder to routinely check the APP web site for Solicitation Amendments. Additional instructions for preparing an Offer are included in this solicitation.

With seventy-two (72) hours prior notice, persons with disabilities may request special accommodations such as interpreters, alternative formats, or assistance with physical accessibility. Such requests are to be addressed to the Solicitation contact person named below.

**BIDDERS ARE STRONGLY ENCOURAGED TO CAREFULLY READ THE ENTIRE SOLICITATION**

**Solicitation Contact Person:**

Carlos Carranza Jr., Procurement Officer

Arizona Department of Health Services

Phone: (480) 356-1006

E-mail: [Carlos.Carranza@azdhs.gov](mailto:Carlos.Carranza@azdhs.gov)



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**HIV Rapid Test Kits**

**ARIZONA DEPARTMENT  
OF HEALTH SERVICES**  
150 North 18<sup>th</sup> Avenue, Suite 260  
Phoenix, AZ 85007

**\*The following table of contents applies to all attachment documents in APP for this Solicitation\***

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**Part One (1) – Scope of Work**  
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## **I. SCOPE OF WORK**

### **1. BACKGROUND**

1.1. The Arizona Department of Health Services (ADHS), Bureau of Epidemiology and Disease Control (EDC) is committed to utilizing a combination of scientifically proven, cost-effective and scalable interventions. These interventions are targeted populations in Arizona that address the goals of the National Human Immunodeficiency Virus/Acquired Immunodeficiency Syndrome (HIV/AIDS) Strategy which include:

- 1.1.1. Reducing new HIV infections,
- 1.1.2. Increasing access to care,
- 1.1.3. Improving health outcomes for people living with HIV, and
- 1.1.4. Reducing HIV-related health disparities.

1.2. In December of 2012, the HIV Program was awarded a grant from the Centers for Disease Control and Prevention (CDC). These funds are provided to state health departments to implement a comprehensive statewide HIV Prevention Program. Arizona's program is based upon the goals of the National HIV/AIDS Strategy, which is to:

- 1.2.1. Lower the number of infections,
- 1.2.2. Increase the percentage of people living with HIV who know of their infection to 90%,
- 1.2.3. Reduce the HIV transmission rate,
- 1.2.4. Increase the percentage of newly diagnosed people linked to care,
- 1.2.5. Intensify HIV Prevention in the communities where HIV is most heavily concentrated,
- 1.2.6. Expand targeted use of effective combinations of evidence-based HIV Prevention approaches, and
- 1.2.7. Educate all Arizonans about the threat of HIV and how to prevent it.

1.3. In order to support the interventions, the HIV Prevention Program intends to utilize the most updated point-of-care HIV rapid tests and supplies. The CDC has recommended a new HIV testing protocol that will take advantage of advances in testing technology and will better identify acute cases of the virus. New "fourth generation" HIV tests not only screen for antibodies to the virus in blood samples but also for what's known as the HIV-1 p-24 antigen, which shows up in the body much sooner than antibodies. Correctly identifying acute cases of HIV is crucial for HIV prevention because viral loads are typically very high during that period of infection, making someone much more likely to pass on the virus.

### **2. OBJECTIVE**

To obtain HIV rapid test kits and supplies that screen for the HIV-1 p-24 antigen, for use by local agencies, county health departments and districts throughout the state.



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### 3. SCOPE OF SERVICES / SPECIFICATIONS

The Contractor shall:

- 3.1. Provide a comprehensive selection of materials and pricing through established catalogs and brochures, if applicable;
- 3.2. Catalog and brochure price lists shall be available in electronic (web-based) and/or hardcopy formats;
  - 3.2.1. All electronic and hardcopy catalog and brochure price lists shall contain the same products and pricing,
  - 3.2.2. All costs associated with creation, distribution, management, set up, interface, and delivery of all catalog and brochure price lists shall be borne by the Contractor,
    - 3.2.2.1. Products:
      - 3.2.2.1.1. HIV Rapid (point-of-care) tests that have been approved by the Food and Drug Administration (FDA), for a Clinical Laboratory Improvement Amendment (CLIA) waived tests. CMS.gov CLIA Information:
        - 3.2.2.1.1.1. The rapid test kits shall be capable of detecting HIV-1 p24 antigen and HIV-1 and HIV-2 antibodies (Ag/Ab Combo);
        - 3.2.2.1.1.2. The rapid test kits shall detect HIV-1 p-24Ag in less than thirty (30) days from infection; and
        - 3.2.2.1.1.3. The rapid test kits shall have a minimum shelf life of fourteen (14) months,
      - 3.2.2.2. Training materials and procedural instructions for proper handling and administration of the rapid test kits,
      - 3.2.2.3. Copies of Subject Information Notices, and
      - 3.2.2.4. End-User Samples:
        - 3.2.2.4.1. Provide at each of the ADHS user's request, one (1) complete set of samples at no cost to ADHS.

### 4. REQUIREMENTS

The Contractor shall:

- 4.1. Submit invoices at the time an order is delivered including:
  - 4.1.1. Verification of delivery with the invoice, and
  - 4.1.2. The bill of lading if Contractor's invoice includes freight;
- 4.2. Itemize invoices to include products sent, services provided and any exceptions noted;



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- 4.3. Have the ability to ship to multiple locations Statewide;
- 4.4. Provide a catalog discount;
- 4.5. Provide products at the discount price offered in the Arizona Procurement Portal (APP) items tab;
- 4.6. Offer a full satisfaction guarantee. Any item that is received in error or in a defective or damaged condition shall be replaced within thirty (30) days at no cost to ADHS;
- 4.7. At the Contractor's expense, locate a similar item and obtain written agreement from the ordering Program, to replace the product, if a product ordered cannot be delivered in the timeframe agreed upon at the time of order; and
- 4.8. Provide and maintain a valid Certificate of Liability insurance (COI) upon Contract Award and throughout the life of the Contract that exactly matches the description and language contained in the Special Terms and Conditions. No Purchase Order shall be issued by ADHS unless there is valid COI provided by the Contractor.

**5. DELIVERABLES**

The Contractor shall provide the following item, to the ADHS:

- 5.1. Invoice, due on date order is delivered. Invoice shall include ADHS Contract number, catalog price, amount of discount and net cost to ADHS.

**6. NOTICES, CORRESPONDENCE, REPORTS AND INVOICES**

- 6.1. Notices, Correspondence and Invoices from the Contractor to ADHS shall be sent to:

Attn: Deborah Reardon-Maynard  
HIV Prevention Program Improvement Manager  
Arizona Department of Health Services  
150 N. 18th Ave., Suite 110  
Phoenix, AZ 85007  
(602) 364-3599  
[Deborah.Reardon@azdhs.gov](mailto:Deborah.Reardon@azdhs.gov)

- 6.2. Invoices shall be submitted to [invoices@azdhs.gov](mailto:invoices@azdhs.gov)



**Part One (1) – Special Terms and Conditions**  
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## **II. SPECIAL TERMS AND CONDITIONS**

### **1. Purpose**

Pursuant to provisions of the Arizona Procurement Code, A.R.S. § 41-2501 Et Seq., the State of Arizona, Department of Health Services (ADHS) intends to establish a Contract for the materials or services as listed herein.

### **2. Term of Contract (1 Year)**

The term of any resultant Contract shall commence upon final signature and shall continue for a period of One (1) Year thereafter, unless terminated, canceled or extended as otherwise provided herein.

### **3. Contract Extensions 5 Year Maximum**

The Contract term begins upon award and shall continue for a period of One (1) Year subject to additional successive periods of twelve (12) months per extension with a maximum aggregate including all extensions not to exceed five (5) years.

### **4. Contract Type**

Fixed Price

### **5. Licenses**

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

### **6. Information Disclosure**

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

### **7. Key Personnel**

- 7.1. It is essential that the Contractor provide adequate experienced personnel, capable of and devoted to the successful accomplishment of work to be performed under this Contract. The Contractor shall agree to assign specific individuals to the key positions.
- 7.2. The Contractor agrees that, once assigned to work under this Contract, key personnel shall not be removed or replaced without written notice to the State.
- 7.3. Key personnel who are not available for work under this Contract for a continuous period exceeding thirty (30) calendar days, or are expected to devote substantially less effort to the work than initially anticipated, the Contractor shall immediately notify the State, and shall, subject to the concurrence of the State, replace such personnel with personnel of substantially equal ability and qualifications.



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#### 8. Most-Favored Customer

Throughout the life of the contract, the Contractor shall always offer the State the Most-Favored Customer or Highest Tier Customer price discount rate on contracted product(s) concurrent with a published price discount rate made to other Customers (both Private and Public sectors). The Contractor shall extend to the State that most-favored customer or Highest Tier Customer price discount on all new product lines during the life of the contract.

#### 9. Non-Exclusive Contract

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

#### 10. Volume of Work

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

#### 11. Employees of the Contractor

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

#### 12. Order Process


The award of a Contract shall be in accordance with the Arizona Procurement Code. Any attempt to represent any material and/or service not specifically awarded as being under contract with ADHS is a violation of the Contract and the Arizona Procurement Code. Any such action is subject to the legal and contractual remedies available to the state inclusive of, but not limited to, Contract cancellation, suspension and/or debarment of the Contractor.

#### 13. Vendor Performance Reports

Program management shall document vendor performance, both exemplary and needing improvements where corrective action is needed or desired. Copies of corrective action reports will be forwarded to the ADHS Procurement Office for review and any necessary follow-up. The Procurement Office may contact the Contractor upon receipt of the report and may request corrective action. The Procurement Office shall discuss the Contractor's suggested corrective action plan with the Procurement Specialist for approval of the plan.

#### 14. Payment Procedures

- 14.1. ADHS accounting will not make payments to any Entity, Group or individual other than the Vendor with the Federal Employer Identification (FEI) Number identified in the Contract. Vendor invoices requesting payment to any Entity, Group or individual other than the contractually specified Vendor shall be returned to the Vendor for correction.
- 14.2. The Vendor shall review and insure that the invoices for services provided show the correct Vendor name prior to sending them to the ADHS Accounting Office for payment.
- 14.3. If the Vendor Name and FEI Number change, the Vendor must complete an "Assignment and Agreement" form transferring contract rights and responsibilities to the new Vendor. ADHS must indicate consent on the

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|  | <p align="center"><b>Part One (1) – Special Terms and Conditions</b></p> <p align="center"><b>INVITATION FOR BID No.: BPM002909</b></p> <p align="center"><b>HIV Rapid Test Kits</b></p> | <p align="center"><b>ARIZONA DEPARTMENT OF HEALTH SERVICES</b><br/> 150 North 18<sup>th</sup> Avenue, Suite 530<br/> Phoenix, AZ 85007</p> |
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form. A written Contract Amendment must be signed by both parties and a new IRS W-9 form must be submitted by the new Vendor and entered into the system prior to any payments being made to the new Vendor.

**15. Financial Management**

- 15.1. For all Contracts, the practices, procedures, and standards specified in and required by the Accounting and Auditing Procedures Manual for Arizona Department of Health Services funded programs shall be used by the Contractor in the management of Contract funds and by the ADHS when performing a Contract audit. Funds collected by the Contractor in the form of fees, donations and/or charges for the delivery of these Contract services shall be accounted for in a separate fund.
- 15.2. *State Funding.* Contractors receiving state funds under this Contract shall comply with the certified compliance provisions of A.R.S. § 35-181.03.
- 15.3. *Federal Funding.* Contractors receiving federal funds under this Contract shall comply with the certified finance and compliance audit provision of the Office of Management and Budget (OMB) Circular A-133, if applicable. The federal financial assistance information shall be stated in a Change Order or Purchase Order.

**16. Inspection and Acceptance**

All services, data and required reports are subject to final inspection, review, evaluation and acceptance by the ADHS. The ADHS may withhold payment for services that are deemed to not meet Contract standards.

**17. Authorization for Services**

Authorization for purchase of services under this Contract shall be made only upon ADHS issuance of a Purchase Order that is signed by an authorized agent. The Purchase Order will indicate the Contract number and the dollar amount of funds authorized. The Contractor shall only be authorized to perform services up to the amount on the Purchase Order. ADHS shall not have any legal obligation to pay for services in excess of the amount indicated on the Purchase Order. No further obligation for payment shall exist on behalf of ADHS unless a) the Purchase Order is changed or modified with an official ADHS Procurement Change Order, and/or b) an additional Purchase Order is issued for purchase of services under this Contract.

**18. Indemnification Clause**

- 18.1. 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.





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18.2. 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.

**19. Insurance Requirements**

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

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

19.1. Minimum Scope and Limits of Insurance

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

19.1.1. 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

19.1.1.1. 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.

19.1.1.2. 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.

19.1.2. 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

19.1.2.1. 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



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from work performed by or on behalf of the Contractor.

19.1.2.2. 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).

19.1.3. Professional Liability (Errors and Omissions Liability)

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

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

19.1.3.2. The policy shall cover professional misconduct or negligent acts for those positions defined in the Scope of Work of this contract.

19.2. Additional Insurance Requirements

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

19.2.1. 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).

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

19.3. 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).

19.4. 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.

19.5. Verification of Coverage



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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.

- 19.5.1. 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.
- 19.5.2. Each insurance policy required by this Contract must be in effect at, or prior to, commencement of work under this Contract. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.
- 19.5.3. 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.

#### 19.6. Subcontractors

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

#### 19.7. 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.

#### 19.8. 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.

### 20. Health Insurance Portability and Accountability Act of 1996

- 20.1. The Contractor warrants that it is familiar with the requirements of HIPAA, as amended by the Health Information Technology for Economic and Clinical Health Act (HITECH Act) of 2009, and accompanying regulations and will comply with all applicable HIPAA requirements in the course of this Contract. Contractor warrants that it will cooperate with the Arizona Department of Health Services (ADHS) in the course of performance of the Contract so that both ADHS and Contractor will be in compliance with HIPAA, including cooperation and coordination with the Arizona Department of Administration-Arizona Strategic Enterprise Technology (ADOA-ASET) Office, the ADOA-ASET Arizona State Chief Information Security Officer and HIPAA Coordinator and other compliance officials required by HIPAA and its regulations. Contractor will sign any documents that are reasonably necessary to keep ADHS and Contractor in compliance with HIPAA,



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including, but not limited to, business associate agreements.

20.2. If requested by the ADHS Procurement Office, Contractor agrees to sign a “Pledge To Protect Confidential Information” and to abide by the statements addressing the creation, use and disclosure of confidential information, including information designated as protected health information and all other confidential or sensitive information as defined in policy. In addition, if requested, Contractor agrees to attend or participate in HIPAA training offered by ADHS or to provide written verification that the Contractor has attended or participated in job related HIPAA training that is: (1) intended to make the Contractor proficient in HIPAA for purposes of performing the services required and (2) presented by a HIPAA Privacy Officer or other person or program knowledgeable and experienced in HIPAA and who has been approved by the ADOA-ASET Arizona State Chief Information Security Officer and HIPAA Coordinator.

#### 21. New Products/Services Language

The State, at its sole discretion may allow new products or services identified by the Contractor or ADHS to be incorporated. The request may be submitted at any time during the Contract period. The requested products or services shall align with the current Scope of Work and Price List.

#### 22. Shipping F.O.B. Destination:

Prices shall be F.O.B. destination, inside delivery, to the delivery location designated at time of order and submission of Purchase Order. Contractor shall retain title and control of all goods until they are delivered and the Contract of coverage has been completed. All risk of transportation and all related charges shall be the responsibility of the Contractor. All claims for visible or concealed damage shall be filed by the Contractor. The State or eligible participating entity will notify the Contractor promptly of any damaged goods and shall assist the Contractor in arranging for inspection.

#### 23. Defective Products

All defective products shall be replaced and exchanged by the Contractor. The cost of transportation, unpacking, inspection, repacking, reshipping or other like expenses shall be paid by the Contractor. All replacement products must be received by the State within seven (7) days of initial notification.

#### 24. New Equipment

All equipment, and supplies provided for through this Contract shall be brand new. Equipment shall be warranted by the Original Equipment Manufacturer. Evidence of such warranty may be required to be provided, prior to payment of any submitted invoice. ADHS will not accept or pay for any equipment delivered and found to be remanufactured, rebranded, or refurbished.

#### 25. Product Discontinuance

25.1. In the event that a manufacturer discontinues a product or groups of products, the State at its sole discretion may allow the Contractor to provide substitutes for the discontinued product(s) or allow the deletion of such products from the Contract. The request may be submitted at any time during the Contract period and shall be supplemented with the following information. Failure to supply any of the following information with the request may result in the State not considering the request;

25.1.1. A formal announcement from the manufacturer stating that the product(s) or equipment has been discontinued,

25.1.2. Documentation from the manufacturer that cites the effected products by item number and



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description, and

- 25.1.3. Documentation from the manufacturer that names the replacement product(s) or equipment.

#### 26. Technology Replacement

In any event where product is discontinued, no longer available or technically inferior to newly developed product, the Contractor shall provide an equivalent replacement model at no additional cost and shall honor the original contract terms.

#### 27. Data Universal Numbering System (DUNS) Requirement

Pursuant to 2 CFR 25.100 et seq., no entity (defined as a Governmental organization, which is a State, local government, or Indian tribe; foreign public entity; domestic or foreign nonprofit organization; domestic or foreign for-profit organization; or Federal agency, but only as a sub-recipient under an award or sub-award to a non-Federal entity) may receive a sub-award from ADHS unless the entity provides its Data Universal Numbering System (DUNS) Number to ADHS.

#### 28. Pandemic Contractual Performance

28.1. The State shall require a written plan that illustrates how the Contractor shall perform up to contractual standards in the event of a pandemic. The State may require a copy of the plan any time prior or post award of a Contract. At a minimum, the pandemic performance plan shall include:

- 28.1.1. Key succession and performance planning if there is a sudden significant decrease in Contractor's workforce;
- 28.1.2. Alternative methods to ensure there are products in the supply chain; and
- 28.1.3. An up to date list of company contacts and organizational chart.

28.2. In the event of a pandemic, as declared the Governor of Arizona, U.S. Government or the World Health Organization, which makes performance of any term under this Contract impossible or impracticable, the State shall have the following rights:

- 28.2.1. After the official declaration of a pandemic, the State may temporarily void the Contract(s) in whole or specific sections, if the Contractor cannot perform to the standards agreed upon in the initial terms;
- 28.2.2. The State shall not incur any liability if a pandemic is declared and emergency procurements are authorized by the Director as per A.R.S. 41-2537 of the Arizona Procurement Code; and
- 28.2.3. Once the pandemic is officially declared over and/or the Contractor can demonstrate the ability to perform, the State, at its sole discretion, may reinstate the temporarily voided Contract(s).

28.3. The State, at any time, may request to see a copy of the written plan from the Contractor. The Contractor shall produce the written plan within seventy-two (72) hours of the request.



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#### 29. The Federal Funding Accountability and Transparency Act (FFATA or Transparency Act - P.L.109-282, as amended by section 6202(a) of P.L. 110-252), found at <https://www.fsrc.gov/>

If applicable, the Contractor/Grantee shall submit to ADHS via email the Grant Reporting Certification Form. This form and the instructions can be downloaded from the ADHS Procurement website at <http://www.azdhs.gov/operations/financial-services/procurement/index.php#ffata> and must be returned to the ADHS by the 15th of the month following that in which the award was received. The form shall be completed electronically, and submitted using the steps outlined in the Grant Reporting Certification Form Instructions to the following email address: [ADHS\\_Grant@azdhs.gov](mailto:ADHS_Grant@azdhs.gov). All required fields must be filled including Top Employee Compensation, if applicable. Completing the Grant Reporting Certification Form is required for compliance with the Office of Management and Budget (OMB), found at <http://www.whitehouse.gov/omb/open>. Failure to timely submit the Grant Reporting Certification Form could result in the loss of funds. This requirement applies to all subcontractors/sub-awardees utilized by the Contractor/Grantee for amounts exceeding \$30,000.00 during the term of the Award.

#### 30. Transition Activities

- 30.1. The Contractor shall support the transfer of goods and services to the new Contractor at the conclusion of its Contract;
- 30.2. Upon termination of this Contract, if ADHS anticipates a continued need for the Contract Services specified herein and a contract is awarded to a new Contractor, there shall be a transition of services period of not less than thirty (30) days. During this period, the existing Contractor shall work closely with the new Contractor, or Contractors, personnel and/or staff to ensure a smooth and complete transfer of duties and responsibilities;
- 30.3. An authorized representative from ADHS shall coordinate all transition activities. A transition plan will be developed in conjunction with the outgoing Contractor to assist the new Contractor, or Contractors, personnel and/or staff to implement the transfer of duties;
- 30.4. ADHS reserves the right to determine which projects nearing completion will remain with the current Contractor of record.
- 30.5. The Contractor shall return all ADHS equipment, reports, and any other documentation developed during the term of the Contract that ADHS deems necessary to maintain ongoing operations.

#### 31. Contracting; Procurement; Investment; Prohibitions

- 31.1. A public entity may not enter into a contract with a company to acquire or dispose of services, supplies, information technology or construction unless the contract includes a written certification that the company is not currently engaged in, and agrees for the duration of the contract to not engage in, a boycott of Israel.
- 31.2. A public entity may not adopt a procurement, investment or other policy that has the effect of inducing or requiring a person or company to boycott Israel.



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### III. 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.

#### 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



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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; and
  - 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 (5) years after the completion of the Contract. All records shall be subject to inspection and audit by the State at reasonable times. Upon request, the Contractor shall produce a legible copy of any or all such records.
- 3.2. Non-Discrimination. The Contractor shall comply with State Executive Order No. 2009-09 and all other applicable Federal and State laws, rules and regulations, including the Americans with Disabilities Act.
- 3.3. Audit. Pursuant to ARS § 35-214, at any time during the term of this Contract and five (5) years thereafter, the Contractor's or any subcontractor's books and records shall be subject to audit by the State and, where applicable, the Federal Government, to the extent that the books and records relate to the performance of the Contract or Subcontract.
- 3.4. Facilities Inspection and Materials Testing. The Contractor agrees to permit access to its facilities, subcontractor facilities and the Contractor's processes or services, at reasonable times for inspection of the facilities or materials covered under this Contract. The State shall also have the right to test, at its own cost,





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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 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



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personal client data shall be performed within the defined territories of the United States. Unless specifically stated otherwise in the specifications, this paragraph does not apply to indirect or 'overhead' services, redundant back-up services or services that are incidental to the performance of the contract. This provision applies to work performed by subcontractors at all tiers.

#### 4. Costs and Payments

- 4.1. Payments. Payments shall comply with the requirements of A.R.S. Titles 35 and 41, Net 30 days. Upon receipt and acceptance of goods or services, the Contractor shall submit a complete and accurate invoice for payment from the State within thirty (30) days.
- 4.2. Delivery. Unless stated otherwise in the Contract, all prices shall be F.O.B. Destination and shall include all freight delivery and unloading at the destination.
- 4.3. Applicable Taxes.
  - 4.3.1. Payment of Taxes. The Contractor shall be responsible for paying all applicable taxes.
  - 4.3.2. State and Local Transaction Privilege Taxes. The State of Arizona is subject to all applicable state and local transaction privilege taxes. Transaction privilege taxes apply to the sale and are the responsibility of the seller to remit. Failure to collect such taxes from the buyer does not relieve the seller from its obligation to remit taxes.
  - 4.3.3. Tax Indemnification. Contractor and all subcontractors shall pay all Federal, state and local taxes applicable to its operation and any persons employed by the Contractor. Contractor shall, and require all subcontractors to hold the State harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under Federal, and/or state and local laws and regulations and any other costs including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.
  - 4.3.4. IRS W9 Form. In order to receive payment the Contractor shall have a current I.R.S. W9 Form on file with the State of Arizona, unless not required by law.
- 4.4. Availability of Funds for the Next State fiscal year. Funds may not presently be available for performance under this Contract beyond the current state fiscal year. No legal liability on the part of the State for any payment may arise under this Contract beyond the current state fiscal year until funds are made available for performance of this Contract.
- 4.5. Availability of Funds for the current State fiscal year. Should the State Legislature enter 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



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Contract. Changes to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by a person who is not specifically authorized by the procurement officer in writing or made unilaterally by the Contractor are violations of the Contract and of applicable law. Such changes, including unauthorized written Contract Amendments shall be void and without effect, and the Contractor shall not be entitled to any claim under this Contract based on those changes.

- 5.2. Subcontracts. The Contractor shall not enter into any Subcontract under this Contract for the performance of this contract without the advance written approval of the Procurement Officer. The Contractor shall clearly list any proposed subcontractors and the subcontractor's proposed responsibilities. The Subcontract shall incorporate by reference the terms and conditions of this Contract.
- 5.3. Assignment and Delegation. The Contractor shall not assign any right nor delegate any duty under this Contract without the prior written approval of the Procurement Officer. The State shall not unreasonably withhold approval.

## 6. Risk and Liability

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



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disorders; fire; flood; lockouts; injunctions- intervention-acts; or failures or refusals to act by government authority; and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence.

6.4.2. Force Majeure shall not include the following occurrences:

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

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

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

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

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

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

## 7. 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.



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- 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.
- 8.2.2. If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the Contractor shall resume work. The Procurement Officer shall make an equitable adjustment in the delivery schedule or Contract price, or both, and the Contract shall be amended in writing accordingly.
- 8.3. Non-exclusive Remedies. The rights and the remedies of the State under this Contract are not exclusive.



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- 8.4. Nonconforming Tender. Materials or services supplied under this Contract shall fully comply with the Contract. The delivery of materials or services or a portion of the materials or services that do not fully comply constitutes a breach of contract. On delivery of nonconforming materials or services, the State may terminate the Contract for default under applicable termination clauses in the Contract, exercise any of its rights and remedies under the Uniform Commercial Code, or pursue any other right or remedy available to it.
- 8.5. Right of Offset. The State shall be entitled to offset against any sums due the Contractor, any expenses or costs incurred by the State, or damages assessed by the State concerning the Contractor's non-conforming performance or failure to perform the Contract, including expenses, costs and damages described in the Uniform Terms and Conditions.

## 9. Contract Termination

- 9.1. Cancellation for Conflict of Interest. Pursuant to A.R.S. § 38-511, the State may cancel this Contract within three (3) years after Contract execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of the State is or becomes at any time while the Contract or an extension of the Contract is in effect an employee of or a consultant to any other party to this Contract with respect to the subject matter of the Contract. The cancellation shall be effective when the Contractor receives written notice of the cancellation unless the notice specifies a later time. If the Contractor is a political subdivision of the State, it may also cancel this Contract as provided in A.R.S. § 38-511.
- 9.2. Gratuities. The State may, by written notice, terminate this Contract, in whole or in part, if the State determines that employment or a Gratuity was offered or made by the Contractor or a representative of the Contractor to any officer or employee of the State for the purpose of influencing the outcome of the procurement or securing the Contract, an amendment to the Contract, or favorable treatment concerning the Contract, including the making of any determination or decision about contract performance. The State, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three times the value of the Gratuity offered by the Contractor.
- 9.3. Suspension or Debarment. The State may, by written notice to the Contractor, immediately terminate this Contract if the State determines that the Contractor has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body. Submittal of an offer or execution of a contract shall attest that the Contractor is not currently suspended or debarred. If the Contractor becomes suspended or debarred, the Contractor shall immediately notify the State.
- 9.4. Termination for Convenience. The State reserves the right to terminate the Contract, in whole or in part at any time when in the best interest of the State, without penalty or recourse. Upon receipt of the written notice, the Contractor shall stop all work, as directed in the notice, notify all subcontractors of the effective date of the termination and minimize all further costs to the State. In the event of termination under this paragraph, all documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the State upon demand. The Contractor shall be entitled to receive just and equitable compensation for work in progress, work completed and materials accepted before the effective date of the termination. The cost principles and procedures provided in A.A.C. R2-7-701 shall apply.
- 9.5. Termination for Default.
- 9.5.1. In addition to the rights reserved in the contract, the State may terminate the Contract in whole or in part due to the failure of the Contractor to comply with any term or condition of the Contract, to acquire and maintain all required insurance policies, bonds, licenses and permits, or to make satisfactory



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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**

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 15<sup>th</sup> Avenue, Suite 201, Phoenix, Arizona, 85007.