



# ARIZONA STATE TREASURER'S OFFICE

**Request for Proposal # 21-03A**

## **RFP 21-03A: STATE OF ARIZONA MERCHANT CARD SERVICES PROVIDER**

Sealed Written Proposals will be accepted until  
2:00 P.M. Arizona Time, Friday, November 5,  
2021

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# SECTION 1

## EXECUTIVE SUMMARY

### TITLE

**RFP 21-03A State of Arizona Merchant Card Services**

### BACKGROUND AND PURPOSE

The Arizona State Treasurer’s Office (ASTO) is seeking proposals from companies (Bidder) to provide Merchant Card Services to The State of Arizona agencies as defined in this Request for Proposals (RFP) document. This document contains all the necessary information required to be submitted by the Bidder in order to be considered.

The State of Arizona currently has over 300 merchant card accounts in use by the agencies across the state. The agencies combined process more than 3 million payment card transactions and more that \$460 million in gross sales annually. These transactions are a combination of Visa, MasterCard, Discover and American Express and are processed using POS, MOTO, and e-commerce.

The successful proposer will enter into a contract with the State Treasurer on or before March 31, 2022 for a three-year term with two possible one-year extensions thereafter by mutual agreement. All formal inquiries or requests for significant or material clarification or interpretation must be directed in writing or by e-mail to:

Arizona State Treasurer’s Office

Attn: Deputy Treasurer of Operations RE: RFP 21-03A Merchant Card Services

1700 West Washington

Phoenix, Arizona 85007

or

Email: [RFPproposal@aztreasury.gov](mailto:RFPproposal@aztreasury.gov)

Reference “RFP 21-03A Merchant Card Services” in the subject line.

The Arizona State Treasurer’s Office anticipates making one award for this RFP process.

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**AUTHORITY**

The Arizona State Treasurer's Office (ASTO) is authorized under A.R.S. § 35-315 to contract for Merchant Card Services for the State of Arizona.

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## SECTION 2

### OFFER AND ACCEPTANCE

#### OFFER

The undersigned hereby offers and agrees to furnish the material, service or construction in compliance with all terms, conditions, scope of work and amendments to the solicitation. The person signing must be a senior executive who has managerial control over the deliverables required under the scope of work with the ability to terminate vendors or employees for failure to perform the duties of the contract.

Authorized Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Email: \_\_\_\_\_

Company: \_\_\_\_\_

Federal TIN: \_\_\_\_\_ or AZ TPT: \_\_\_\_\_

By signing in the offer section above, the bidder certifies:

- 1 The submission of the offer did not involve collusion or other anti-competitive practices.
- 2 The bidder shall not discriminate against any employee or applicant for employment in violation of Federal Executive Order 11246, State Executive Order 99.4, or A.R.S. § 41-1461 through 1465.
- 3 The bidder has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted offer. Failure to provide a valid signature affirming the stipulations required by this clause shall result in rejection of the offer. Signing the offer with a false statement shall void the offer, any resulting contract and may be subject to legal remedies provided by law.
- 4 None of the provisions of the Agreement may be waived, changed or altered except in writing signed by both parties.
- 5 In accordance with A.R.S. § 35-393.01, the Bidder hereby certifies that the Bidder is not currently engaged in and agrees for the duration of the contract to not engage in a boycott of Israel.

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**ACCEPTANCE**

The Offer is hereby accepted.

**Office of the State Treasurer**

Authorized Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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## SECTION 3

### SPECIAL INSTRUCTIONS TO OFFERORS

#### TERMS AND DEFINITIONS

For the purpose of this RFP and the ensuing contract, the following terms and definitions will apply:

- 1 "ASTO" means the Arizona State Treasurer's Office.
- 2 "Attachment" means any item the Solicitation requires a Bidder to submit as part of the Offer.
- 4 "Bidder" means a vendor who responds to a Solicitation.
- 5 "Contract" means the combination of the Solicitation, including the Uniform and Special Instructions to Bidders, 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.
- 6 "Contract Amendment" means a written document signed by the ASTO that is issued for the purpose of making changes in the Contract.
- 7 "Contractor" means any person who has a Contract with the State.
- 8 "Days" means calendar days unless otherwise specified.
- 9 "Exhibit" means any item labeled as an Exhibit in the Solicitation or placed in the Exhibits section of the Solicitation.
- 10 "Offer" means bid, proposal or quotation.
- 11 "Solicitation" means an Invitation for Bids ("IFB"), a Request for Proposals ("RFP"), or a Request for Quotations ("RFQ").
- 12 "Solicitation Amendment" means a written document that is signed by the ASTO and issued for the purpose of making changes to the Solicitation.
- 13 "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.
- 14 "State" means the State of Arizona and any Department or Agency of the State that executes the Contract.

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## PROPOSAL

1. **Deliverables:** Responses must include 1 ORIGINAL printed copy plus 3 complete electronic versions of the proposal on a USB drive, that will be used in the evaluation process. The original copy of the proposal should be clearly labeled "ORIGINAL". The material should be in sequence and related to the Request for Proposal.

Proposals are due at the following address on or before 2:00 p.m. (Arizona Time) on Friday, November 5, 2021. All questions should be sent to [RFPproposal@aztreasury.gov](mailto:RFPproposal@aztreasury.gov) and must include "RFP 21-03A Merchant Card Services" in the subject line of the email.

Office of the State Treasurer Attn: RFP 21-03A Merchant Card Services 1700 W. Washington 1st Floor Room 102 Phoenix, AZ 85007
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Proposals received after the date and time specified herein will not be considered. Proposals shall be opened publicly at the time and place designated on the cover page of this document. The name of each bidder shall be read publicly and recorded. All other information contained in the proposals shall be confidential so as to avoid disclosure of contents prejudicial to competing bidders during the process of negotiation. Prices will **NOT** be read. Proposals will not be subject to public inspection until after contract has been awarded and signed. Proposals shall be irrevocable offers for sixty (60) days after the proposal due date.

2. **Proposed Timeline:**

Figure 1: Schedule	
Event	Date
Distribution of RFP	October 4, 2021
Deadline for Questions	October 15, 2021
Date for Answers to Questions	October 22, 2021
Proposals Due (no later than 2 p.m. Arizona time)	November 5, 2021
Proposal Opening	November 5, 2021 @ 3:30 PM
Finalist Presentations (if necessary)	November 29 – December 3, 2021





Award Business By	TBD
Contract Start Date	TBD

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## SECTION 4

### EVALUATION CRITERIA

#### MINIMUM CRITERIA

These minimum criteria must be met for a Proposal to be considered for award:

- The offer must be submitted by the deadline;
- The Offeror must provide a signed completed contract;
- The Offeror must state its interest in performing the various Merchant Card Services to The State of Arizona agencies as outlined in the scope of work; and
- Offeror's answers to Section 8 – Exhibits and Attachments, Exhibits A through F must be responsive and complete.

#### EVALUTION

An award shall be made to the responsible Bidder whose proposal is determined in writing to be the most advantageous to the State based upon the evaluation criteria listed in Figure 2: Weightings. The Bidder is cautioned that it is the Bidder's sole responsibility to submit information related to the evaluation categories and that the State of Arizona is under no obligation to solicit such information if it is not included with the Bidder's proposal. Failure of the Bidder to submit such information may cause an adverse impact on the evaluation of the Bidder's proposal as to the responsiveness of the proposal and the responsibility of the Bidder.

Figure 2: Weightings		
Pricing (Cost)	Exhibit A	30%
Conformance to Scope of Work	Exhibit B	25%
Method of Approach	Exhibit C	25%
Experience of Company	Exhibit D	20%
<b>Total</b>		<b>100%</b>

#### PRICING

The Bidder must provide a firm, fixed price for all requirements set forth in this RFP. All prices must be shown in the pricing schedule of this RFP shown in Exhibit A – Pricing. During the

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course of the contract period, merchant IDs (MIDs) will be added and deleted according to the business requirements of the State of Arizona agencies. All current MIDs and any new MIDs will be charged for services using the bid prices contained herein for the term of the contract including extensions.

### **CONFORMANCE TO SCOPE OF WORK**

The Bidder should submit a written narrative that demonstrates the method or manner in which the Bidder proposes to satisfy the requirements of the Scope of Work. The language of the narrative should be straight forward and limited to fact, solutions to problems or requests, and plans of proposed action. The written narrative should include specific responses to the items listed in Exhibit B - Scope of Work.

### **METHOD OF APPROACH**

The Bidder should submit a written narrative that demonstrates the method of approach for servicing the State of Arizona agencies. At minimum, the written narrative should provide the information in Exhibit C – Method of Approach.

### **EXPERIENCE OF COMPANY**

The Bidder should submit a written narrative that provides a description of the company and the employees that will be involved with the implementation and servicing of the State of Arizona relationship. At minimum, the written narrative should provide the information requested in Exhibit D – Experience of Company.

### **SOCIAL ACTIVISM**

1. Does your financial institution restrict or terminate financing to lawful companies or industries in the United States including but not limited to oil, gas, coal or firearm companies?
2. If yes, please provide the formal documentation of when your Board of Directors voted to restrict financing to lawful companies.
3. If no formal vote was taken, please describe the decision-making process of how the decision was made, which executives were involved and where shareholders were provided the ability to have input in the decision-making process to stop financing lawful companies and industries in the United States?

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## SECTION 5

### UNIFORM INSTRUCTIONS TO OFFERORS

#### DEFINITION OF TERMS

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

- 1 “Attachment” means any item the Solicitation requires an Offeror to submit as part of the offer.
- 2 “Contract” means the combination of the Solicitation, including the Special and Uniform Instructions to Offeror’s, the Special and Uniform 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.
- 3 “Contract Amendment” means a written document signed by the ASTO that is issued for the purpose of making changes in the Contract.
- 4 “Contractor” means any person who has a Contract with the State.
- 5 “Days” means calendar days unless otherwise specified.
- 6 “Exhibit” means any item labeled as an Exhibit in the Solicitation or placed in the Exhibits section of the Solicitation.
- 7 “Offer” means bid, proposal or quotation.
- 8 “Offeror” means a vendor who responds to a Solicitation.
- 9 “Solicitation” means an Invitation for Bids (“IFB”), a Request for Proposals (“RFP”), or a Request for Quotations (“RFQ”).
- 10 “Solicitation Amendment” means a written document that is signed by the ASTO and issued for the purpose of making changes to the Solicitation.
- 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 services required for the performance of the Contract.
- 12 “State” or “State Treasurer” or “ASTO” means the State of Arizona and any Department or Agency of the State that executes the Contract.

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## INQUIRIES

1. Duty to Examine. It is the responsibility of each Offeror to examine the entire Solicitation, seek clarification in writing (inquiries), and examine the Offer for accuracy before submitting the Offer. Lack of care in preparing an Offer shall not be grounds for modifying or withdrawing the Offer after the Offer due date and time, nor shall it give rise to any Contract claim.
2. Solicitation Contact Person. Any inquiry related to a Solicitation, including any requests for or inquiries regarding standards referenced in the Solicitation shall be directed solely to the Solicitation contact person. The Offeror shall not contact or direct inquiries concerning this Solicitation to any other State employee unless the Solicitation specifically identifies a person other than the Solicitation contact person as a contact.
3. Submission of Inquiries. The ASTO or the person identified in the Solicitation as the contact for inquiries requires that an inquiry be submitted in writing. Any inquiry related to a Solicitation shall refer to the appropriate Solicitation number, page and paragraph. Do not place the Solicitation number on the outside of the envelope containing that inquiry, since it may then be identified as an Offer and not be opened until after the Offer due date and time. The State shall consider the relevancy of the inquiry but is not required to respond in writing.
4. Timeliness. Any inquiry or exception to the solicitation shall be submitted as soon as possible and should be submitted at least seven (7) days before the Offer due date and time for review and determination by the State. Failure to do so may result in the inquiry not being considered for a Solicitation Amendment.
5. No Right to Rely on Verbal Responses. An Offeror shall not rely on verbal responses to inquiries. A verbal reply to an inquiry does not constitute a modification of the solicitation.
6. Solicitation Amendments. The Solicitation shall only be modified by a Solicitation Amendment.
7. Pre-Offer Conference. If a pre-Offer conference has been scheduled under this Solicitation, the date, time and location shall appear on the Solicitation cover sheet or elsewhere in the Solicitation. Offerors should raise any questions about the Solicitation or the procurement at that time. An Offeror may not rely on any verbal responses to questions at the conference. Material issues raised at the conference that result in changes to the Solicitation shall be answered solely through a written Solicitation Amendment.
8. Persons with Disabilities. Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting the Solicitation contact

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person. Requests shall be made as early as possible to allow time to arrange the accommodation.

## OFFER PREPERATION

1. Forms: No Facsimile, Telegraphic or Electronic Mail Offers. An Offer shall be submitted either on the forms provided in this Solicitation or their substantial equivalent. Any substitute document for the forms provided in this Solicitation must be legible and contain the same information requested on the forms unless the solicitation indicates otherwise. A facsimile, telegraphic, mailgram or electronic mail Offer shall be rejected if submitted in response to requests for proposals or invitations for bids.
2. Typed or Ink, Corrections. The Offer shall be typed or in ink. Erasures, interlineations or other modifications in the Offer shall be initialed in ink by the person signing the Offer. Modifications shall not be permitted after Offers have been opened except as otherwise provided under applicable law.
3. Evidence of Intent to be Bound. The Offer and Acceptance form within the Solicitation shall be submitted with the Offer and shall include a signature (or acknowledgement for electronic submissions, when authorized) by a person authorized to sign the Offer. The signature shall signify the Offeror's intent to be bound by the Offer and the terms of the Solicitation and that the information provided is true, accurate and complete. Failure to submit verifiable evidence of intent to be bound, such as an original signature, shall result in rejection of the Offer.
4. Exceptions to Terms and Conditions. All exceptions included with the Offer shall be submitted in a clearly identified separate section of the Offer in which the Offeror clearly identifies the specific paragraphs of the Solicitation where the exceptions occur. Any exceptions not included in such a section shall be without force and effect in any resulting Contract unless such exception is specifically accepted by the ASTO in a written statement. The Offeror's preprinted or standard terms will not be considered by the State as a part of any resulting Contract.
  - Invitation for Offers. An Offer that takes exception to a material requirement of any part of the Solicitation, including terms and conditions, shall be rejected.
  - Request for Proposals. All exceptions that are contained in the Offer may negatively affect the State's proposal evaluation based on the evaluation criteria stated in the Solicitation or result in rejection of the Offer. An offer that takes exception to any material requirement of the solicitation may be rejected.
5. Subcontracts. The successful Offeror shall not subcontract any of its responsibilities in the Offer without the prior written consent of the State.

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6. Cost of Offer Preparation. The State will not reimburse any Offeror the cost of responding to a Solicitation.
  7. Solicitation Amendments. Each Solicitation Amendment shall be signed with an original signature by the person signing the Offer and shall be submitted no later than the Offer due date and time. Failure to return a signed copy of a Solicitation Amendment may result in rejection of the Offer.
  8. Federal Excise Tax. The State of Arizona is exempt from certain Federal Excise Tax on manufactured goods. Exemption Certificates will be provided by the State.
  9. Provision of Tax Identification Numbers. Offerors are required to provide their Arizona Transaction Privilege Tax Number and/or Federal Tax Identification number in the space provided on the Offer and Acceptance Form.
  10. Employee Identification. Offeror agrees to provide an employee identification number or social security number for the purposes of reporting to appropriate taxing authorities, monies paid under this contract. If the federal identifier of the Offeror is a social security number, this number is being requested solely for tax reporting purposes and will be shared only with appropriate state and federal officials. This submission is mandatory under 26 U.S.C. § 6041A.
  11. Identification of Taxes in Offer. The State of Arizona is subject to all applicable state and local transaction privilege taxes. All applicable taxes shall be included in the pricing offered in the solicitation. At all times, payment of taxes and the determination of applicable taxes are the sole responsibility of the contractor.
  12. Disclosure. If the firm, business or person submitting this Offer has been debarred, suspended or otherwise lawfully precluded from participating in any public procurement activity, including being disapproved as a subcontractor with any Federal, state or local government, or if any such preclusion from participation from any public procurement activity is currently pending, the Offeror shall fully explain the circumstances relating to the preclusion or proposed preclusion in the Offer. The Offeror shall include a letter with its Offer setting forth the name and address of the governmental unit, the effective date of this suspension or debarment, the duration of the suspension or debarment, and the relevant circumstances relating to the suspension or debarment. If suspension or debarment is currently pending, a detailed description of all relevant circumstances including the details enumerated above shall be provided.
  13. Solicitation Order of Precedence. In the event of a conflict in the provisions of this Solicitation, the following shall prevail in the order set forth below:
    - Special Terms and Conditions;
    - Uniform Terms and Conditions;

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- Statement or Scope of Work & Description of Proposed Solution, Exhibit A;
  - Special Instructions to Offerors;
  - Uniform Instructions to Offerors; and
  - Other documents referenced or included in the Solicitation.

## **SUBMISSION OF OFFER**

1. Sealed Envelope or Package. The submission of offer must include 1 ORIGINAL printed copy plus 5 additional electronic versions of the proposal on a USB drive, that will be used in the evaluation process. Each Offer shall be submitted to the submittal location identified in this Solicitation. Offers should be submitted in a sealed envelope or container. The envelope or container should be clearly identified with the name of the Offeror and Solicitation number. The State may open envelopes or containers to identify contents if the envelope or container is not clearly identified.
2. Offer Amendment or Withdrawal. An Offer may not be amended or withdrawn after the Offer due date and time except as otherwise provided under applicable law.
3. Public Record. All Offers submitted and opened are public records and must be retained by the State. Offers shall be open to public inspection after Contract award, except for such Offers deemed to be confidential by the State. If an Offeror believes that information in its Offer should remain confidential, it shall indicate as confidential the specific information and submit a statement with its Offer detailing the reasons that the information should not be disclosed. Such reasons shall include the specific harm or prejudice which may arise. The State shall determine whether the identified information is confidential pursuant to the Arizona Procurement Code.
4. Non-collusion, Employment, and Services. By signing the Offer and Acceptance Form or another official contract form, the Offeror certifies that:
  - The Offeror did not engage in collusion or other anti-competitive practices in connection with the preparation or submission of its Offer; and
  - The Offeror does not discriminate against any employee or applicant for employment or person to whom it provides services because of race, color, religion, sex, national origin, or disability, and that it complies with all applicable federal, state and local laws and executive orders regarding employment.



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## MISCELLANEOUS CONSIDERATIONS FOR EVALUATION

1. Unit Price Prevails. In the case of discrepancy between the unit price or rate and the extension of that unit price or rate, the unit price or rate shall govern.
2. Prompt Payment Discount. Prompt payment discounts of thirty (30) days or more set forth in an Offer shall be deducted from the offer for the purposes of evaluating that price.
3. Late Offers. An Offer submitted after the exact Offer due date and time shall be rejected.
4. Disqualification. A Bidder (including each of its principals) who is currently debarred, suspended or otherwise lawfully prohibited from any public procurement activity shall have its Offer rejected.
5. Offer Acceptance Period. An Offeror submitting an Offer under this Solicitation shall hold its Offer open for the number of days from the Offer due date that is stated in the solicitation. If the Solicitation does not specifically state a number of days for Offer acceptance, the number of days shall be one hundred-twenty (120). If a Best and Final Offer is requested pursuant to a Request for Proposal, an Offeror shall hold its Offer open for one hundred-twenty (120) days from the Best and Final Offer due date.

## WAIVER OF REJECTION RIGHTS

1. Notwithstanding any other provision of the Solicitation, State reserves the right to:
  - Waive any minor informality;
  - Reject any and all Offers or portions thereof; or
  - Cancel the Solicitation.

## AWARD

1. Contract inception. An Offer does not constitute a Contract, nor does it confer any rights on the Offeror to the award of a Contract. A Contract is not created until the Offer is accepted in writing by the ASTO's (or designee) signature on the Offer and Acceptance Form. A notice of award or of the intent to award shall not constitute acceptance of the Offer.
2. Effective Date. The effective date of this Contract shall be the date that the ASTO or designee signs the Offer and Acceptance form or other official contract form unless another date is specifically stated in the Contract.

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## PROTESTS

A protest shall comply with and be resolved according to A.R.S Title 41, Chapter 23, Article 9 and rules adopted there under. Protests shall be in writing and be filed with the ASTO. A protest of a Solicitation shall be received by the ASTO before the Offer due date. A protest of a proposed award or of an award shall be filed within ten (10) days after the protester knows or should have known the basis of the protest. A protest shall include:

- The name, address and telephone number of the protester;
- The signature of the protester or its representative;
- Identification of the purchasing agency and the Solicitation or Contract number;
- A detailed statement of the legal and factual grounds of the protest including copies of relevant documents; and the form of relief requested.

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## SECTION 6

### SPECIAL TERMS AND CONDITIONS

#### TERM OF CONTRACT

1. The term of contract shall commence on the acceptance of the bid and shall remain in effect for a period of three (3) years thereafter unless terminated, canceled or extended as otherwise provided herein.
2. The ASTO reserves the right to extend the contract up to a maximum of twenty-four (24) months.
3. The contract shall not bind nor purport to bind the State for any contractual commitment in excess of the original contract period. ASTO may utilize the option to renew the contract for two (2) one-year renewals, if mutually agreed upon by ASTO and the Contractor. If the ASTO exercises this option, all terms, conditions and provisions of the original contract shall remain the same and apply during the renewal period.

#### PROJECT MANAGEMENT

1. The Contractor shall appoint a project manager to be responsible for the planning; conducting progress; and successful completion of all activities during the contract period.
2. The Contractor shall, within seven (7) days after the award of the contract, submit a written identification and notification to the ASTO of the name, title, address, and telephone number of one (1) individual within its organization as a duly authorized representative to whom all correspondence, official notices, and requests related to the contractor's performance pursuant to the contract shall be addressed. The Contractor shall have the right to change or substitute the name of the individual described above as deemed necessary with written approval of the ASTO.
3. The ASTO shall provide the contractor with the name of a contact person who will coordinate all information to and/or from the Contractor.

#### INSURANCE

1. The Contractor shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Contract, are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in

connection with the performance of the work hereunder by the Contractor, his agents, representatives, employees or subcontractors.

- The insurance requirements herein are minimum requirements for this Contract and in no way, limit the indemnity covenants contained in this Contract. The State of Arizona in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that might arise out of the performance of the work under this contract by the Contractor, its agents, representatives, employees or subcontractors, and Contractor is free to purchase additional insurance.
2. Commercial General Liability (Policy shall include bodily injury, property damage, personal injury and broad form contractual liability coverage.)

Commercial General Liability	
General Aggregate	\$2,000,000
Products – Completed Operation Aggregate	\$1,000,000
Personal and Advertising Injury	\$1,000,000
Blanket Contractual Liability – Written/Oral	\$1,000,000
Fire Legal Liability	\$50,000
Each Occurrence	\$1,000,000

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

4. Business Automobile Liability

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

Business Automobile Liability	
Combined Single Limit (CSL)	\$1,000,000

- Policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by, or on behalf of, the Contractor, involving automobiles owned, leased, hired and/or non-owned by the Contractor.
- 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.

5. Worker’s Compensation and Employers’ Liability

Worker’s Compensation and Employer’s Liability	
Worker’s Compensation	Statutory
Each Accident	\$1,000,000
Disease-Each Employee	\$1,000,000
Disease-Policy Limit	\$1,000,000

- 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.
- This requirement shall not apply to each Contractor or subcontractor that is exempt under A.R.S. § 23-901, and when such contractor or subcontractor executes the appropriate waiver form (Sole Proprietor/Independent Contractor).

6. Professional Liability (Errors and Omissions Liability)

Errors and Omissions Liability	
Each Claim	\$2,000,000
Annual Aggregate	\$2,000,000

7. Commercial Crime Policy or Blanket Fidelity Bond

Commercial Crime Policy or Blanket Fidelity Bond	
Coverage Amount	\$35,000,000

Coverage should include but is not limited to:

- a. Employee Dishonesty (to include coverage for theft and mysterious disappearance and inventory shortage)
- b. Money & Securities Inside/Outside
- c. Computer Fraud
- d. Funds Transferred (if applicable)
- e. Forgery or Alteration
- f. The policy shall be endorsed to include the State of Arizona (and the respective agency) as Loss Payee
- g. The policy shall not contain a condition requiring a conviction or arrest in order to file a claim

8. Technology Errors & Omissions Insurance – Required as applicable to the services provided.

Technology Errors and Omissions Liability	
Each Claim	\$2,000,000
Annual Aggregate	\$2,000,000

- Such insurance shall cover any, and all errors, omissions, or negligent acts in the delivery of products, services, and/or licensed programs under this contract.
- Coverage shall include copyright infringement, infringement of trade dress, domain name, title or slogan.
- In the event that the Tech E&O insurance required by this Contract is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of this Contract and, either continuous coverage will be maintained, or an extended discovery period will be exercised for a period of two (2) years, beginning at the time work under this Contract is completed.

9. Network Security (Cyber) and Privacy Liability – Required as applicable to the services provided.

Network Security (Cyber) and Privacy Liability	
Each Claim	\$2,000,000

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Annual Aggregate	\$2,000,000
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- Such insurance shall include, but not be limited to, coverage for third party claims and losses with respect to network risks (such as data breaches, unauthorized access or use, ID theft, theft of data) and invasion of privacy regardless of the type of media involved in the loss of private information, crisis management and identity theft response costs. This should also include breach notification costs, credit remediation and credit monitoring, defense and claims expenses, regulatory defense costs plus fines and penalties, cyber extortion, computer program and electronic data restoration expenses coverage (data asset protection), network business interruption, computer fraud coverage, and funds transfer loss.
- In the event that the Network Security and Privacy Liability insurance required by this Contract is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of this Contract and, either continuous coverage will be maintained, or an extended discovery period will be exercised for a period of two (2) years beginning at the time work under this Contract is completed.
- The policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to vicarious liability of the insured arising out of the activities performed by or on behalf of the Contractor.
- Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its department, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

10. **ADDITIONAL INSURANCE REQUIREMENTS:** The policies shall include, or be endorsed to include the following provisions:

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

11. **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 Arizona State Treasurer's office if they

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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:

Arizona State Treasurer's Office  
1700 W. Washington Street  
Suite 102  
Phoenix, AZ 85007  
Fax: (602) 542-7176  
Email: [info@aztreasury.gov](mailto:info@aztreasury.gov)

12. 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 and Financial Institutions 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.
13. VERIFICATION OF COVERAGE: Contractor shall furnish the State of Arizona with certificates of insurance (valid ACORD form or equivalent approved by the State of Arizona) evidencing that Contractor has the insurance as required by this Contract. An authorized representative of the insurer shall sign the certificates.
- All such certificates of insurance and policy endorsements must be received by the State before work commences. The State's receipt of any certificates of insurance or policy endorsements that do not comply with this written agreement shall not waive or otherwise affect the requirements of this agreement.
  - Each insurance policy required by this Contract must be in effect at, or prior to, commencement of work under this Contract. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.
  - All such 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, certified copies of all insurance policies required by this Contract at any time.
14. SUBCONTRACTORS: Contractors' certificate(s) shall include all subcontractors as insured 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



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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.

15. 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.
16. EXCEPTIONS: In the event the Contractor or sub-contractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a Certificate of self-insurance. If the Contractor or sub-contractor(s) is/are a State of Arizona agency, board, commission, or university, none of the above shall apply.
17. INDEMNIFICATION: To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless the State of Arizona, and its departments, agencies, boards, commissions, universities, 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 judgement 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, its officers, officials, agents, and employees for losses arising from the work performed by the Contractor for the State of Arizona. This indemnification will survive the termination of the above listed contract with the Contractor.

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

18. If 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 that either continuous coverage will be maintained or an

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extended discovery period will be exercised for a period of two (2) years beginning at the time work under this Contract is completed.

19. The policy shall cover professional misconduct or lack of ordinary skill for those positions defined in the Scope of Service of this contract.

## **DISASTER RECOVERY**

1. The successful Offeror is required to maintain a tested disaster recovery and business continuity plan throughout the term of the contract resulting from this Request for Proposal. This plan, along with any modifications or testing results will be available for review by the ASTO with notice.
2. At a minimum, such disaster recovery plan will
  - a. Include information regarding the steps taken to avoid interruptions in service availability to the State of Arizona.
  - b. The plan must address the recovery time objective (RTO)
  - c. The recovery point objective (RPO)
  - d. The establishment of a minimum level of critical support
  - e. A maximum tolerable downtime.
  - f. Information regarding at least one alternative processing facility, its capacity and capability levels, along with specific methods to provide access to information if the primary system is out of service.

## **SSAE-18**

The successful bidder must provide its most current report by its independent auditors of its internal controls. The SSAE 18 report must cover the services provided by the contractor resulting from this document.

## **PANDEMIC CONTRACTUAL PERFORMANCE**

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 at any time prior or post award of a contract. At a minimum, the pandemic performance plan shall include:
  - a. Key succession and performance planning if there is a sudden significant decrease in contractor's workforce.
  - b. Alternative methods to ensure there are products in the supply chain.

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- c. An up-to-date list of company contacts and organizational chart.
2. In the event of a pandemic, as declared by 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:
    - a. 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.
    - b. The State shall not incur any liability if a pandemic is declared, and emergency procurements are authorized pursuant to § 41-2537 of the Arizona Procurement Code.
    - c. 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).

**CONFIDENTIALITY OF RECORDS:** The Contractor shall establish and maintain procedures and controls acceptable to the State for the purpose of assuring that information or data in its possession is not mishandled, misused, released, disclosed, or used in an inappropriate manner by it, its agents, officers, or employees. This includes information contained in its records obtained from the State or others, necessary for contract performance. The Contractor shall take all reasonable steps and precautions to safeguard this information and data and shall not divulge the information or data to parties other than those needed for the performance of duties under the contract.

**ARIZONA RISK AND AUTHORIZATION MANAGEMENT PROGRAM (AZRAMP)**  
**(NOTE: This section is added and did not appear in the previous version of this RFP)**

Security Standards

Security of the State’s systems and data are of “UTMOST” importance to the State. In order to assure security from a personnel and operations perspective, Contractor shall comply with:

All requirements, in their entirety, as described in the statewide enterprise architecture, and statewide Information Technology security policies, standards and procedures:

<https://aset.az.gov/resources/policies-standards-and-procedures>.

In some instances, Contractor personnel will only be allowed inside of a State facility if accompanied by a State escort. This is applicable in the Correctional facilities, Public Safety facilities, State Lottery, or other facilities as designated by the State.

Security Framework

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The State of Arizona information security policies and standards follow the National Institute of Standards and Technology (NIST) Cyber Security Framework (CSF) and NIST 800-53 revision 5. The State has established a process to assess risk associated with storing, processing and/or transmitting State of Arizona data with external, non-State of Arizona, entities. The Arizona Risk and Authorization Management Program (AZRamp) was developed to ensure State and contractors meet these requirements. All contractors responding to State solicitations must successfully complete the AZRamp risk assessment based upon the data classification involved as determined by the data owner and Arizona Strategic Enterprise Technology (ASET) Department. Failure to successfully complete AZRamp assessment will be deemed as breach of contract. Contractor attests too, understands and agrees no other forms of Cyber Security Frameworks (CSF), Trust Documents, Self-Attestations, to include ISO/IEC, SOC 2 & 3, PCI, or HIPAA reports of compliance are recognized nor accepted by State. NIST SP 800-53 Rev. 4 Security and Privacy Guidelines can be located at: <https://csrc.nist.gov/publications/detail/sp/800-53/rev-5/final>.

Contractor shall comply with all applicable security requirements including but not limited to:

- Arizona Risk and Authorization Management Program (AZRamp):
  - Submit with your solicitation package a completed Arizona Baseline Infrastructure Security Controls assessment spreadsheet as found at: <https://aset.az.gov/sites/default/files/Arizona%20Baseline%20Security%20Controls%20Pre-Requirement%20.xls> and mitigate gaps or install compensating controls for any issues of concern identified by State.
  - Contractor is required to provide Information Security documentation for the AZRamp assessment to include System Security Plan (SSP), or Written Information Security Programs (WISP) and supporting documentation for review of the assessment.
  - Note: The State of Arizona seeks a partnership with our supporting vendors, therefore, Non-Disclosure Agreements (NDA) for release to review submitted SSP's and/or WISP 's will not be considered. Procedures for submission of documents considered Confidential/Proprietary are identified within this RFP. Special secure transfer of documents related to this AZRamp review process can be made by contacting: [AsetAssurance@azdoa.gov](mailto:AsetAssurance@azdoa.gov) to make special arrangements for the transfer of these documents.
  - All respondents will complete and submit with your solicitation package an unedited and signed State of Arizona Health Insurance Portability and Accountability Act (HIPAA) Business Associate Addendum (BAA), if required by this RFP.
  - If selected for award, all awards are contingent on the successful completion of the AZRamp 125 Low Impact (public information) or the AZRamp 325 Moderate

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(Confidential, PII, or PHI) Impact Control spreadsheet titled “Arizona Infrastructure Security Controls 2017 (Excel)” to be determined by the Enterprise Security, Privacy & Risk Compliance team. Low (Column E) and Moderate (Column F) Impact controls spreadsheet can be located here:

[https://aset.az.gov/sites/default/files/Arizona%20Baseline%20Security%20Controls%202017\\_v2.xls](https://aset.az.gov/sites/default/files/Arizona%20Baseline%20Security%20Controls%202017_v2.xls).

- State reserves the right to conduct risk assessments, vulnerability assessments, black-box penetration tests or hire a third party to conduct risk assessments, vulnerability assessments, and black-box penetration tests of the Contractor’s environment. 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(s).
- Contractor will submit copies of system logs from Contractor’s environment to State of AZ security team upon request to be added to the State SIEM (Security Information Event Monitor) or IDS (Intrusion Detection System).
- The ideal vendor solution will be contained within a Federal Risk and Authorization Management Program (FedRAMP), government-rated, single tenant cloud compartment. This preferred architecture provides protection during storage, processing, and/or transmission of sensitive or regulated State data. Information about FedRAMP Authorized SaaS, PaaS or IaaS platforms can be located at: <https://marketplace.fedramp.gov/#/products?sort=productName>.

Contractor shall comply with all applicable State and Federal laws and regulations, including, but not limited to;

- Federal Information Security Modernization Act of 2014 (FISMA): <https://csrc.nist.gov/topics/laws-and-regulations/laws/fisma>
- OMB Circular A-130: <https://www.federalregister.gov/documents/2016/07/28/2016-17872/revision-of-omb-circular-n-o-a-130-managing-information-as-a-strategic-resource>.
- National Cyber Strategy of the United States of America: <https://www.cisa.gov/executive-order-strengthening-cybersecurity-federal-networks-and-critical-infrastructure>
- Health Insurance Portability and Accountability Act (HIPAA) including Business Associate Agreement/ Health Information Technology for Economic and Clinical Health Act (HITECH): <https://www.hhs.gov/hipaa/index.html>
- Tax Information Security Guidelines For Federal, State and Local Agencies: Safeguards for Protecting Federal Tax Returns and Return Information (IRS Publication 1075): <https://www.irs.gov/pub/irs-pdf/p1075.pdf>
- Criminal Justice Information Services Security Policy (CJIS) <https://www.fbi.gov/services/cjis/cjis-security-policy-resource-center>

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- Centers for Medicare & Medicaid Services (CMS), Minimum Acceptable Risk Standards for Exchanges (MARS-E)  
<https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/2-MARS-E-v2-0- Minimum-Acceptable-Risk-Standards-for-Exchanges-11102015.pdf>
  - A.R.S. 18-104 - Arizona Department of Administration, Arizona Strategic Enterprise Technology (ADOA-ASET), Powers and duties of the agency:  
<https://www.azleg.gov/arsDetail/?title=18>
  - A.R.S. 18-105 - Statewide information security and privacy office (SISPO):  
<https://aset.az.gov/ars-18-105-statewide-information-security-and-privacy-office>
  - A.R.S. 18-551 - Definitions Information Security Including PII:  
<https://www.azleg.gov/ars/18/00551.htm>
  - A.R.S. 18-552 - Notification of security system breaches; requirements; enforcement; civil penalty; preemption; exceptions: <https://www.azleg.gov/ars/18/00552.htm>
  - Arizona Executive Order 2008-10 – Mitigating Cyber Security Threats:  
<https://aset.az.gov/executive-order-2008-10-mitigating-cyber-security-threats>
  - State of Arizona statewide policies, standards and procedures:  
<https://aset.az.gov/resources/policies-standards-and-procedures>
  - SIPC Memorandum of Understanding (MOU): <https://www.sipc.org/about-sipc/>
  - State Environmental policies: <https://azdeq.gov/LawsAndRules>
  - Family Education Rights Privacy Act (FERPA):  
<https://www2.ed.gov/policy/gen/guid/fpco/ferpa/students.html>
  - Driver’s Privacy Protection Act (DPPA):  
<https://azdot.gov/motor-vehicles/driver-services/driver-license-information/motor-vehicle-records>
  - Incident Response Reporting program and system:  
[https://aset.az.gov/sites/default/files/P8240%20Incident%20Response%20Planning\\_Sept2018\\_0.pdf](https://aset.az.gov/sites/default/files/P8240%20Incident%20Response%20Planning_Sept2018_0.pdf)
  - Privacy Incident Reporting policy and standards:  
<https://aset.az.gov/sites/default/files/STANDARD%208240%20INCIDENT%20RESPONSE%20PLANNING.pdf>
  - State of Arizona Library, Archives and Public Records, Records Management Division, General Retention Schedules <https://azlibrary.gov/arm/policies>
  - Payment Card Industry (PCI) Security Standards including but not limited to Supplemental Documents, Information Supplements and Validation Requirements:  
<https://www.pcisecuritystandards.org/>

#### **DATA AND INFORMATION HANDLING:**

**(NOTE: This section is added and did not appear in the previous version of this RFP)**

This section 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

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from others at State's behest.

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

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

Personally Identifiable Information. Without limiting the generality of this paragraph, Contractor warrants that it will protect any personally identifiable information ("PII") belonging to State's employees or other contractors or members of the general public that it receives from State or otherwise acquires in its performance under the Contract. For purposes of this paragraph:

1. PII has the meaning given in the [federal] Office of Management and Budget (OMB) Memorandum M-17-12 Preparing for and Responding to a Breach of Personally Identifiable Information, January 3, 2017; and
2. "protect" means taking measures to safeguard personally identifiable information and prevent its breach that are functionally equivalent to those called for in that OMB memorandum and elaborated on in the [federal] General Services Administration (GSA) 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:

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<https://dpcl.d.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-\(pii\)-](https://www.gsa.gov/directive/gsa-rules-of-behavior-for-handling-personally-identifiable-information-(pii)-)

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:

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;
2. will cooperate with State in the course of performing under the Contract so that both State and Contractor stay in compliance with the requirements in (1) above; and
3. will sign any documents that are reasonably necessary to keep both State and Contractor in compliance with the requirements in (1) above, in particular “Business Associate Agreements” in accordance with the Privacy Rule.

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

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

**INFORMATION TECHNOLOGY WORK:** this section 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.

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



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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.

### Information Access

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.
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.
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.

### Pass-Through Indemnity

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.

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2. NOTIFY OF CLAIMS. State shall notify Contractor promptly of any claim to which a Pass-Through Indemnity might apply. Contractor, with reasonable consultation from State, shall control of the defense of any action on any claim to which a Pass-Through Indemnity applies, including negotiations for settlement or compromise, provided that:
    - a. State reserves the right to elect to participate in the action at its own expense;
    - b. State reserves the right to approve or reject any settlement or compromise on reasonable grounds and if done so timely; and
    - c. State shall in any case cooperate in the defense and any related settlement negotiations.

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.

#### Redress of Infringement

1. REPLACE, LICENSE, OR MODIFY. If Contractor becomes aware that any Materials or Services infringe, or are likely to be infringing, on any third party's intellectual property rights, then Contractor shall, at its sole cost and expense and in consultation with State, either:
  - a. replace any infringing items with non-infringing ones;
  - b. obtain for State the right to continue using the infringing items; or
  - c. modify the infringing items so that they become non-infringing, so long as they continue to function as specified following the modification.
2. CANCELLATION OPTION. In every case listed above, if none of those options can reasonably be accomplished, or if the continued use of the infringing items is impracticable, State may cancel the relevant Order or terminate the Contract, and Contractor shall take back the infringing items. If State does cancel the Order or terminate the Contract, Contractor shall refund to State:
  - a. for any software created for State under the Contract, the amount State paid to Contractor for creating it;
  - b. for all other Materials, the net book value of the product provided according to generally accepted accounting principles; and
  - c. for Services, the amount paid by State or an amount equal to 12 (twelve) months of charges, whichever is less.
3. EXCEPTIONS. Contractor will not be liable for any claim of infringement based solely on any of the following by a State Indemnitee:
  - a. modification or use of Materials other than as contemplated by the Contract or

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

#### First Party Liability Limitation

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.
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:
  - a. Indemnified Claim against which Contractor has indemnified State Indemnitees
  - b. claim against which Contractor has indemnified State Indemnitees; or
  - c. provision of the Contract calling for liquidated damages or specifying amounts or percentages as being at-risk or subject to deduction for performance deficiencies.
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.
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.

#### Information Technology Warranty

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

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the Materials that are:

- a. modified or altered by anyone not authorized by Contractor to do so;
  - b. maintained in a way inconsistent to any applicable manufacturer recommendations;  
or
  - c. operated in a manner not within its intended use or environment.
2. COTS SOFTWARE. With respect to Materials provided under the Contract that are commercial-off-the-shelf (COTS) software, Contractor warrants that:
- a. to the extent possible, it will test the software before delivery using commercially available virus detection software conforming to current industry standards;
  - b. the COTS software will, to the best of its knowledge, at the time of delivery be free of viruses, backdoors, worms, spyware, malware, and other malicious code that could hamper performance, collect unlawfully any personally identifiable information, or prevent products from performing as required by the Contract; and
  - c. it will provide a new or clean install of any COTS software that State has reason to believe contains harmful code.
3. PAYMENT HAS NO EFFECT. The warranties in this paragraph are not affected by State's inspection, testing, or payment.

Specific Remedies. Unless expressly stated otherwise elsewhere in the Contract, State's remedy for breach of warranty 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. If none of the foregoing options can reasonably be affected, 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.

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.

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

1. Submit a completed Arizona Baseline Infrastructure Security Controls assessment spreadsheet as found at: <https://aset.az.gov/resources/policies-standards-and->

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[procedures](#), and mitigate or install compensating controls for any issues of concern identified by State. Contractor is required to provide any requested documentation supporting the review of the assessment. The assessment shall be re-validated on a minimum annual basis.

2. State reserves the right to conduct penetration tests or hire a third party to conduct penetration tests of the Contractor's application. Contractor will be alerted in advance and arrangements made for an agreeable time. Contractor shall respond to all serious flaws discovered by providing an acceptable timeframe to resolve the issue and/or implement a compensating control.
3. Contractor must submit 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).
4. Contractor must employ a government-rated cloud compartment to better protect sensitive or regulated State data.

**FINANCIAL SOUNDNESS:** The State must be notified in writing of any substantial change in the Offeror's financial condition during the term of the Contract. Failure to notify the State of such a substantial change in financial condition will be sufficient grounds for terminating the Contract.

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## SECTION 7

### UNIFORM TERMS AND CONDITIONS

#### DEFINITION OF TERMS

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

1. Acceptance. "Acceptance" means the document headed "Offer and Acceptance Form" bearing the State contract number once Procurement Officer has signed it to signify (1) State's formal acceptance of the Accepted Offer and (2) the formation of the Contract.
2. Accepted Offer. If State did not request a Revised Offer, then "Vendor Offer" means the Initial Offer.
  - If State did request a Revised Offer but not a Best and Final Offer, then "Accepted Offer" means the latest Revised Offer.
  - If State requested a Best and Final Offer, then "Accepted Offer" means the latest Best and Final Offer.
3. Arizona Procurement Code. A.R.S.; A.A.C. The "Arizona Procurement Code, "A.R.S.," and "A.A.C." refers to Arizona Revised Statutes ("A.R.S.") § 41-2501, et seq., and the rules promulgated thereunder, Arizona Administrative Code ("A.A.C.") R2-7-101, et. seq.
4. Arizona TPT. "Arizona TPT" means Arizona Transaction Privilege Tax. For information, refer to the Arizona Department of Revenue (DOR) website at:  
<https://www.azdor.gov/business/transactionprivilegetax.aspx>
5. Attachment. "Attachment" means any item that:
  - The Solicitation required Offeror to submit as part of the relevant Offer (e.g., Initial Offer, Revised Offer, or BAFO);
  - Was attached to an Offer when submitted; and
  - Was included in the Accepted Offer.
6. Contract. "Contract" means the combination of the Solicitation, including the Uniform and Special Instructions to Offerors, the Uniform and Special Terms and Conditions, and the Specifications and Statement or Scope of Work; the Offer and any Best and Final Offers; and any Solicitation Amendments or Contract Amendments or authorized Purchase Orders.
7. Contract Amendment. "Contract Amendment" means a document signed by Procurement Officer that has been issued for the purpose of making changes to the Contract after execution. Only the Procurement Officer responsible for this Contract has the authority to modify or amend this Contract.

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8. Contract Terms and Conditions. “Contract Terms and Conditions” means the Special Terms and Conditions and these Uniform Terms and Conditions taken collectively.
  9. Contractor. “Contractor” means the Person identified on the Accepted Offer who has entered into the Contract with State.
  10. Contractor Indemnitor. “Contractor Indemnitor” means Contractor or any of its owners, officers, directors, agents, employees, volunteers or Subcontractors.
  11. Days. “Days” means calendar days unless otherwise specified.
  12. Exhibit. “Exhibit” means any items labeled as an Exhibit in the solicitation or placed in the Exhibits section of the Solicitation.
  13. Gratuity. “Gratuity” means a payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.
  14. Indemnified Basic Claims. “Indemnified Basic Claims” means any and all claims, actions, liabilities, damages, losses, or expenses, including court costs, attorney fees, and costs of claim processing, investigation and litigation, for bodily injury or personal injury, including death, or loss or damage to any real or tangible or intangible personal property, collectively. See paragraph 6.2.
  15. Instructions to Offerors. “Instructions to Offerors” is Section 3-a of Part 3 of the Solicitation Documents.
  16. Materials. “Materials” has the meaning given in A.R.S. § 41-2503(7). Materials includes software, except that if software is sold or provided as a service, then to the extent it consists of encoded information or computer instructions it is included in “Materials” and to the extent it is a service it is described in “Services” below.
  17. Offer: Initial Offer; Revised Offer; Best and Final Offer (BAFO).
    - 17.1 “Initial Offer” means, per A.A.C. R2-7-101(33), Offeror’s proposal submitted to State in response to the Solicitation, as initially submitted;
    - 17.2 “Revised Offer” means any revised versions of the Initial Offer that Offeror has submitted to State at State’s request as permitted under A.A.C. R2-7-C314 and R2 7-C315;
    - 17.3 “Best and Final Offer” (“BAFO”) means, per A.A.C. R2-7-101(8), the Revised Offer submitted after negotiations have been completed that contain Offeror’s most favorable terms for price, service, and products to be delivered.
    - 17.4 Reference to “an Offer, “the Offer,” or “your Offer” means any of the Initial Offer, a Revised Offer, or the Best and Final Offer.
  18. Pricing Document. “Pricing Document” means Section 8, Exhibit C of the RFP, provided that, if there is no such Section in the Contract, then “Pricing Document” is to be construed as

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referring to whatever item in the Contract contains the contracted pricing and payment provisions.

19. Procurement Officer. "Procurement Officer" means the person, or his or her designee, who has been duly authorized by the State to enter into and administer the Contract and to make written determinations with respect to the Contract. Procurement Officer is as identified on the Acceptance unless subsequently changed by Contract Amendment.
20. Purchase Order. "Purchase Order" means the instrument by which State authorizes Contractor to perform some or all of the Work. Whether the Contract will have one Purchase Order, or many Purchase Orders depends the scope of the Contract and how State will use it. The Special Terms and Conditions provide that information. Any of the following is to be construed as being a "Purchase Order":
21. Services. "Services" has the meaning given in A.R.S. § 41-2503(35), Services include the service aspects of software described in the definition of "Materials" above.
22. Specification. "Specification" has the meaning given in A.R.S. § 41-2561. Specifications (if any are included in the Contract), are indexed in the Scope of Work and could be bound separately from the other documents forming the Contract.
23. State. With respect to the Contract generally, "State" means the State of Arizona and its department, agency, university, commission, or board that has executed the Contract. With respect to administration or rights, remedies, obligations and duties under the Contract for a given Purchase Order, "State" means each of Eligible Agency or Co Op Buyer who has issued the Purchase Order.
24. State Fiscal Year. "State Fiscal Year" means the period beginning with July 1 and ending June 30.
25. State Indemnitees. "State Indemnitees" means, collectively, the State of Arizona, its departments, agencies, universities, commissions, and boards and, and their respective officers, agents, and employees.
26. Subcontract. "Subcontract" means any Contract, express or implied, between the Contractor and another party or between a subcontractor and another party, delegating, in whole or in part, the making or furnishing of any material or any service required for the performance of the Contract.
27. Subcontractor. "Subcontractor" has the meaning given in A.R.S. § 41-2503(38).
28. Work. "Work" means the totality of the provision of 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.



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## CONTRACT INTERPRETATION

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. 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.
3. Contract Order of Precedence:
  - Complementary Documents. All documents forming the Contract are complementary and all provisions are to be interpreted as a single, united Contract. If certain work, requirements, obligations, or duties are set out only in one but not in another, Contractor shall carry out the Work as though the relevant work, requirements, obligations, or duties had been fully described in all, consistent with the other documents forming the Contract and as is reasonably inferable from them as being necessary to produce complete results.
  - Conflicts. In case of any inconsistency, conflict, or ambiguity among the documents forming the Contract and their provisions, the Contract documents and their provisions are to prevail in the following order, descending from most dominate to most subordinate, provided that, among categories of documents or provisions within the same sub-section below, 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.

### The Solicitation Documents, in the order:

- Special Terms and Conditions;
- Exhibits to the Special Terms and Conditions;
- Uniform Terms and Conditions;
- Scope of Work;
- Exhibits to the Scope of Work;
- Pricing Document;
- Exhibits to the Pricing Document;
- Specifications; and
- Any other documents referenced or included in the Solicitation;
- Orders, in reverse chronological order; and

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- Accepted Offer.
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.
  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.
  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.
  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.
  8. Arbitration. The parties to this Agreement agree to resolve all disputes arising out of or relating to this Agreement 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.
  9. Counterparts. The parties may execute this Agreement in two or more counterparts, each of which shall be deemed an original and together which shall constitute one and the same document.

#### **CONTRACT ADMINISTRATION AND OPERATION**

1. Records. Under A.R.S. § 35-214 and § 35-215, the Contractor shall retain and shall contractually require each subcontractor to retain all data and other "records" relating to the acquisition and performance of the Contract for a period of five years after the completion of the Contract. All records shall be subject to inspection and audit by the State at reasonable times. Upon request, the Contractor shall produce a legible copy of any or all such records.
2. Non-Discrimination. Contractor shall comply with Executive Order 2009-9, which mandates that all persons, regardless of race, color, religion, sex, age, or national origin not mentioned in Order shall have equal access to employment opportunities, and all other applicable state and Federal employment laws, rules, and regulations, including the Americans with Disabilities Act. Contractor shall take affirmative action to ensure that applicants for employment and employees are not discriminated against due to race, creed, color, religion, sex, national origin or disability.

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3. Audit. Pursuant to A.R.S. § 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.
  4. 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.
  5. 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 ASTO.
  6. 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.
  7. 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 the 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.
  8. 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

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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.

9. 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.
10. 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.

## **COSTS AND PAYMENTS**

1. Payments. Payments shall comply with the requirements of A.R.S. Titles 35 and 41, Net thirty (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.
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.
3. Applicable Taxes.
  - Payment of Taxes. The Contractor shall be responsible for paying all applicable taxes.
  - 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.
  - 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

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transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.

- IRS W9 Form. In order to receive payment, the Contractor shall have a current IRS W9 Form on file with the State of Arizona, unless not required by law.
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.
  5. Availability of Funds for the current State fiscal year. Should the State Legislature enter back into session and reduce the appropriations for any reason and these goods or services are not funded, the State may take any of the following actions:
    - Accept a decrease in price offered by the contractor;
    - Cancel the Contract; and
    - Cancel the Contract and re-solicit the requirements.

## **CONTRACT CHANGES**

1. Amendments. This Contract is issued under the authority of the ASTO. 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 ASTO 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.
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 ASTO. 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.
3. Assignment and Delegation. Contractor acknowledges that Contractor's experience and expertise is a substantial consideration in the ASTO's review of the Offer. The Contractor shall not assign any right nor delegate any duty under this Contract without the prior written approval of the ASTO.

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## RISK AND LIABILITY

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.
2. Indemnification
  - 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. Notwithstanding any provision of the Agreement to the contrary, a department of the State of Arizona is not authorized to indemnify Bank.
  - 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.
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.
4. Force Majeure.
  - a. 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

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declaring force majeure which such party is unable to prevent by exercising reasonable diligence.

- b. Force Majeure shall not include the following occurrences:
- i. Late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, or an oversold condition of the market;
  - ii. 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
  - iii. Inability of either the Contractor or any subcontractor to acquire or maintain any required insurance, bonds, licenses or permits.
- c. 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.
- d. 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.
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 applied by third parties to the Contractor, toward fulfillment of this Contract.

## WARRANTIES

1. Liens. The Contractor warrants that the materials supplied under this Contract are free of liens and shall remain free of liens.
2. Quality. Unless otherwise modified elsewhere in these terms and conditions, the Contractor warrants that, for one (1) year after acceptance by the State of the materials, they shall be:
  - Of a quality to pass without objection in the trade under the Contract description;
  - Fit for the intended purposes for which the materials are used;
  - Within the variations permitted by the Contract and are of even kind, quantity, and quality within each unit and among all units;

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- Adequately contained, packaged and marked as the Contract may require; and
  - In conformance to the written promises or affirmations of fact made by the Contractor.
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.
  4. Inspection/Testing. The warranties are not affected by inspection or testing of or payment for the materials by the State.
  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 licenses and permit requirements.
  6. Survival of Rights and Obligations after Contract Expiration or Termination.
    - Contractors 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.
    - 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 ASTO, including, without limitation, all purchase orders received prior to but not fully performed and satisfied at the expiration or termination of this Contract.
  7. Contractors with no operations in Arizona. 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.



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## 8. Contractors with Operations in Arizona.

- By entering into the contract, the contractor warrants compliance with the Federal immigration and Nationality Act (FINA) and all other Federal immigration laws and regulations related to the immigration status of its employees. The contractor shall obtain statements from its subcontractors certifying compliance and shall furnish the statements to the Procurement Officer upon request. The contractor and its subcontractors shall also maintain Employment Eligibility Verification forms (I-9) as required by the U.S. Department of Labor's Immigration and Control Act), for all Employees performing work under the contract. I-9 forms are available for download at USCIS.GOV.
- Compliance requirements for A.R.S. § 41-4401—immigration laws and E-Verify requirement.
- Contractors warrants compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with Section A.R.S. § 23-214, Subsection A. (That subsection reads: "After December 31, 2007, every employer, after hiring an employee, shall verify the employment eligibility of the employee through the E-Verify program.)
- A breach of a warranty regarding compliance with immigration laws and regulations shall be deemed a material breach of the contract and the Contractor may be subject to penalties up to and including termination of the Agreement.
- The Department retains the legal right to inspect the papers of any employee who works on the Agreement to ensure that Contractor is complying with the warranty.

## **STATE'S CONTRACTUAL REMEDIES**

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 ASTO 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.
2. Stop Work Order.
  - 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

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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.

- 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 ASTO shall make an equitable adjustment in the delivery schedule or Contract price, or both, and the Contract shall be amended in writing accordingly.
3. Non-exclusive Remedies. The rights and the remedies of the State under this Contract are not exclusive.
  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.
  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.

## **CONTRACT TERMINATION**

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.
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

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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.

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.
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 interests 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.
5. Termination for Default.
  - 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 ASTO shall provide written notice of the termination and the reasons for it to the Contractor.
  - 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.
  - The State may, upon termination of this Contract, procure, on terms and in the manner that it deems appropriate, materials or services to replace those under this Contract. The Contractor shall be liable to the State for any excess costs incurred by the State in procuring materials or services in substitution for those due from the Contractor.

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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.
  7. Contract Cancellation (Immediate). This contract is critical to ASTO and the agency reserves the right to immediately cancel the whole or any part of this contract due to failure of the Contractor to carry out any material obligation, term or condition of the contract. The ASTO shall issue a written notice of default effective at once and not deferred by any interval of time. Default shall be for acting or failing to act in any of the following:
    - The Contractor provides material that does not meet the specifications of the contract;
    - The Contractor fails to adequately perform the services set forth in the specifications of the contract;
    - The Contractor fails to complete the work required or furnish the materials required within the time stipulated in the contract;
    - The Contractor fails to make progress in the performance of the contract and/or gives the ASTO reason to believe that the Contractor will not or cannot perform to the requirements of the contract.
  8. The ASTO may resort to any single or combination of the following remedies:
    - Cancel any contract;
    - Reserve all rights or claims to damage for breach of any covenants of the contract;
    - Perform any test or analysis on materials for compliance with the specifications of the contract. If the result of any test confirms a material non-compliance with the specifications, any reasonable expense of testing shall be borne by the Contractor.
    - In case of default, the ASTO reserves the right to purchase materials or to complete the required work in accordance with the Arizona Procurement Code.
  9. The Procurement officer may recover reasonable excess costs from the Institution by:
    - Deduction from an unpaid balance;
    - Collection against the bid and/or performance bond; or
    - Any combinations of the above or any other remedies as provided by law.

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## SECTION 8

### EXHIBITS AND ATTACHMENTS

#### EXHIBIT A: PRICING

Respondent must provide a merchant fee schedule based on the activity and volume, including the following:

- a. Setup Fee
- b. Monthly Maintenance
- c. Monthly Minimum Discount
- d. Chargeback Fee
- e. Authorization Fee should include American Express & Discover/Novus card Brands and Diners Club/Carte Blanche/JCB
- f. Online Access Fee
- g. Return Fee
- h. Wireless Fee
- i. Wireless Authorization Fee
- j. Merchant Equipment Fees
- k. Interchange-Plus Pricing
- l. Membership Pricing
- m. Flat Rate Pricing
- n. And any other fees and or pricing that is offered

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## **EXHIBIT B: SCOPE OF WORK**

The following is a description of the Merchant Card Services Scope of Work and Requirements ASTO is requesting. Each bidder must be currently capable of providing the required services outlined below and therefore, respond affirmatively to each item and elaborate where requested to be considered.

### **Minimum and Legal Requirements**

1. Meet all legal and regulatory requirements of departments and agencies of Federal and State Government as appropriate for the services being proposed.
2. Maintain records of all State transactions for a period of no less than seven (7) years.
3. Ability to adapt to reasonable changes in State systems, procedures, technology, and needs.
4. Maintain reasonable internal controls to safeguard funds, accounts, and confidential data.
5. Employ appropriate disaster recovery plans and resources to adequately and completely protect all ASTO accounts, funds, and services.
6. Ability to provide state-of-the-art merchant card services and resources to coordinate revenue collection and payment issuance transitions with State agencies, as required.
7. Provide PCI DSS compliance certification issued to the bidder and completed by a third-party assessor.
8. Ability to provide PCI DSS compliance documentation issued to any and all subcontractors and third-party processors. Identify the customer contact for PCI DSS compliance.
9. Ability to provide references and project history which clearly exhibit qualifications necessary to deliver merchant card solutions to entities of the same size and structure as the State of Arizona.

### **Services and Processing Requirements**

1. Provide an account manager/customer service representative to ASTO who is familiar with the State of Arizona service requirements and knowledgeable in the layout of the State. Provide sufficient back-up coverage that is available and responsive to the State's daily business needs from at least 7:00 A.M. to 5:00 P.M. Arizona Time. This person shall be responsible for tracking all requests, providing status updates on submitted requests, and

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ensuring all requests have been satisfied in a timely manner. The customer service representative and back-up shall:

- a. Be available Monday through Friday (excluding State holidays) between the hours of 7:00 A.M. and 5:00 P.M. Arizona Time;
  - b. Receive and acknowledge requests from ASTO and other State agencies in a timely manner;
  - c. Ensure satisfactory response and/or status update is received within one (1) business day of initial request. Ensure a status update is communicated at least every two (2) business days thereafter;
  - d. Escalate inquiries/issues as appropriate;
  - e. Notify ASTO of all changes to processing and protocol impacting ASTO accounts and/or services; and
  - f. Notify ASTO of all complaints received from other State agencies, including an explanation of the complaint and resolution.
2. Communicate to and seek approval from authorized ASTO staff for any addition, change, modification, or deletion of any and all services, equipment, security, and processes covered by any contract resulting from this RFP.
  3. Allow batch close-outs until at least 8:00 P.M. Arizona Time for same day processing and next-day credit.
  4. Process transactions for gross settlement. No deduction for fees shall be made at the transaction level.
  5. Provide internet-based system access to unlimited users to retrieve merchant account data, query activity, and generate reports from at least 7:00 A.M. to 6:00 P.M., Monday through Friday excluding holidays. System security must allow for both single and multiple merchant account users and always allow multiple users per merchant account and allow a user access to multiple merchant accounts.
  6. Previous day information must be posted by 7:00 A.M. each day. At least 365 completed days of all merchant account transaction data must be available online at all times.
  7. Report Provider-initiated account adjustments to ASTO for receipt within three (3) business days. Adjustments include, but are not limited to, disputed items, adjustments, and any other miscellaneous debit or credit adjustments. Information provided to ASTO must be as

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detailed as possible, and copies or originals of all documentation related to such transactions must be provided.

8. Upon ASTO's request, individual statements must be mailed to the address on record for the merchant account and a summary must be mailed to ASTO.
9. Debit individual merchant account fees at the conclusion of each processing month from the settlement account. The merchant number shall be indicated in the memo post field of the transaction on the bank account statement. Credit card chargebacks or other debit adjustments are to be debited separately and not netted from daily proceeds.
10. The Provider must support existing hardware and software pertaining to credit card collections or provide processing hardware and software to designated State locations and provide appropriate training in use of the same.
11. Provide electronic notifications of chargebacks electronically within two (2) banking days of the chargeback date.
12. Provide next day settlement for Visa, MasterCard, AMEX and Discover Card network transactions. If not able to, provide settlement schedule for each card network.
13. Provide software and hardware necessary for acceptance of credit and debit cards
  - a. with card present, and
  - b. card not present,
  - c. using an IVR application,
  - d. via e-Commerce (internet),
  - e. pin-based debit,
  - f. Mobile/Digital wallets, and
  - g. mail or telephone.
14. Provide a list of all payment gateways and networks supported and address all fees for setup, monthly recurring charges and per transactions fees on the Pricing Schedule – Exhibit A.
15. The Offeror shall have a mechanism to void or reverse a payment as necessary.
16. Provide a list of all card organizations and electronic payment types that the company is able to process.



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### **Third-Party Processing**

1. Explain your company's role; are you an acquirer, processor, other?
2. Do you rely on third parties to process your merchant credit card transactions? If so, explain and provide the years of service you have been doing business with them and describe your relationship with your third-party processor.
3. Describe in detail how your services are integrated to/with third party software, websites and gateways.
4. Identify your payment gateway provider and the number of years you have had a relationship with them.

### **Systems and Reporting Requirements**

ASTO users require access to all State of Arizona merchant activity. Previous day information reporting must be available by 7 A.M. (Arizona Time) each business day. All activity regarding sales, refunds, and chargebacks must be available online for at least sixty (60) days. Designated ASTO staff will authorize and manage all system users. The system must offer the ability to grant certain permissions by merchant account on demand. For example, Sample User #1 may have authority to view activity and process refunds for Merchant Account 123, but only to view activity for Merchant Account 456, but not Merchant Account 789. In all cases, dual control is required when users or roles are created or edited.

1. Provide appropriate security, as mutually agreed upon, for all online systems and automated financial transactions. Requested security measures include:
  - a. Individual usernames and passwords for each user;
  - b. Password expiration and complexity requirements;
  - c. Session timeout after a defined period of inactivity;
  - d. Customizable authorization levels for users.
2. Provide all account and analysis reports and statements, hard copy and/or electronic, within five (5) banking days of the last banking day of the reporting period.
3. Provide a written and electronic monthly analysis of fees for each account and a line-item summary of all accounts. The analyses shall accompany the invoice and detail the number

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of transactions, the unit price, and the total amount billed for each line item, along with a grand total of services provided for that statement period. If there are multiple accounts, a consolidated statement must be provided as well.

4. Provide daily electronic files as prescribed above by 8:00 A.M.
5. Provide training for system and reporting functions mentioned in this section.
6. Provide advanced notification to ASTO and to each merchant of any anticipated system downtime, scheduled system maintenance, or equipment upgrades. Notifications must be provided electronically and be provided at least a week prior to any occurrence.
7. Provide daily and monthly reconciliation reports to the merchant electronically in a format that can be easily downloaded. Provide samples of standard reports, including detail and summary reports.
8. Provide the capability to access transaction details, with a total that will reconcile to the bank statement total.
9. Provide security measures used to prevent unauthorized user access to the system or data.

### **Merchant and Debit Card Processing Services**

1. Credit and Debit Card Deposit Activity. The State Treasurer requires merchant bank card accounts for various state agencies. Separate merchant identification is required for each agency.
2. Credit Card Discount Rate and Debit Card per Transaction Fee. Provide a schedule of discount rates and all other fees associated with processing credit card payments on the BID FORM.
3. Purchase/Rental of EDC Terminals. The State currently uses EDC terminals throughout the year at various agency locations.
4. Touch Tone Credit Card Payment Systems. The State may employ telephone systems to allow citizens to make payments by phone with credit or debit cards. The systems will be connected online with the servicing bank with agencies as separate merchants.
5. Return Item Processing:

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- a. ACH returns shall be processed within 24 hours of sent receipt.
  - b. ACH reversals shall be processed within 24 hours of receipt of the item. If a reversal cannot be completed, notification shall be received within 24 hours with the reason of the uncompleted transaction.
  - c. The State shall receive a separate record for each returned and reversed item, which shall include the type of item being returned or reversed and the following information:
    - i. transaction number
    - ii. transaction date
    - iii. transaction amount
    - iv. reason and code
    - v. account and ABA number
    - vi. full name on transaction
    - vii. original deposit date

6. Upon request the bank shall provide the depositing location.

7. Transaction Research:

- a. Transaction correction adjustments shall include the following information:
  - i. correction amount
  - ii. total transactions amount
  - iii. date
  - iv. account number
  - v. reason for correction
  - vi. copy of the source document
  - vii. copy of any vault or processor backup documentation
  - viii. agency name if known

b. The State shall receive requested copies or documentation within 48 hours.

8. Transaction Processing and Settlement:

- a. The bidder shall be able to process VISA and MasterCard, Discover, American Express and Diners Club.
- b. The bidder shall arrange for and support any agreements required to process debit transactions.
- c. The bidder shall provide for the authorization and settlement of transactions through the appropriate authorization and settlement network.

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- d. The bidder shall provide research and problem resolution related to transaction and or settlement discrepancies. Customer service shall be available 24 hours, seven days a week.

9. Transaction Reporting:

- a. Daily reporting shall provide totals and count by card type, by terminal ID and or Merchant ID, total summary transaction count by card type rolling up all terminal ID and or Merchant ID numbers to an association level.
- b. Daily reporting shall identify any transactions activity considered miscellaneous.
- c. Daily reporting shall give total transaction count and amount by card type for all locations.
- d. Daily settlement reporting by terminal ID and or merchant ID and or association level.

10. Deposit and Reporting of Credit Card and Debit Card Transactions:

All accepted credit and debit card transactions are to be deposited into credit card accounts located in Arizona with the state servicing bank. All bids are to indicate the availability of deposits from credit card transactions, e.g., all EDC paperless transactions before a specified time credited to the Treasurer's account that day.

On-line daily statements of credit sales must be available for downloading. Vendor must identify each batch by State agency. The last four (4) digits of a State agency identification number and where applicable, the three-digit state agency AFIS code shall appear in the on-line daily statements to identify the State agency. Credit and debit card sales processed in the same batch should be posted to the credit card account as a single batch amount. Any splitting of these batches for purposes of charging the "per transaction debit card fee" should be accomplished separately as part of the billing process and not through the deposit process. Detailed backup must be provided for all miscellaneous credits and debits. All fees shall be charged on a monthly basis.

11. Other Credit Cards. The State Treasurer may enter into separate arrangements for the acceptance of credit/charge cards with MasterCard/Visa, Discover, American Express, or Diners Club.

12. Safety and Soundness. All service providers shall identify key measures of the business financial strength, e.g. capital ratios, market capitalization, total assets.

13. The merchant card processor shall provide:

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- A bundled bid (inclusive of the interchange costs) resulting in a single rate for VISA/MC transactions. This requirement directly impacts existing third-party contracts where reimbursement agreements exist and an alternative unbundled bid pricing structure.
  - An alternative unbundled bid pricing structure.
  - Electronic access by the State Treasurer globally to statewide merchant account activity reported daily and monthly.
  - Electronic access by the responsible agency to the merchant account activity of their field sites reported daily and monthly.
  - Electronic access by the field site to their activity reported daily and monthly. Reporting must meet or exceed current service levels.
  - Same day settlement on merchant card activity processed on the same day (VISA, MC, Discover, AMEX), or a mutually agreeable settlement arrangement. Electronic access to all activity including sales, discounts, equipment charges, and miscellaneous credit/debit items for use in reconciling site and merchant activity.
  - A designated primary accounts manager with two secondary personnel designated. An organization chart shall be provided with the bid listing names, titles, department(s), e-mail addresses and telephone numbers.

How will revenue and fees be credited and debited to the bank account? Currently, revenue is processed and credited to the account daily within 24 hours after settlement has occurred. All fees are charged monthly to the specified bank account for each Merchant ID.

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## EXHIBIT C: METHOD OF APPROACH

### Competitive Position and Future Commitment

- What differentiates your service from other providers?
- How do you plan to keep services current and competitive?
- What approach is the company taking in the development of new services and products?
- What new services and products does the company plan to offer and within what timeframe?

### Outsourcing:

- Are any applications outsourced to a third party? If so, name the vendor(s) and describe the application or product.
- Describe the role of any third-party vendor used by the business to provide the services.

### Cut-off Time:

- What are the cut-off time Mountain Standard Time for settlement of transactions?
- Describe the transaction process timing in detail by including days events will occur from settlement of transaction to funds delivered to the bank account.
- How soon after the cut-off date will the following be made available?
  - Statements
  - Reconciliation information
  - Reports

### Technical Capabilities:

- What security procedures are in place?
- How do you plan to keep this product current and competitive as it relates to changes in technology?
- What methods are utilized for delivery of information?
- What technical capabilities can be utilized throughout state government to improve the efficiency, effectiveness, and productivity of transactional processes?

### Disaster Recovery:

- What disaster recovery plans does the company have to avoid interruptions in services?
- Describe the company's disaster recovery plan in detail.
- Where are the off-site facilities located? Are they "hot" sites? Describe the location and capabilities. Is there an alternative backup site? If yes, describe the location and capabilities.

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- How quickly can the hot site be implemented in the event of an emergency?

Customer Service and Quality:

- Indicate your business' customer service organizational structure.
- Will a specific customer service representative be assigned to handle this business?
- Describe the responsibilities of customer service personnel, including the chain of command for problem resolution.
- Does your business provide technical customer support for application and communication problems?
- Does the business have a formal quality improvement program for this service? If yes, please describe.
- What is the standard service level agreement (SLA) for system outages and problem resolution?

Implementation:

- Provide a copy of all agreements that will be required to initiate services.
- Provide a detailed description of the implementation process, including testing, and a sample implementation schedule.
- What is the average lead time required for implementation?
- Describe materials available and/or any on-site training that you provide.

Do you assign an implementation team?

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## **EXHIBIT D: COMPANY EXPERIENCE**

1. Experience: the offeror should describe its experience as it relates to the scope of work and conducting similar services for government entities.
2. Brief overview of firm: describe the organization, size, structure, and office location(s).
3. Personnel: provide the professional and educational background of key personnel.
4. Full disclosure of any potential conflicts of interest (e.g., serving as a reseller of software, or business relationship between the Offeror and any State employee.
5. A statement documenting all open or pending litigation initiated by Bidder or where Bidder is a defendant or party in any litigation with a public sector client.
6. How long has your business offered the service being requested?
7. Specify the number of government/business customers using this service.
8. Provide names and phone numbers of three references, preferably governments who are currently using the service requested. Select a mix of long-standing and recent customers.
9. Provide any additional information which you believe to be relevant to your capabilities to provide the services requested, e.g., product brochures, articles in trade journals, etc.



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**EXHIBIT E: COPY OF A.A.C. R2-7-103 (CONFIDENTIAL INFORMATION) AS WAS CURRENT AT TIME OF SOLICITATION ISSUANCE**

**PROVIDED FOR REFERENCE ONLY**

1. If a person wants to assert that a person's offer, specification, or protest contains a trade secret or other proprietary information, a person shall include with the submission a statement supporting this assertion. A person shall clearly designate any trade secret and other proprietary information, using the term "confidential". Contract terms and conditions, pricing, and information generally available to the public are not considered confidential information under this Section.
2. Until a final determination is made under Section 5, an agency chief procurement officer shall not disclose information designated as confidential except to those individuals deemed by an agency chief procurement officer to have a legitimate state interest.
3. Upon receipt of a submission, the agency chief procurement officer shall make one of the following written determinations:
  - The designated information is confidential, and the agency chief procurement officer shall not disclose the information except to those individuals deemed by the agency chief procurement officer to have a legitimate state interest.
  - The designated information is not confidential; or
  - Additional information is required before a final confidentiality determination can be made.
4. If the agency chief procurement officer determines that information submitted is not confidential, a person who made the submission shall be notified in writing. The notice shall include a time period for requesting a review of the determination by the state procurement administrator.
5. The agency chief procurement officer may release information designated as confidential if:
  - A request for review is not received by the agency chief procurement officer within the time period specified in the notice; or
  - The agency chief procurement officer, after review, makes a written determination that the designated information is not confidential.

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## EXHIBIT F: CONFIDENTIAL INFORMATION DESIGNATION

All materials submitted as part of a response to a solicitation 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. Recognizing there may be materials included in a solicitation response that are proprietary or a trade secret, a process is set out in A.A.C. R2-7-103 (copy can be found at: <https://www.azsos.gov/rules/arizona-administrative-code> ) that will allow qualifying materials to be designated as confidential and excluded from disclosure. For purposes of this process the definition of “trade secret” will be the same as that set out in A.A.C. R2-7-101(50).

Complete this form. Return it with your Offer along with the appropriate supporting information to assist State in making its determination as to whether any of the materials submitted as part of your Offer should be designated confidential because the material is proprietary or a trade secret and therefore not subject to disclosure.

STATE WILL NOT CONSIDER ANY MATERIAL IN YOUR OFFER “CONFIDENTIAL” UNLESS DESIGNATED ON THIS FORM.

**Check one of the following – if neither is checked, State will assume that as equivalent to “DOES NOT”:**

<input type="checkbox"/>	This response DOES NOT contain proprietary or trade secret information. I understand that my entire response will become public record in accordance with A.A.C. R2-7-C317.
<input type="checkbox"/>	This response DOES contain trade secret information because it contains information that:  Is a formula, pattern, compilation, program, device, method, technique or process, AND  Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; AND  Is the subject of efforts by myself or my organization that are reasonable under the circumstances to maintain its secrecy?

NOTE: Failure to attach an explanation may result in a determination that the information does not meet the statutory trade secret definition. All information that does not meet the definition

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of trade secret as defined by A.A.C. R2-7-101(50) will become public in accordance with A.A.C. R2-7-C317. State may make its own determination on materials in accordance with A.A.C. R2-7-103.

If State agrees with Offeror’s designation of trade secret or confidentiality and the determination is challenged, the undersigned hereby agrees to cooperate and support the defense of the determination with all interested parties, including legal counsel or other necessary assistance.

By submitting this response, Offeror agrees that the entire Offer, including confidential, trade secret and proprietary information may be shared with an evaluation committee and technical advisors during the evaluation process. Offeror agrees to indemnify and hold State, its agents and employees, harmless from any claims or causes of action relating to State’s withholding of information based upon reliance on the above representations, including the payment of all costs and attorney fees incurred by State in defending such an action.

_____	_____
Offeror Company Name	Signature of Authorized Person
_____	_____
Address	Printed Name
_____	_____
City                      State                      Zip	Title

## EXHIBIT G: CONFORMANCE STATEMENTS

ASTO WILL NOT CONSIDER ANY EXCEPTIONS UNLESS DESIGNATED ON THIS FORM. READ THE INSTRUCTIONS TO OFFERORS BEFORE TAKING ANY EXCEPTIONS – TAKING EXCEPTIONS CAN BE GROUNDS FOR STATE REJECTING OR DOWN-GRADING YOUR OFFER IN EVALUATION.

### CONFORMANCE TO THE INSTRUCTIONS:

Check one of the following – if neither is checked, State will assume that as equivalent to “YES”:

- YES – Offeror acknowledges that it has read and understands the Instructions to Offerors of the Solicitation Documents and attests that its Offer complies.
- NO – Offeror acknowledges that it has read and understands the Instructions to Offerors of the Solicitation Documents, and attests that its Offer complies with both EXCEPT FOR the exceptions listed in **Exhibit G Supplement 1**.

### CONFORMANCE TO THE SCOPE:

Check one of the following – if neither is checked, State will assume that as equivalent to “YES”:

- YES – Offeror acknowledges that it has read and understands the Scope Document of the Solicitation Documents and attests that its Offer complies.
- NO – Offeror acknowledges that it has read and understands the Scope Document in Part 2 of the Solicitation Documents and attests that its Offer complies EXCEPT FOR the exceptions listed in **Exhibit G Supplement 2**.

### CONFORMANCE TO THE CONTRACT TERMS AND CONDITIONS:

Check one of the following – if neither is checked, State will assume that as equivalent to “YES”:

- YES – Offeror acknowledges that it has read and understands the Special Terms and Conditions and the Uniform Terms and Conditions, along with their respective Exhibits of the Solicitation Documents and attests that its Offer complies with both.
- NO – Offeror acknowledges that it has read and understand the Special Terms and Conditions and the Uniform Terms and Conditions, along with their respective Exhibits of the Solicitation Documents and attests that its Offer complies with both EXCEPT FOR the exceptions listed in **Exhibit G Supplements 3 and 4**.

**EXHIBIT G – SUPPLEMENT 1: EXCEPTIONS TO INSTRUCTIONS**

Article / Paragraph or Exhibit Reference	Proposed Changes / Alternate Language	Rationale for Proposed Change
No.1: Instructions to Offerors		

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Signature of Person Authorized to Sign

**EXHIBIT G – SUPPLEMENT 2: EXCEPTIONS TO SCOPE OF WORK**

Article / Paragraph or Exhibit Reference	Proposed Changes / Alternate Language	Rationale for Proposed Change
No.2: Scope of Work		

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Signature of Person Authorized to Sign

**EXHIBIT G – SUPPLEMENT 3: EXCEPTIONS TO SPECIAL TERMS AND CONDITIONS**

Article / Paragraph or Exhibit Reference	Proposed Changes / Alternate Language	Rationale for Proposed Change
No.3: Special Terms & Conditions		

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Signature of Person Authorized to Sign

**EXHIBIT G – SUPPLEMENT 4: EXCEPTIONS TO UNIFORM TERMS AND CONDITIONS**

Article / Paragraph or Exhibit Reference	Proposed Changes / Alternate Language	Rationale for Proposed Change
No.4: Uniform Terms & Conditions		

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Signature of Person Authorized to Sign



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## EXHIBIT G – SUPPLEMENT 5: BOYCOTT OF ISRAEL DISCLOSURE

Please note that if any of the following apply to this Solicitation, Contract, or Contractor, then the Offeror shall select the “Exempt Solicitation, Contract, or Contractor” option below:

- The Solicitation or Contract has an estimated value of less than \$100,000;
- Contractor is a sole proprietorship;
- Contractor has fewer than ten (10) employees; OR
- Contractor is a non-profit organization.

Pursuant to A.R.S. §35-393.01, public entities are prohibited from entering into contracts “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 goods or services from Israel.”

Under A.R.S. §35-393:

1. "Boycott" means engaging in a refusal to deal, terminating business activities or performing other actions that are intended to limit commercial relations with entities doing business in Israel or in territories controlled by Israel, if those actions are taken either:
  - (a) Based in part on the fact that the entity does business in Israel or in territories controlled by Israel.
  - (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 an organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company or other entity or business association, including a wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate, that engages in for-profit activity and that has ten or more full-time employees.
3. "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.

The certification below does not include boycotts prohibited by 50 United States Code Section 4842 or a regulation issued pursuant to that section. See A.R.S. §35-393.03.

**In compliance with A.R.S. §35-393 et seq., all offerors must select one of the following:**

- The Company submitting this Offer **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 *et seq.* I understand that my entire response will become public record in accordance with A.A.C. R2-7-C317.
- The Company submitting this Offer **does** participate in a boycott of Israel as described in A.R.S. §§35-393 *et seq.*
- Exempt Solicitation, Contract, or Contractor.**

Indicate which of the following statements applies to this Contract:

- Solicitation or Contract has an estimated value of less than \$100,000;
- Contractor is a sole proprietorship;
- Contractor has fewer than ten (10) employees; and/or
- Contractor is a non-profit organization.

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Signature of Person Authorized to Sign

\_\_\_\_\_  
Address

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
City                      State                      Zip

\_\_\_\_\_  
Title