



**BOARD OF SUPERVISORS AGENDA ITEM REPORT  
CONTRACTS / AWARDS / GRANTS**

Award  Contract  Grant

Requested Board Meeting Date: 12/12/2017

\* = Mandatory, information must be provided

or Procurement Director Award

**\*Contractor/Vendor Name/Grantor (DBA):**

State of Arizona Secretary of State

**\*Project Title/Description:**

Secretary of State ES&S IGA

**\*Purpose:**

maintenance and administration of the statewide voter registration database

**\*Procurement Method:**

Procurement Exempt D29.4

**\*Program Goals/Predicted Outcomes:**

It is federally mandated that Pima County upload it's voter registration information to the statewide database. This is Pima county's share of the maintenance and administration of the system, including the link with Pima County.

**\*Public Benefit:**

Pima County voter registration data is included in the statewide database.

**\*Metrics Available to Measure Performance:**

Voter registration data is successfully uploaded in a timely manner.

**\*Retroactive:**

no

To: CAB. 11.28.17  
Ver. - 1  
ygs. 76

**Contract / Award Information**

Document Type: CT Department Code: RE Contract Number (i.e., 15-123): 18\*160

Effective Date: 12/12/17 Termination Date: 6/30/18 Prior Contract Number (Synergen/CMS): \_\_\_\_\_

Expense Amount: \$\* 47,331.20  Revenue Amount: \$ \_\_\_\_\_

\*Funding Source(s) required: General Fund

Funding from General Fund?  Yes  No If Yes \$ 47,331.20 % \_\_\_\_\_

Contract is fully or partially funded with Federal Funds?  Yes  No

\*Is the Contract to a vendor or subrecipient? vendor

Were insurance or indemnity clauses modified?  Yes  No

If Yes, attach Risk's approval

Vendor is using a Social Security Number?  Yes  No

If Yes, attach the required form per Administrative Procedure 22-73.

**Amendment / Revised Award Information**

Document Type: \_\_\_\_\_ Department Code: \_\_\_\_\_ Contract Number (i.e., 15-123): \_\_\_\_\_

Amendment No.: \_\_\_\_\_ AMS Version No.: \_\_\_\_\_

Effective Date: \_\_\_\_\_ New Termination Date: \_\_\_\_\_

Prior Contract No. (Synergen/CMS): \_\_\_\_\_

Expense or  Revenue  Increase  Decrease Amount This Amendment: \$ \_\_\_\_\_

Is there revenue included?  Yes  No If Yes \$ \_\_\_\_\_

\*Funding Source(s) required:

Funding from General Fund?  Yes  No If Yes \$ \_\_\_\_\_ % \_\_\_\_\_

**Grant/Amendment Information** (for grants acceptance and awards)  Award  Amendment

Document Type: \_\_\_\_\_ Department Code: \_\_\_\_\_ Grant Number (i.e., 15-123): \_\_\_\_\_

Effective Date: \_\_\_\_\_ Termination Date: \_\_\_\_\_ Amendment Number: \_\_\_\_\_

Match Amount: \$ \_\_\_\_\_  Revenue Amount: \$ \_\_\_\_\_

\*All Funding Source(s) required:

\*Match funding from General Fund?  Yes  No If Yes \$ \_\_\_\_\_ % \_\_\_\_\_

\*Match funding from other sources?  Yes  No If Yes \$ \_\_\_\_\_ % \_\_\_\_\_

\*Funding Source: \_\_\_\_\_

\*If Federal funds are received, is funding coming directly from the Federal government or passed through other organization(s)? \_\_\_\_\_

Contact: Pamela Franklin

Department: Recorder Telephone: 520-724-4356

Department Director Signature/Date: F. A. Rodney 11-27-17

Deputy County Administrator Signature/Date: \_\_\_\_\_

County Administrator Signature/Date: C. J. Stuelbany 11/27/17  
(Required for Board Agenda/Addendum Items)

**Intergovernmental Agreement**  
**between**  
**Pima County and the Office of the Secretary of State**  
**for**  
**Voter Registration Services and Support**

This Intergovernmental Agreement ("IGA") is entered into by and between Pima County, a body politic and corporate of the State of Arizona ("County"), on behalf of the Pima County Recorder ("County Recorder") and the Office of the Secretary of State ("Secretary") pursuant to A.R.S. § 11-952.

**Recitals**

- A. County and Secretary may contract for services and enter into agreements with one another for joint or cooperative action pursuant to A.R.S. § 11-951, *et seq.*
- B. Secretary is required by A.R.S. § 16-168(J) to maintain and administer a statewide voter registration database.
- C. County Recorder is required by A.R.S. § 16-168(J) to electronically transmit voter registration data for inclusion in the statewide voter registration database and is authorized to access voter registration data from the statewide voter registration database.
- D. County and Secretary desire to cooperate on using software and software maintenance services for the statewide voter registration database.

NOW, THEREFORE, County and Secretary, pursuant to the above, and in consideration of the matters and things hereinafter set forth, do mutually agree as follows:

**Agreement**

- 1. **Purpose.** The purpose of this IGA is to support an agreement that Secretary entered into with Election Services & Software, Inc. ("ES&S") dated March 1, 2016 for software and software maintenance services for the statewide voter registration database, as well as a substantially similar agreement between the same parties dated July 1, 2017 (collectively the "ES&S Agreements"). Copies of the ES&S Agreements are attached as Exhibits One and Two.
- 2. **Future Agreements.** The Secretary and County agree and acknowledge that Secretary has awarded a new contract that will replace the current ES&S contract. Secretary and County intend that the County Recorder have the opportunity to access any such replacement software in substantially the same manner as the County Recorder now accesses that software provided for in the ES&S Agreements.

3. **Financing.** Secretary and County have mutually determined that County's fair share of all costs associated with the ES&S Agreements is \$47,331.20 for services rendered in fiscal year 2017. Payment will be rendered once County receives an invoice from Secretary. The same amount will also apply in fiscal year 2018, unless ES&S Services requires removal of the Poller Application Services for fiscal year 2018. An amendment to the IGA will be required to authorize payment in 2018.
4. **Term.** This IGA will be effective on the date it is fully executed by both parties and will continue until June 30, 2018, unless it is, prior to the expiration of such period, extended or terminated by agreement of the parties.
5. **Disposal of Property.** Upon the termination of this IGA, all property involved will revert back to the owner. Termination will not relieve any party from liabilities or costs already incurred under this IGA, nor affect any ownership of property pursuant to this IGA.
6. **Indemnification.** 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") for bodily injury of any person (including death) or property damage, but only to the extent that such injury or damage is caused or alleged to be caused by a negligent or intentionally wrongful act or omission of the Indemnitor, or of any of its officers, officials, agents, employees, or volunteers.
7. **Insurance.** All parties to this agreement are government entities. Neither entity is required to procure special insurance coverage for their obligations under this IGA.
8. **Compliance with Laws.** The parties will comply with all federal, state and local laws, rules, regulations, standards, and Executive Orders. The laws and regulations of the State of Arizona will govern the rights of the parties, the performance of this IGA, and any disputes. Any action relating to this IGA will be brought in a court in Pima County.
9. **Non-Discrimination.** The parties will not discriminate against any employee, client, or any other individual in any way because of that person's age, race, creed, color, religion, sex, disability, or national origin in the course of carrying out their duties under this IGA. The parties will comply with the provisions of Executive Order 75-5, as amended by Executive Order 2009-09, which is incorporated into this IGA by reference.

10. **ADA.** The parties will comply with all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 C.F.R. Parts 35 and 36.
11. **Severability.** If any provision of this IGA, or any application of a provision to the parties or any person or circumstance, is found by a court to be invalid, that invalidity will not affect other provisions or applications of this IGA that can be given effect without the invalid provision or application.
12. **Conflict of Interest.** This contract is subject to cancellation for conflict of interest pursuant to A.R.S. § 38-511, the pertinent provisions of which are incorporated herein by reference.
13. **Non-Appropriation.** Notwithstanding any other provision in this IGA, this IGA may be terminated if for any reason the Pima County Board of Supervisors or the Secretary does not appropriate sufficient monies for the purpose of maintaining this IGA. In the event of such cancellation, the parties will have no further obligations under this IGA other than for payment for services rendered prior to cancellation.
14. **Legal Authority.** Neither party warrants to the other its legal authority to enter into this IGA. If a court, at the request of a third person, should declare that either party lacks authority to enter into this IGA, or any part of it, then the IGA, or parts of it affected by such order, will be null and void, and no recovery may be had by either party against the other for lack of performance or otherwise.
15. **Worker's Compensation.** Each party will comply with the notice of A.R.S. § 23-1022 (E). For purposes of A.R.S. § 23-1022, irrespective of the operations protocol in place, each party is solely responsible for the payment of Worker's Compensation benefits for its employees.
16. **No Joint Venture.** It is not intended by this IGA to, and nothing contained in this IGA will be construed to, create any partnership, joint venture, or employment relationship between the parties or create any employer-employee relationship between a party and the employees of the other party. Neither party will be liable for any debts, accounts, obligations, or other liabilities whatsoever of the other, including (without limitation) the other party's obligation to withhold Social Security and income taxes for itself or any of its employees.
17. **No Third Party Beneficiaries.** Nothing in this IGA is intended to create duties or obligations to or rights in third parties not parties to this IGA or affect the legal liability of either party to the IGA by imposing any standard of care with respect to

the maintenance of public facilities different from the standard of care imposed by law.

- 18. Notice.** Any notice required or permitted to be given under this IGA must be in writing and served by delivery or by certified mail upon the other party as follows (or at such other address as may be identified by a party in writing to the other party) :

County:  
Honorable F. Ann Rodriguez  
Pima County Recorder  
240 North Stone Avenue  
Tucson, AZ 85701  
Phone: (520) 724-4356  
Fax: (520) 623-1785

Secretary:  
Honorable Michele Reagan  
Secretary of State  
1700 West Washington Street  
Floor 7  
Phoenix AZ 85007-2808  
Phone: (602) 542-4285

*With copies to:*  
County Administrator  
130 West Congress Street  
10th Floor  
Tucson, AZ 85701

Clerk of the Board  
130 West Congress  
5<sup>th</sup> Floor  
Tucson, AZ 85701

- 19. Entire Agreement.** This document, and any exhibits attached to it, constitutes the entire agreement between the parties pertaining to the subject matter addressed, and all prior or contemporaneous agreements and understandings, oral or written, are superseded and merged into this IGA. This IGA may not be modified, amended, altered, or extended except through a written amendment signed by the parties.

**THIS AGREEMENT MAY BE SIGNED IN COUNTERPARTS**

IN WITNESS WHEREOF, the parties execute this Agreement:

PIMA COUNTY BOARD OF  
SUPERVISORS

OFFICE OF THE SECRETARY OF  
STATE

\_\_\_\_\_  
Sharon Bronson, Chair

\_\_\_\_\_  
Michele Reagan, Secretary of State

\_\_\_\_\_  
Date

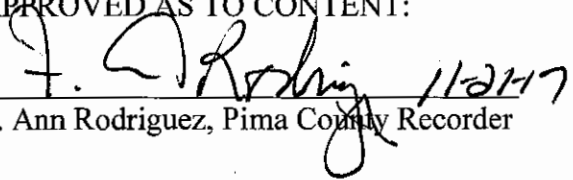
\_\_\_\_\_  
Date

ATTEST:

\_\_\_\_\_  
Julie Castañeda,  
Clerk of the Board of Supervisors

\_\_\_\_\_  
Date

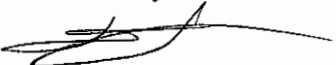
APPROVED AS TO CONTENT:

  
\_\_\_\_\_  
F. Ann Rodriguez, Pima County Recorder

The foregoing Intergovernmental Agreement between the Office of the Secretary of State, Pima County and the Pima County Recorder has been reviewed pursuant to A.R.S. § 11-952 by the undersigned, who have determined that it is in the proper form and is within the powers and authority granted under the laws of the State of Arizona to those parties to the Intergovernmental Agreement represented by the undersigned.

Pima County and Pima County Recorder

Office of the Secretary of State

  
\_\_\_\_\_  
Daniel Jurkowitz, Deputy County Attorney

\_\_\_\_\_  
Assistant Attorney General

# Exhibit 1



**ELECTION SYSTEMS & SOFTWARE, LLC.  
VOTER REGISTRATION AND ELECTION MANAGEMENT SYSTEM SOFTWARE LICENSE  
MAINTENANCE AND SUPPORT AND SYSTEM SERVICES AGREEMENT**

This Voter Registration and Election Management System Software License Maintenance and Support and System Services Agreement, including the scope of work described therein (collectively the "Agreement") is made and entered into effective March 1, 2016 (the "Effective Date"),

**BETWEEN:** Election Systems & Software, LLC, a Delaware limited liability company ("ES&S");

**AND:** State of Arizona ("Customer").

**RECITALS:**

- A. Customer has agreed to license certain voter registration software from ES&S for use in the State of Arizona (the "Jurisdiction"). The terms and conditions under which such license support and services shall be provided are set forth in the **GENERAL TERMS** attached hereto.
- B. The following Exhibits are incorporated into, and constitute an integral part of, this Agreement (check all that apply):
- Exhibit A (Pricing and Payment Summary)
  - Exhibit B (ES&S Software Description)
  - Exhibit C (ES&S Software License, Maintenance and Support Services)
  - Exhibit D (Training Services)
  - Exhibit E (Third Party Products)
  - Exhibit F (Additional Services)
  - Exhibit G (State of Arizona Special Terms & Conditions)
  - Exhibit H (State of Arizona Uniform Terms & Conditions)
  - Exhibit I (State of Arizona Statutory Terms & Conditions)
  - Exhibit J (State of Arizona, Arizona Department of Administration, State Procurement Office (SPO) Form 101 - Competition Impracticable)

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, each of the parties hereto:

- Agrees to the **GENERAL TERMS** and the terms and conditions set forth in each Exhibit attached hereto and incorporated herein. The Agreement is contingent upon the Arizona Department of Administration, State Procurement Office, approving Customer's Competition Impracticable request through SPO Form 101.
- Agrees that at all times, this Agreement shall be governed by and construed in accordance with the laws of the **State of Arizona**, without regard to conflicts of law principles that would require the application of the laws of any other state.
- Represents and warrants to the other party that as of the date of its signature below it has full power and authority to enter into and perform this Agreement, and that the person signing below on its behalf has been properly authorized to execute this Agreement.
- Acknowledges that it has read this Agreement, understands it and intends to be bound by it.

ELECTION SYSTEMS & SOFTWARE, LLC.  
11208 John Galt Boulevard  
Suite 201 Omaha, NE 68137  
Fax No.: (402) 970-1291

*Richard Sabicki*  
Signature  
Richard Sabicki  
Name (Printed or Typed)  
V.P. Finance  
Title  
2/23/2016  
Date

STATE OF ARIZONA  
100 N. 15<sup>th</sup> Avenue,  
Phoenix, AZ 85007  
Fax No. (602) 542-5508

*Judy Wente*  
Signature  
Judy Wente  
Name  
State Procurement Administrator  
Title  
2/26/16  
Date

**GENERAL TERMS  
ARTICLE 1  
DEFINITIONS**

1.1 The following capitalized terms used, but not defined, in these General Terms or on an Exhibit shall have the following meanings:

- a. "Documentation" means the operating instructions, user manuals or training materials for ES&S Software.
- b. "ES&S Software" means ES&S' proprietary voter registration software as set forth on Exhibit B as well as all Updates and items delivered to Customer under this Agreement.
- c. "ES&S Software license, maintenance and support" means those services described on Exhibit C
- d. "Poller Software" Shall mean that certain software specifically developed for the Customer by a separate third party and utilized in conjunction with the ES&S Software.
- e. "System" means, collectively, the ES&S Software and Third Party Products.
- f. "Third Party Products" means hardware, software and equipment which have been manufactured, created and/or licensed by persons other than ES&S.

**ARTICLE 2  
LICENST OF ES&S SOFTWARE AND SERVICES TO BE PROVIDED BY ES&S**

2.1. **Grant of License.** Subject to the terms and conditions of this Agreement, ES&S hereby grants to Customer nonexclusive, nontransferable licenses for its bona fide full-time employees and its local State of Arizona County Recorders Offices, with the exception of Pima and Maricopa Counties (who each may have only two (2) bona-fide full time employees utilize the ES&S Software), to use the ES&S Software, described on Exhibit B, and related Documentation in the Jurisdiction. The License allows Customer to use and copy the ES&S Software (in object code only) and the Documentation, solely for the purposes of managing the voter registration process and other election-related activities in the Jurisdiction. The licenses granted in this Section 2.1 do not permit Customer to use the source code for the ES&S Software.

2.2. **Prohibited Uses.** Customer shall not take any of the following actions with respect to the ES&S Software or the Documentation:

a. Reverse engineer, decompile, disassemble, re-engineer or otherwise create, attempt to create, or permit, allow or assist others to create, the source code or the structural framework for part or all of the ES&S Software;

b. Cause or permit any use, display, loan, publication, transfer of possession, sublicensing or other dissemination of the ES&S Software or Documentation, in whole or in part, to or by any third party, including, but not limited to, any transfer of possession to, or use of the ES&S Software or Documentation by any third party to perform any services for Customer without ES&S' prior written consent; or

c. Cause or permit any change to be made to the ES&S Software without ES&S' prior written consent; or

d. Cause or permit any copying, reproduction or printing of any output generated by the ES&S Software in which ES&S owns or claims any registered or common law proprietary intellectual property rights (e.g., copyright, trademark, patent or patent pending). This section shall not prohibit Customer from copying, reproducing or printing any voter registration reports, records or information stored in or generated by the System.

2.3. **License Fee.** In consideration for ES&S' grant of the License for the ES&S Software described in Section 2.1, Customer shall pay ES&S the ES&S Software License Fees set forth on Exhibit A.

2.4. **Term of License.** As the Customer has previously received the ES&S Software described in Section 2.1, the licenses granted in Section 2.1 shall commence upon the Effective Date of this Agreement and shall continue for the Term of the Agreement. ES&S may terminate the license if Customer fails to pay the consideration due for, or breaches Sections 2.2, 2.5 or 3.4 with respect to, such license. Upon the termination of the license granted in Section 2.1 for ES&S Software or upon Customer's discontinuance of the use of any ES&S Software, Customer shall immediately return such ES&S Software and the related Documentation (including any and all copies thereof) to ES&S, or (if requested by ES&S) destroy such ES&S Software and Documentation and certify in writing to ES&S that such destruction has occurred

2.5. **Source Code.** The License granted in Section 2.1 does not permit Customer to use the source code for the ES&S Software. ES&S has placed the source code in escrow with its third party escrow agent and will likewise place in escrow the source code for all Updates, Add-Ons and New Products (as defined below) provided to Customer. ES&S's third party escrow agent is Iron Mountain Intellectual Property Management, Inc. with offices located at 2100 Norcross Parkway, Suite 150, Norcross, Georgia 30071. Should ES&S cease operations and become unable to maintain and support any of the ES&S Software, Updates, Add-Ons or New Products provided to Customer while under an obligation to do so, Customer may obtain the source code for such item(s) for the sole purpose of enabling the continuing use of such item(s) in accordance with this Agreement. Except as set forth in this section, the source code will remain the property of ES&S and may not otherwise be used by Customer. The cost of using an alternative third party escrow agent shall be borne by Customer. Notwithstanding the foregoing, the restrictions set forth herein shall not apply to the Poller Software as such Software is owned by the Customer. The Customer shall at all times remain the owner of the Poller Software source code. ES&S is not licensing the Poller Software source or object code to the Customer and has no responsibility for such code except as otherwise set forth herein. On or before the Effective Date of this Agreement, Customer shall provide ES&S with a copy of the Poller Software source and object code in order for ES&S to provide the maintenance and support for such Poller Software as set forth in Exhibit C during the Term of this Agreement.

2.6. **Updates, Add-Ons and New Products.**

a. **Updates.** During the Term of the Agreement, ES&S may provide new releases, upgrades or maintenance patches to the ES&S Software, together with appropriate Documentation ("Updates"), on a schedule defined by ES&S. Customer and ES&S shall mutually agree upon the date upon which any such Updates shall be provided and installed by ES&S. Customer is responsible for obtaining any upgrades or purchases of third party items required to operate the Updates. All Updates shall be deemed to be ES&S Software for purposes of this Agreement upon delivery. Customer shall be responsible for any claim, damage, loss, judgment, penalty, cost, amount paid in settlement or fee which is caused by Customer's failure to install and use the most recent Update provided to it by ES&S, but only if such Update was necessary to operate Customer's System, and not because the Update was requested for another state's benefit. If Customer proposes changes in the ES&S Software to ES&S, such proposals will become ES&S' property. ES&S may, in its sole discretion, elect to make or not to make such changes without reference or compensation to Customer or any third party. ES&S represents to Customer that the Updates will comply with all applicable state law requirements at the time of delivery. Customer shall be responsible to ensure that it has installed and is using only certified versions of ES&S Software in accordance with applicable law. Customer shall report any failure of performance of an Update within ten (10) business days after the Update is, or is required to be, installed.

b. **Add-Ons and New Products.** From time to time, ES&S may offer new features which can be added on to the ES&S Software ("Add-Ons") or new software products ("New Products") to Customer. Customer may elect to license an Add-On or New Product upon the

payment of a license fee to ES&S. Unless any such license is effectuated pursuant to a separate license agreement, the Add-On or New Product shall be deemed to be part of the ES&S Software upon payment of such license fee.

c. Testing. Updates, Add-Ons and New Products shall be fully tested by ES&S prior to release to Customer. ES&S may provide optional test decks and scripts to Customer, but otherwise all Updates, Add-Ons and New Products shall perform in accordance with their specification upon release to Customer and Arizona county recorder's office personnel.

## 2.7. Services.

a. ES&S Software License, Maintenance and Support Services. During the Term of this Agreement, ES&S shall provide license, maintenance and support services for the ES&S Software ("Software License, Maintenance and Support") (a) to enable the ES&S Software to perform in all material respects in accordance with its Documentation, as provided by ES&S, and (b) to cure any defect in material or workmanship. The specific ES&S Software License, Maintenance and Support services provided by ES&S and each party's obligations with respect to such services are set forth on Exhibit C. In consideration for ES&S providing Software License, Maintenance and Support, the Customer agrees to pay ES&S the fees set forth on Exhibit A.

b. Training Services. During the Term of the Agreement, ES&S may, upon request by the Customer, provide training services to the Customer and Arizona county recorder's office personnel in accordance with the terms set forth on Exhibit D. In exchange for ES&S providing such training services, the Customer shall pay ES&S the fees set forth per a signed change order by both parties according to the rates outlined in Exhibit D. ES&S and the Customer shall mutually agree upon the date and time upon which such training services shall be provided.

c. Additional Services. During the Term of the Agreement, ES&S may, upon request by the Customer, provide those additional services as set forth on Exhibit F. In consideration for ES&S providing such additional services, the Customer agrees to pay ES&S the fees set forth per a signed change order by both parties according to the rates outlined in Exhibit F. ES&S and the Customer shall mutually agree upon the date and time in which ES&S will provide the requested services.

## ARTICLE 3 MISCELLANEOUS

3.1 Term; Termination. This Agreement shall be effective on the Effective Date, and shall terminate on June 30, 2017 (the "Term"). The parties acknowledge and agree that certain of the Exhibits contain separate termination provisions, and that the termination of any Exhibit shall not constitute a termination of any other Exhibit or of the Agreement as a whole. The obligations of ES&S and the Customer may be terminated prior to the termination or expiration of the Agreement as follows:

a. By either party if the other party breaches any material provision hereof and does not cure such breach within thirty (30) days after it receives notification thereof from the non-breaching party; or

b. By either party in the event that funds are not appropriated or otherwise made available to support the continuation of performance by the Customer hereunder in any subsequent fiscal period. However, this Section shall not be construed so as to permit the Customer to terminate this Agreement solely in order to acquire a voter registration system and/or related services from a third party. Either party may notify the other of the termination. Upon termination, ES&S shall be reimbursed to the extent of available appropriations for the reasonable value of any nonrecurring costs incurred, but not amortized, in the price of the products and services delivered to the Customer hereunder. Both parties agree that such costs will include the unrecovered ES&S Software costs (if applicable) and reasonable exit costs incurred by ES&S.

The amount of any reimbursement may be paid from any appropriations available for such purposes, and Customer's highest ranking officer or official shall use his/her best efforts to timely and sufficiently request the appropriation necessary to pay such amount. The Customer acknowledges and agrees that its estimated requirements cover the period of this Agreement and are reasonably firm and continuing, that sufficient funds to pay for the first twelve (12) months of this Agreement are available.

3.2 **Limitation of Liability.** Neither party will be liable for any indirect, incidental, punitive, exemplary, special or consequential damages of any kind whatsoever arising out of or relating to this Agreement. Neither party shall be liable for the other party's negligent or willful misconduct. ES&S' total liability to the Customer arising out of or relating to this Agreement shall not exceed the aggregate amount to be paid to ES&S hereunder. By entering into this Agreement, The Customer agrees to accept responsibility for (a) the use of the System; and (b) the selection of, use of and results obtained from any equipment, software or services not provided by ES&S and used with the System. ES&S will not be liable under this Agreement for any claim, damage, loss, judgment, penalty, cost, amount paid in settlement or fee which is caused by (y) the Customer's failure to install and use the most recent Update, or the second most recent Update, provided to it by ES&S or (z) the Customer's election not to receive, or to terminate, the License and Maintenance Services provided under Exhibit C.

3.3 **Proprietary rights.** ES&S shall own the entire right, title and interest in the ES&S Software and all corrections, programs and Work Product (which shall be defined as inventions, discoveries, developments, modifications, procedures, ideas, innovations, systems, programs, know-how, literary properties and other work products) conceived, created or developed alone or with Customer or others, which are based on, related to or arising out of the ES&S Software, including all proprietary rights therein or based thereon. Subject to the payment of all Software License, Maintenance and Support Fees, ES&S hereby grants to Customer a non-exclusive license to use the ES&S Software and such corrections, programs and Work Products which are based on, related to or arising out of the ES&S Software that ES&S actually delivers to Customer pursuant to this Agreement. All licensed items shall be deemed to be ES&S Software for purposes of this Agreement. Except and to the extent expressly provided herein, ES&S does not grant to Customer any right, license, or other proprietary right, express or implied, in the ES&S Software or any corrections, programs, information, or Work Product based on, related to or arising out of the ES&S Software covered by this Agreement.

3.4 **Confidentiality.** During the term of this Agreement, each party (the "Disclosing Party") may provide the other (the "Receiving Party") with certain confidential and proprietary information ("Confidential Information"). Confidential Information includes the Documentation, the information imparted during training provided by ES&S, and any other information relating to the Customer's or ES&S' operations, services, products, research or development. In the event that the Disclosing Party makes an oral or visual disclosure of information which it considers to be Confidential Information, it shall confirm the confidentiality of such disclosure in writing to the Receiving Party within fifteen (15) calendar days after its initial disclosure. "Confidential Information" will not include information that (a) is publicly known at the time of its disclosure; (b) is lawfully received by the Receiving Party from a third party not under an obligation of confidentiality to the Disclosing Party; (c) is published or otherwise made known to the public by the Disclosing Party; or (d) was generated independently by the Receiving Party before disclosure by the Disclosing Party. The Receiving Party will refrain from using the Disclosing Party's Confidential Information except to the extent necessary to exercise its rights or perform its obligations under this Agreement. The Receiving Party will likewise restrict its disclosure of the Disclosing Party's Confidential Information to those who have an absolute need to know such Confidential Information in order for the Receiving Party to perform its obligations and enjoy its rights under this Agreement. Such persons shall be informed of and will agree to the provisions of this Section, and the Receiving Party will remain responsible for any unauthorized use or disclosure of the Confidential Information by any of them. The Receiving Party may also disclose Confidential Information of the Disclosing Party pursuant to the requirement or request of a governmental agency, a court or administrative subpoena, an order or other legal process or requirement of law, or in order to defend its rights hereunder, so long as it shall (x) first notify the Disclosing Party of such request, requirement or proposal for use in defense; (y) in the case of a required disclosure, furnish only such portion of the Confidential Information as it is advised in writing by counsel that it is legally required to disclose; and (z) cooperate with the Disclosing Party in its efforts to obtain an order or other reliable assurance that confidential treatment will be accorded to that portion of the Confidential Information that

is required to be disclosed. Upon the termination of this Agreement in its entirety, each Receiving Party shall return all Confidential Information of the Disclosing Party which is in its possession or under its control.

3.5 **Taxes: Interest.** Subject to the "Taxes" section in the Special Terms and Conditions and § 4.3 of the Uniform Terms and Conditions, Customers shall not be responsible for sales and use, excise or other similar taxes that may be imposed on the transactions contemplated by this Agreement; nor shall Customer be liable for taxes imposed on ES&S' income. Any undisputed payment which is past due to ES&S will bear interest at the rate of one and one-half percent per month (or such greater amount as may be permitted by applicable) for each month or portion thereof during which it remains unpaid.

3.6 **Excusable Nonperformance.** If ES&S is delayed or prevented from performing its obligations under this Agreement due to any cause beyond its reasonable control, including natural disaster, fire, flood, unusually severe weather, Acts of God, labor disputes and governmental regulations, the delay shall be excused during the continuance of, and to the extent of, such cause, and the period of performance shall be extended to the extent necessary to allow performance after the cause of delay has been removed. ES&S agrees to work with Customer, at Customer's request, to develop mutually agreeable alternatives in order to minimize the negative impact of any such delay.

3.7 **Counterparts: Execution By Facsimile.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument. The parties may execute this Agreement and exchange counterparts of the signature pages by means of facsimile transmission, and the receipt of such executed counterparts by facsimile transmission shall be binding on the parties. Following such exchange, the parties shall promptly exchange original versions of such signature pages.

3.8 **Independent Contractor.** In performing its obligations or enjoying its rights under this Agreement, each party shall comply with all applicable laws and regulations. ES&S is providing the ES&S Software and services to Customer as an independent contractor, and shall not be deemed to be a "state actor" for purposes of 42 U.S.C. § 1983. ES&S will not be responsible for (a) user errors or (b) compatibility problems encountered through the use of the Software with equipment or software not meeting ES&S's specifications.

3.9 **Assignment.** Except in the case of a sale, transfer or assignment of all or substantially all of the assets of ES&S to a successor who has asserted its intent to continue the business of ES&S, neither party may assign or transfer this Agreement or assign, subcontract or delegate any of its rights, duties or obligations hereunder without the prior written consent of the other party hereto, such consent not to be unreasonably withheld or conditioned, nor unduly delayed.

3.10 **Remedies.** Except as specifically provided herein, the remedies provided to the parties under this Agreement shall be cumulative and non-exclusive, and the parties shall be entitled to seek any other rights to which they may be entitled at law or in equity, subject to the terms of this Agreement.

3.11 **Notice.** Any notice or other communication required or permitted hereunder shall be in writing, and will be deemed given when delivered personally, sent by confirmed fax and sent by commercial overnight courier (with written verification of receipt) or sent by registered or certified mail, return receipt requested, postage prepaid. All communications shall be sent to the attention of the persons listed below unless other names, addresses or fax numbers are provided by either or both parties. Copies of such notices shall be delivered by email, in addition to the other methods set forth above, to the persons identified below.

If to the Customer:  
State Election Director  
Arizona Secretary of State  
1700 W. Washington, 7<sup>th</sup> Floor  
Phoenix, AZ 85007  
Fax Number (602) 364-2087

If to ES&S:

Office of General Counsel  
Election Systems & Software, Inc.  
11208 John Galt Boulevard  
Omaha, NE 68137  
Fax Number: (402) 970-1291

3.12 **Disputes.**

a. **Payment Disputes.**

i. **Payment of Undisputed Amounts.** In the event of a dispute between the parties regarding (1) a product or service for which payment has not yet been made to ES&S, (2) the amount due to ES&S for any product or service, or (3) the due date of any payment, Customer shall timely pay all other undisputed amounts to ES&S. Such payment shall not constitute a waiver by Customer or ES&S of any of its rights and remedies against the other party.

ii. **Remedies for Past Due Undisputed Payments.** If any undisputed payment to ES&S is past due more than thirty (30) days, ES&S may suspend performance under this Agreement until such amount is paid. If Customer's payment is past due for more than sixty (60) days and is undisputed, ES&S may, with demand and notice to Customer and as applicable, declare the total amount immediately due and payable.

b. **Dispute Resolution Process.** Time is of the essence in resolving disputes. The initiating party shall notify the responding party of any dispute, including all relevant information (e.g. the nature of the dispute; dates, times, persons involved). The responding party shall respond to the notification within ten (10) business days. Thereafter, the parties shall use their good faith efforts to resolve the dispute within a reasonable period of time.

3.13 **Entire Agreement.** This Agreement, including Exhibits A through K (which are specifically incorporated herein by this reference) contains the entire agreement of the parties with respect to the subject matter hereof and supersedes and replaces any and all other prior or contemporaneous discussions, negotiations, agreements or understandings between the parties, whether written or oral, regarding the subject matter hereof. Any provision of any purchase order, form or other agreement which conflicts with or is in addition to the provisions of this Agreement shall be of no force or effect. In the event of any conflict between a provision contained in this Agreement, the Special Terms & Conditions, the Uniform Terms & Conditions, the Statutory Terms & Conditions, or SPO Form 101, the conflict shall be resolved in the following order of precedence: (1) the Statutory Terms & Conditions; (2) SPO Form 101; and (3) the order of precedence outlined in § 2.3 of the Uniform Terms & Conditions. ES&S may engage duly qualified subcontractors to perform certain of the services to be provided hereunder, but shall remain fully responsible for such performance. The provisions of Article 2, 3.2-3.4, 3.11, 3.12 this Section 3.13 shall survive the termination of this Agreement, to the extent applicable. This Agreement shall be governed by and construed in accordance with the laws of the State in which the Customer resides, without regard to its conflicts of laws principles.

**[END OF GENERAL TERMS]**



**EXHIBIT A  
PRICING AND PAYMENT SUMMARY**

<b>Fee Summary:</b>		
<b>Description</b>	<b>Refer to</b>	<b>Amount</b>
Software License, Maintenance and Support Fees		
Year 1 Coverage Dates 3/1/16 - 2/28/17	Exhibit C	\$770,000.00
<ul style="list-style-type: none"> <li>• License to use the PowerProfile product and all specifically named modules in Exhibit B</li> <li>• Customer and technical support of the PowerProfile application, including 24/7 access to Voter Registration expertise via 800 number.</li> <li>• Bi-annual releases of the software (January and July)</li> <li>• Limited system monitoring and support of VRAZII infrastructure</li> <li>• Primary account manager</li> <li>• Custom documentation for Arizona-specific business requirements and software functions such as HEI (HAVA Exceptions Interface) and Zia</li> <li>• Required database licenses for VRAZII use (Oracle Enterprise Edition, Oracle Standard Edition)</li> <li>• Maintenance and support of the IBM poller application and its source code</li> </ul>		<p align="right">\$ <u>594,050.00</u></p> <p align="right">(Included)</p> <p align="right">(Included)</p> <p align="right">(Included)</p> <p align="right">\$ <u>79,950.00</u></p> <p align="right">\$ <u>10,000.00</u></p> <p align="right">\$ <u>28,000.00</u></p> <p align="right">\$ <u>58,000.00</u></p>
Four month Coverage Dates 3/1/17-6/30/17		\$ <u>256,660.00</u>
<ul style="list-style-type: none"> <li>• License to use the PowerProfile product and all specifically named modules in Exhibit B</li> <li>• Customer and technical support of the PowerProfile application, including 24/7 access to Voter Registration expertise via 800 number.</li> <li>• Bi-annual releases of the software (January and July)</li> <li>• Limited system monitoring and support of VRAZII infrastructure</li> <li>• Primary account manager</li> <li>• Custom documentation for Arizona-specific business requirements and software functions such as HEI (HAVA Exceptions Interface) and Zia</li> <li>• Required database licenses for VRAZII use (Oracle Enterprise</li> </ul>		<p align="right">\$ 179,341.00</p> <p align="right">(Included)</p> <p align="right">(Included)</p> <p align="right">(Included)</p> <p align="right">\$ 26,650.00</p> <p align="right">\$ 3,334.00</p> <p align="right">\$ 28,000.00</p>

<ul style="list-style-type: none"> <li>• Edition, Oracle Standard Edition)</li> <li>• Maintenance and support of the IBM polier application and its source code</li> </ul>		\$ 19,335.00
<b>Total Fees For the Term</b>		<b>\$1,026,660.00</b>
Training Fees	Exhibit D	Change Order
Additional Services Fees:	Exhibit F	Change Order

**Terms and Conditions:**

**Note 1:** State and local taxes are not included but are subject to the Special Terms and Conditions and Uniform Terms and Conditions. See Section 3.8. Premium or rush transportation services incurred in connection with deliverables included in the Total Fees are additive and will be billed as incurred.

**Note 2:** Customer acknowledges and agrees that after the Effective Date, Customer shall not modify or remove any items set forth above and that Customer shall remain responsible for the payment of all items set forth herein during the Term of the Agreement.

**Note 2:** Payment Terms for the Services Provided herein shall be as follows:

- **Software License, Maintenance and Support Fees:** These fees will be billed quarterly. The first payment shall be due upon the Effective Date. Thereafter, the quarterly payments will be due on the first day of each new quarter during the Term.
- **Training Fees:** Due within thirty (30) days of Customer's receipt of ES&S invoice which shall be provided by ES&S upon the completion of the applicable training service.
- **Additional Services Fees:** Due within thirty (30) days of Customer's receipt of ES&S invoice which shall be provided by ES&S upon the completion of the applicable service.

**EXHIBIT B**  
**ES&S Software Modules Licensed by the Customer**  
**PowerProfile EE Module**

(Check all that apply)

- X Voter Registration Module
- X Absentee Module
- X HEI
- X Election Worker Module
- X NVRA
- X Election Management Module
- X Polling Place Module
- X Street File Module
- X Mass Changes
- X Notices Module
- X Image Indexing Module
- X Job Processor
- X Petitions Module
- X Public Service Requests Module
- X Export Files
- X Voter View
- X Agency Central Interface Module
- X VRS
- X ZIA
- X Power Lock
- X Power Scan

**EXHIBIT C**  
**ES&S Software License, Maintenance & Support**

1. **SERVICES PROVIDED.** Upon Customer's payment of the Software License, Maintenance and Support fees set forth on Exhibit A (the "Maintenance Fee"); ES&S shall provide Software License, Maintenance and Support during the Term. ES&S shall support the following environments under this Agreement: (1) Production, and (2) User Acceptance Testing. ES&S shall only be obligated to provide support to the foregoing environments under this Agreement. The respective support responsibilities of the parties for license, maintenance and support are set forth herein.

2. **SYSTEM ADMINISTRATORS.** The customer shall always have two (2) designated State System Administrators. ES&S shall be notified of their names, telephone numbers and email addresses.

3. **UPDATES.** During the Term of the Agreement, Updates will be provided in accordance with Section 2.6(a) of the General Terms.

4. **CONDITIONS.** ES&S shall not be obligated to provide Software License, Maintenance and Support services if:

- (a) the ES&S Software is not used with hardware and software meeting specifications supplied by ES&S.
- (b) the hardware and software used with the ES&S Software is not in good operating order or is not installed in a suitable operating environment;
- (c) the hardware does not have a current warranty or support agreement by the original vendor;
- (d) the ES&S Software or any hardware or software with which the ES&S Software is used is modified, changed or altered without ES&S' prior authorization or approval in writing;
- (e) the data and/or the database structure used in conjunction with the ES&S Software is manipulated using application software other than the ES&S Software;
- (f) the failure of performance is caused by Customer, its employees or authorized representatives, or any third party;
- (g) Customer does not notify ES&S of the failure of performance within ten (10) business days after it occurs and is otherwise not in compliance with its obligations hereunder; or
- (h) Customer does not pay any Maintenance Fee on a timely basis.

5. **SUPPORT HOURS.** ES&S will maintain support Monday – Friday from 7:00 am – 6:00 pm CST, including a specific primary account manager during the hours of 8:00 am CST and 5:00 pm CST. A support member or an automated voice mailbox will greet the toll-free help-line call. Outside of the times noted, ES&S provides after-hours emergency help line support. When calling ES&S' toll-free help-line outside of regular hours, an on-call Support Specialist will return the call and work to resolve the problem. Response times on all calls during non-business hours will be within 2 hours. Priority 1 calls will still be a 30 minute call back time.

6. **SUPPORT CONTACT INFORMATION.** The following is the support contact information for ES&S.

Primary account manager James Zook: Toll-free help line: 1-800-353-2832

Fax: 1-402-970-1284

Email: [helpdesk@essvote.com](mailto:helpdesk@essvote.com)

Only send non-critical support request to our helpdesk e-mail address. Upon receipt, your request will be entered into our call tracking system and will follow the same process had you called the helpdesk from our toll-free number.

ES&S reserves the right to replace the Customer's primary account manager at any time during the Term of the Agreement as ES&S' business needs may arise. ES&S shall notify the Customer, in writing, of any change to the Customer's primary account manager and shall provide a replacement account manager with the same or greater skills than the primary account manager which is being replaced.

7. **SUPPORT.** ES&S provides four tiers of support and corresponding support representatives defined below:

- **Tier 1** – used during high volume times, Tier 1 will be used to answer calls, log tickets, and determine prioritization of calls.
- **Tier 2** – incidents / requests are normally resolved by our customer service representative. Occasionally, coordination with other ES&S departments is necessary.
- **Tier 3** – incidents / requests require resolution by a dedicated Customer Account Specialist experienced in troubleshooting software and hardware issues.
- **Tier 4** – incidents require support from senior network or application software engineers and / or skilled database administrators.

ES&S incorporates a prioritized response process to manage maintenance issues and hardware or software enhancement / defect submittals. Incidents and service requests are escalated to the appropriate resource based on the level of support required. During the mission critical time periods, ES&S works to resolve issues within 24 hours. Below are descriptions of each support level.

The level of call escalation priorities are defined as follows:

**Priority 1 – URGENT** Users are experiencing an urgent software or hardware technical failure which is inhibiting the ability to perform election-critical functions. (Priority 1 often indicates an entire system failure and all users have no capabilities). Priority 1 calls are returned within 30 minutes and resolved as quickly as possible. In order to decrease downtime, workarounds may be necessary.

**Priority 2 – SERIOUS** Users are experiencing a serious software or hardware technical failure, causing loss of productivity during election-critical periods. Priority 2 calls are returned within 1 hour.

**Priority 3 – IMMEDIATE** Users are experiencing a software or technical malfunction or are in need of assistance with a process, which is causing loss of productivity during election critical periods. Priority 3 calls are returned within 1 hour.

**Priority 4 –QUESTION** Users have questions related to software or hardware technical function. Priority 4 calls will be returned within a 2 hour timeframe to answer basic system questions or to set a time for a "walk thru" of a process.

**Priority 5- MINOR** Users are experiencing a minor software or technical problem which is causing loss of productivity during non-election periods. Priority 5 calls will be returned within a 2 hour timeframe

**Priority 9 CLIENT IN THE OFFICE** Users have an immediate need because you have a registrant, a candidate or some other individual in the office and you need information from the application at that moment. Examples might be help with a PSR, Printing a report, printing an ID card. These tickets are handled with a high priority. Priority 9 calls will be returned within minutes.

Responsibilities of ES&S	Responsibilities of Customer
<ul style="list-style-type: none"> <li>▪ VR software support as outlined in Agreement</li> <li>▪ Installation of Oracle software upgrades</li> <li>▪ Database analysis and recommendation of tuning parameters as needed</li> <li>▪ Implement tuning recommendations approved by customer as needed</li> <li>▪ Outline operational and technical requirements for a Backup and Recovery Strategy</li> <li>▪ Outline procedures and provide scripts for performing routine database exports</li> <li>▪ Assist Customer in its performance of the following: <ul style="list-style-type: none"> <li>▪ Hardware problem diagnosis</li> <li>▪ Software problem diagnosis</li> </ul> </li> <li>▪ Support of ES&amp;S approved third-party software required to run VR Products Upgrade, impact planning, and assistance</li> <li>▪ Server recovery, provided backups are available</li> <li>▪ Database recovery or database restore if needed, provided a backup is available</li> <li>▪ Work with technicians to resolve problems after the customer has contacted the appropriate vendor</li> <li>▪ Coordinate with the customer to set a schedule when routine maintenance or upgrades will be performed</li> <li>▪ Limited support of approved client operating systems – Windows 7, 8.1, 10 (Professional/Enterprise)</li> <li>▪ Support of ES&amp;S approved third-party software required to run VR Products, contacting the appropriate vendor if replacement of parts are necessary</li> <li>▪ Backup and archiving of voter registration data and associated meta-data</li> <li>▪ Maintain existing custom product documentation developed specifically for the Customer by a separate third party</li> <li>▪ Provide specifications for the System as it directly relates to Arizona-specific enhancements</li> <li>▪ Provide an Arizona-specific user guide for the System, including Arizona-specific business requirements and software functions</li> <li>▪ Provide Customer the capability to create/troubleshoot Citrix log-ins in order to assist Arizona county recorder's office personnel that experience problems logging into the System.</li> <li>▪ Provide updates to the Arizona specific User Guide for each major release which generally occurs twice a year.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Understand proper use of VR application functions and proper use of VR application in the conduct of election management and administration</li> <li>▪ Inquire directly with ES&amp;S support for questions regarding use of VR application</li> <li>▪ Customer or end-users are required to provide adequate access to system with all necessary logins and passwords. All required admin-level passwords are needed by the Effective Date.</li> <li>▪ Validate any data input and output in the day to day use of VR application</li> <li>▪ Responsible for maintaining and managing State purchased software licenses and hardware warranty agreements</li> <li>▪ Responsible for connectivity</li> <li>▪ Responsible for Business Continuity plan</li> <li>▪ Customer-installed third-party software on end-user workstations</li> <li>▪ Cost associated with any additional hardware or software required to perform required upgrades</li> <li>▪ Damage caused by misuse, abuse, or neglect</li> <li>▪ Damage caused when warranted parts were repaired or replaced by an organization other than those approved by the hardware manufacturer</li> <li>▪ Customer shall have the capability to create/troubleshoot Citrix log-ins in order to assist Arizona county recorder's office personnel that experience problems logging into the System.</li> </ul>

**EXHIBIT D**  
**Training Services**

**PURPOSE**

ES&S will provide training to the State of Arizona and County personnel for the use of the Voter Registration Power Profile software as needed and upon request. All training will be provided in accordance with the terms set forth herein. The dates for any requested training will be mutually agreed upon by the parties. All training services will be invoiced at the completion of each training session.

**ES&S OVERALL TRAINING APPROACH**

Our comprehensive training program has been developed to promote a strong level of competency for all intended users. A series of training modules will be developed that provide participants with the skills to perform necessary operations.

Individuals attending the training sessions should have a general understanding of their roles and responsibilities and their local voter registration and election processes. Members of the staff responsible for the operations of the Power Profile system should have a basic knowledge of computer operations and Microsoft Windows applications. All individuals scheduled for training should be prepared to use the training manuals and checklists provided to compliment the instructor's presentations.

**INSTRUCTORS AND RESOURCES**

ES&S will utilize a diverse team of knowledgeable and experienced trainers to manage all aspects of the training process.

Once training is authorized by the Customer, ES&S will work directly with each user to confirm the training participants and environment setup as their time for training draws near for the on-site training. The ES&S trainer will be responsible for communicating all training invitations and communications.

**REQUIREMENTS/FEEES**

- A 30-day notice should be given to ES&S prior to requesting a training session to allow for proper planning of the class.
- ES&S shall invoice the Customer upon completion of each individual training session. Payment shall be due within thirty (30) days of Customer's receipt of ES&S' invoice.
- For release notes review sessions that usually have a Q&A period, and are held via conference call / Webex, no charge will be incurred. Otherwise, training options are:
  1. Customer Onsite Training in the State of Arizona - \$1,575 per day, one (1) trainer;
  2. Customer Onsite Training in Omaha, Nebraska - \$1,000 per day, one (1) trainer; and
  3. Customer Webex Training - \$150 per hour, one (1) trainer, and maximum of 15 participants per session.

Option 1 is an on-site classroom environment with hands-on access to PowerProfile in a training environment. Class size shall be limited to no more than 12 people per class. Customer is responsible for facilities, workstations and connectivity. Course lengths are a minimum of three (3) days.



Option 2 is an on-site classroom environment with hands-on access to PowerProfile in a training environment in ES&S's corporate HQ in Omaha, Nebraska. Class size shall be limited to no more than 12 people per class. ES&S is responsible for facilities, workstations, and connectivity. Customer is responsible for transportation, lodging, and meals. Course lengths are a minimum of two (2) days.

Option 3 permits users to ask the ES&S instructor about specific issues and have the instructor demonstrate on the screen in real-time. Class size shall be limited to no more than 15 people per class

**EXHIBIT E**  
**Third Party Products**

The chart below outlines the Third Party Products necessary to run the System. The chart outlines the responsible party that should manage and pay for each of the license renewals.

3 <sup>rd</sup> party license	Licenses Managed/Paid by ES&S or AZ SOS
Symantec Backup Exec V-Ray Edition	AZ SOS
Symantec Backup Exec Linux Agent	AZ SOS
Double Take Availability for Windows	AZ SOS
VMware Enterprise Edition	AZ SOS
Tricerat Screwdrivers	AZ SOS
Oracle Enterprise (State)	ES&S
Oracle Standard for Maricopa and Pima Counties	ES&S
Citrix XenApp and Netscaler Virtual Appliance Licenses	AZ SOS
Trend Micro Deep Security	AZ SOS
Required SSL Certificates	AZ SOS
IBM Proprietary monitoring software	AZ SOS
Red Hat Enterprise Linux	AZ SOS
Crystal Reports	AZ SOS

Note 1: From time to time, third party vendors will discontinue maintenance on third party products. If we are notified that a third party product will be discontinued, ES&S will discuss a replacement product with the Customer. The Customer will then need to purchase and renew the licenses based on a timeframe that ES&S will provide.

**EXHIBIT F**  
**ADDITIONAL SERVICES**

1. **SYSTEM ENHANCEMENTS.** From time to time, the Customer may request enhancements to the system. Enhancements can be requested due to changes in state or federal law, as well as modifications the state or county would like to the system. When an enhancement is needed, it should be requested through the ES&S helpdesk as they will log an enhancement into the ES&S' tracking system. Thirty days prior to ES&S scoping the next general release, the state enhancement list will be submitted to the state administrators. The state administrators will prioritize the enhancement request, notate the ones that are being requested specifically for the next general release, and return the list within thirty days of receipt. ES&S will then evaluate the enhancement list, estimate the level of effort, and formulate a plan for release inclusion. A change order will then be presented to the Customer for signature that outlines the work level for each enhancement.
  
2. **SERVICE FEES.** Additional Services may be requested by Customer from time to time under this Agreement. All additional changes will be presented through the change order process and subject to the service fees outlined below. Customer shall only pay for those services which Customer requests and for which services are performed.

All additional services not otherwise set forth herein shall be performed by ES&S and through the change order process and subject to the rate of \$150.00 per hour.

## Special Terms & Conditions

### Accuracy of Work

The Contractor shall be responsible for the accuracy of the work and shall promptly make all necessary revisions or corrections resulting from errors and omissions on the part of the Contractor without additional compensation. Acceptance of the work by the State will not relieve the Contractor of the responsibility for subsequent correction of any such errors and the clarification of any ambiguities.

### Additional Charges

Any charges not delineated in this contract, including but not limited to restocking fees and per print and/or media non-print service charges, may not be added to materials purchased under the terms of this RFP without written consent of the State of Arizona Procurement Office and customer agencies.

### Amendments

Any change in the contract including the Scope of Work described herein, whether by modification or supplementation, must be accomplished by a formal contract amendment signed and approved by and between the duly authorized representatives of the contractor and the Procurement Office of the State of Arizona. Any such amendment shall specify an effective date, any increases or decreases in the amount of the contractors' compensation if applicable and entitled as an 'Amendment', and signed by the parties identified in the preceding sentence. The contractor expressly and explicitly understands and agrees that no other method and/or no other document, including correspondence, acts, and oral communications by or from any person, shall be used or construed as an amendment or modification or supplementation to the contract.

### Americans With Disabilities Act of 1990

The Contractor shall comply with the Americans With Disabilities Act of 1990 (Public Law 101-336) and the Arizona Disability Act of 1992 (A.R.S § 41-1492 et. seq.), which prohibits discrimination on the basis of physical or mental disabilities in delivering contract services or in the employment, or advancement in employment of qualified individuals.

Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting the Contract Manager for the solicitation. Request should be made as early as possible to allow time to arrange the accommodation.

### Appropriation of funds

Every payment obligation of the Agency under this Contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this Contract, this Contract may be terminated by the Agency at the end of the period for which funds are available. No liability shall accrue to the Agency or the State of Arizona in the event this provision is exercised, and neither the Agency nor the State shall be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

### Arbitration

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

### Assignment

The contractor agrees and understands that the contract shall constitute an assignment by the contractor to the State of Arizona of all rights, title and interest in and to all causes of action that the contractor may be under the antitrust laws of the United States or the State of Arizona for which causes of action have

accrued or will accrue as the result of or in relation to the goods or services purchases or procured by the contractor in the fulfillment of the contract with the State of Arizona.

The contractor represents that it is an independent contractor offering such services to the general public and shall not present himself or his employees as an employee of the State of Arizona. Therefore, the contractor shall assume all legal and financial responsibility for taxes, FICA, employee fringe benefits, workmen's compensation, employee insurance, minimum wage requirements, overtime and agree to indemnify, save, and hold the state of Arizona, its officers, agents, and employees, harmless from and against, any and all loss; cost (including attorney fees); and damage of any kind related to such matters.

#### Assistance upon Termination

The State shall have the right to extend offers of employment to any contractor employees to protect the continuance of service to the State. All non-competition agreements for such employees shall be disregarded in this case. Contractor shall provide reasonable access to these employees and will not interfere with the State's efforts to hire them.

Contractor will provide to the State at the termination of the contract, no matter how occasioned, the option to buy or lease back any or all dedicated equipment, furniture, fixtures, and facilities at net book value. Contractor will agree to leave said equipment certified for maintenance by the contractor prior to transfer.

The State shall have the option to assume contracts for any services provided by third parties to the contractor and used by the contractor to provide services to the State, and the contracts between the Contractor and any third parties or sub-contractors shall be written so that they are assumable by the State or new Contractor assuming responsibility for outsourced telecommunications, at the sole option of the State or that new Contractor.

Commencing at least six (6) months prior to termination and continuing through the effective date of termination, contractor shall provide the State with termination assistance. In addition, contractor shall provide, upon the State's request, termination assistance for up to six (6) months following the date of termination. The State may request an additional period of assistance not to exceed six (6) months.

If the Contractor has incorporated the State's network into a contractor proprietary network, the contractor will provide up to two (2) years continued network services at the then current contract rates for such service. This will permit the State to establish a replacement capability in an orderly manner.

The Contractor must propose how it will price termination assistance services that it will provide to The State immediately preceding and for some time after contract termination.

#### Audit

Pursuant to ARS § 35-214, at any time during the term of this Contract and five (5) years thereafter, the Contractor's or any subcontractor's books and records shall be subject to audit by the State and, where applicable, the Federal Government, to the extent that the books and records relate to the performance of the Contract or Subcontract. Should Contractor not desire to retain the audit documentation in its entirety for a period of five (5) years from the date of the audit report, they shall be given to the Auditor General for safekeeping.

#### Availability of Funds for the Next Fiscal Year

Funds are not presently available for performance under this contract beyond the current fiscal year. The State's obligation for performance of this contract beyond this fiscal year is contingent upon the availability of funds from which payment for contract purposes can be made. No legal liability on the part of the State for any payment may arise for performance under this contract beyond the current fiscal year until funds are made available for performance of this contract.

#### Billing

All billing notices shall include delivery time, and contractual payment terms. Items are to be identified by the name, model number, contract number, line item number, and serial number if applicable. Any contract release order issued by the requesting agency shall refer to the contract number and line item number(s).

#### Cancellation

The State reserves the right to cancel the whole or any part of the contract due to failure of the Contractor to carry out any term, promise, or condition of the contract. The State will issue a written ten (10) day notice of default to the Contractor for acting or failing to act as in any of the following:

The Contractor provides personnel that do not meet the requirements of the contract.

The Contractor fails to perform adequately the services required in the contract.

The Contractor attempts to impose on the State, personnel, which are of an unacceptable quality.

The Contractor fails to furnish the required product within the time stipulated in the contract.

The Contractor fails to make progress in the performance of the requirements of the contract and/or gives the State a positive indication that the Contractor will not or cannot perform to the requirements of the contract.

If the Contractor does not correct the above problem(s) within ten (10) days after receiving the notice of default, the State may cancel the contract. If the State cancels the contract pursuant to this clause, the State reserves all rights or claims to damage for breach of contract.

#### 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.

#### Certifications

All key personnel when required shall provide evidence of their certification(s) relevant to the services provided under the contract.

#### Civil Rights Assurance Statement

The Contractor and Subcontractors are subject to Title VI of the Civil Rights Act of 1964, Section 504 of Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Title IX of the Education Amendment of 1972, and offers all persons the opportunity to participate in programs or activities regardless of race, color, national origin, age, sex, or disability. Further, it is agreed that no individual will be turned away from or otherwise denied access to or benefit from any program or activity that is directly associated with a program of the RECIPIENT on the basis of race, color, national origin, age, sex (in educational activities) or disability.

NOTE: An Assurance Statement shall be required to be signed by an individual, private organization, or institution receiving fish and wildlife conservation assistance under the following circumstances:

A. If the premises are at any time opened to the public.

B. If Hunter or Aquatic Resource Education, or any other information/education program sponsored by AGFD, is held on private property.

Civil Rights Notification

The AGFD prohibits discrimination on the basis of race, color, sex, national origin, age, disability in its programs and activities. If anyone believes they have been discriminated against in any of the AGFD programs or activities, including its employment practices, the individual may file a complaint alleging discrimination directly with the AGFD Deputy Director, 2221 W. Greenway Rd., Phx., AZ 85023, (602) 789-3290, or the U.S. Fish and Wildlife Service, 4040 N. Fairfax Dr., Suite 130, Arlington, VA 22203. If you require this document in an alternative format, please contact the AGFD Deputy Director as listed above or call TTY at 1-800 367-8939.

Code of Conduct

The contractor shall avoid any action that might create or result in the appearance of a) inappropriate use or divulging of information gathered or discovered pursuant to the performance of its duties under the contract; b) acted on behalf of the State without appropriate authorization; c) provided favorable or unfavorable treatment to anyone; d) made a decision on behalf of the State that exceeded its authority, could result in impartiality, or have a political consequence for the State; e) misrepresent or otherwise impeded the efficiency, authority, actions, policies, or adversely affect the confidence of the public or integrity of the State; or, f) loss of impartiality when advising the State.

COMPLIANCE REQUIREMENTS FOR A.R.S. § 41-4401. GOVERNMENT PROCUREMENT: E-VERIFY REQUIREMENT.

The Contractor warrants compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with Section A.R.S. § 23-214, Subsection A. (That subsection reads: "After December 31, 2007, every employer, after hiring an employee, shall verify the employment eligibility of the employee through the e-verify program."). A breach of a warranty regarding compliance with immigration laws and regulations shall be deemed a material breach of the contract and the Contractor may be subject to penalties up to and including termination of the contract. Failure to comply with a State audit process to randomly verify the employment records of contractors and subcontractors shall be deemed a material breach of the contract and the Contractor may be subject to penalties up to and including termination of the contract. The State Agency retains the legal right to inspect the papers of any employee who works on the contract to ensure that the Contractor or subcontractor is complying with the warranty

Confidential Information

If a person believes that any portion of a proposal, bid, offer, specification, protest or correspondence contains information that should be withheld, then the Procurement Officer shall be so advised in writing (Price is not confidential and will not be withheld). Such material shall be identified as confidential wherever it appears. The State, pursuant to A.R.S. § 41-2533(D) or A.R.S. § 41-2534(D), shall review all requests for confidentiality and provide a written determination. If the confidential request is denied, such information shall be disclosed as public information, unless the person utilizes the 'Protest' provision as noted in § 41-2611 through § 41-2616.

Confidentiality (End-users)

Notwithstanding aggregate usage statistics used for reporting purposes, Contractor shall keep confidential all information concerning individual end-users. Contractor shall not, under any conditions, resell, transfer or convey information about end-users to any third party. Contractor shall not retain or reuse information about the end-users in their own operations.

Confidentiality of Information

The contractor shall treat all information and in particular, information relating to recipients and providers, which is obtained by it through its performance under the contract, as confidential information to the extent that confidential treatment is provided under State and federal law, and shall not use any

information so obtained in any manner except as necessary for the proper discharge of its obligations and protection of its rights hereunder.

**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.

**Conflict of Interest**

No person preparing or assisting in the preparation of specifications, plans or scopes of work shall receive any direct benefit from the utilization of those specifications, plans or scopes of work.

**Contract Additions**

Items required for expanding/upgrading the existing system shall be purchased at the prices (equal to or less than) provided in response to this solicitation during the term of the contract and any extensions which may be implemented jointly by the State and the contractor.

**Contract Administration**

Following award, the contractor shall contact the Arizona Department of State; Secretary of State's Office, Procurement Group for guidance or direction in matters of contract interpretation or problems regarding the terms, conditions or scope of the contract. Only the Contract Officer or his/hers authorized designee is authorized to change or amend the specific terms, conditions or provisions of the agreement.

**Contract Assignment**

Contractor may not assign, transfer or convey any of its rights or obligations under this Contract without the written permission of the Agency.

**Contract Defined**

The contract shall be construed according to the laws of the State of Arizona. The State of Arizona is not obligated for expenditures under the contract until funds have been encumbered.

The contractor agrees and understands that the State of Arizona's agreement to the contract is predicated, in part and among other considerations, on the utilization of the specific individuals(s) and/or personnel qualifications(s) as identified and/or described in the contractor's proposal. Therefore, the contractor agrees that no substitution of such specified individuals and/or personnel qualifications shall be made without the prior written approval of the State Agency. The contractor further agrees that any substitution made pursuant to this paragraph must be equal or better than originally proposed and that the State Agency's approval of a substitution shall not be construed as an acceptance of the substitution's performance potential. The State of Arizona agrees that an approval of a substitution will not be unreasonably withheld. The contractor agrees to reveal its staffing levels by function, including resumes, upon request by the State at any time during the contract.

**Contract Implementation Meetings**

Upon award, the contractor may be required to participate in meetings for the successful implementation of the contract. The meetings will be at the discretion of the agency. The contractor will be notified in advance of the meeting(s) time, frequency, and locations to ensure all appropriate contract staff and representatives attend. The State reserves the right to decline conference call attendance or participation.



#### Contract Modifications

The State will reserve the right to modify this contract as circumstances may require without penalty to fulfill the needs of the State. The Contractor (s) will be notified prior to any changes in the contract. All contract modifications must be in writing.

#### Contract Problems or Changes

If at any time during the course of the contract the Department makes the supplier aware of any problems with their products, the supplier shall take immediate action to investigate the cause and to develop a solution. Non-response or an untimely response can be grounds for non-use, contract suspension, or contract cancellation

No change to this contract or any item supplied under this contract is allowed without the expressed written authorization of the Procurement Officer. The Department will be the sole authority as to how the proposed change, modification or substitutions is evaluated and whether it is turned down, accepted or accepted conditionally.

#### Contract Restructure After Award

The State may clarify any Contract following award. This clarification shall not substantially alter the contents of the Contract, but shall only edit and reformat the Contract in a manner that will facilitate ease of use, contract administration, and concurrence of the Parties.

#### Contract Termination

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.

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.

#### Contractor Maintenance

All initial maintenance shall be included in the purchase price and shall continue for a period of one (1) year, coinciding with the Warrantee period.

Software Maintenance: Contractor shall provide, at no additional charge, all new releases, upgrades and bug fixes of the software while under a maintenance agreement. Release shall be defined as any collection of enhancements or updates which contractor generally makes available to its installed base of customers of such programs. During the term of the contract all software upgrades, as well as all hardware and software patches to repair defects in the system, at no charge to the using entity or State. Documentation should be updated and delivered accordingly.

#### Contractor Personnel

During the course of the contract, the State reserves the right to require the contractor to reassign or otherwise remove from the project any contractor employees found unacceptable by the State.

The State reserves the right to approve in advance in writing, any changes to the contractor personnel specified in the contractor's proposal. The State will not unreasonably exercise the rights reserved under this paragraph.

#### Contractor Selection and Assignments

The State makes no guarantee as to the amount of work to be assigned to any Contractor and may exercise its option not to utilize the services requested herein. The State is under no financial obligation to any selected Contractor unless the State issues a Purchase Order for a specific assignment.

Each Contractor contacted will have the opportunity to indicate their availability and prepare a proposed inclusive fixed fee for the work assignment in accordance with the following guidelines.

Submit a written cost proposal for the work, by parcel, if applicable. If subcontract work or specialized service is required for the assignment, Contractor must identify such cost separately. If additional subcontracting work or specialized service is required after the award of the assignment, Contractor must obtain prior approval from the State.

The State reserves the right to ask all contractors for a full schedule of values to show how a contractor's fixed price offered was determined.

#### Contractor's Other Contract Responsibilities

Furnish all necessary labor, tools, equipment, vehicles, supplies, and traffic control services and devices as needed to effectively perform the services as specified in this contract.

Attend Required Meetings: The On-Site Contract Administrator will schedule meetings that will be held at the contracting agency's headquarters office in Phoenix unless otherwise indicated by the contracting agency.

- Post-award planning meeting before the start of any work on this contract.
- Pre-commencement meetings scheduled by the State before the beginning of any work on individual project sites.

#### Credit Reviews

The State of Arizona reserves the right to request a credit review on each Offeror and/or any subcontractors offered in their proposal. Such credit reviews will be considered 'confidential' information, and will be treated as such after evaluations and prior to contract award. Such credit reviews will not be available for public review.

#### Current Models

It is the State's intent to procure materials of the latest technology. Therefore, materials bid must have a market place introduction date of 1992 or later. All materials bid must be in current production and parts must be available for a minimum of five (5) years from bid date.

#### Customer Support

At no additional cost to the State, the contractor shall provide telephone-based customer support service for applications, equipment operation, and troubleshooting for a period of one year from the date of acceptance by the State.

#### Defective Products

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

#### Definition of Key Words Used in the RFP

- Shall, Must: Indicates a mandatory requirement. Failure to meet these mandatory requirements may result in the rejection of a proposal as non-responsive.

- Should: Indicates something that is recommended but not mandatory. If the offeror fails to provide recommended information, the State may, at its sole option, ask the offeror to provide the information or

evaluate the proposal without the information.

- May: Indicates something that is not mandatory but permissible.

#### Delays and Extensions

During the course of this Contract, if deemed in the best interest of the State, an extension of time may be granted by written mutual agreement. The due date of delivery of an assignment may not be extended without written authorization of the State. To be considered, requests for extension must be submitted by the Contractor, in writing, no less than five (5) working days prior to the original due date.

Due date extensions will not be granted without compelling cause. A compelling cause will, in most cases, be a change order or revision initiated by the State. However, any time extension so granted shall not constitute or operate as a waiver by the State of any of its rights herein.

#### Delivery Location(s)

To provide adequate coverage for various State agencies and political subdivision(s), the State of Arizona reserves the right to add and or delete locations whichever is deemed most advantageous to the State of Arizona.

#### Documentation

All documentation and printed materials provided by the Contractor may be reproduced by the State, provided that such reproduction is made solely for the internal use of the State or County employees and that no charge is made to anyone for such reproductions. Costs of all reproducible training materials and documentation should be included in the price of the product. Documentation must be delivered to the SOS and counties prior to final system acceptance.

#### Electronic or Information Technology

Products, services and maintenance shall comply with A.R.S. § 41-3531, which requires conformance with the requirements of Section 508 of the Rehabilitation Act of 1973. Failure to comply shall be considered a breach of the Contract.

#### Electronic Ordering Systems

1. Systems that provide electronic commerce assistance for the electronic submission of purchase orders, purchase order tracking and reporting available through a contractor's Electronic Data Interchange (EDI) system or secured internet/web portal. This provision shall only apply to those contractors who have such systems available under the contract. The contractor's system, at a minimum shall:

1.1. Be made available to all eligible agencies. Utilization shall be the sole discretion of the eligible agency;

1.2. Be implemented with a training program to the agency on how to use the system;

1.3. Be maintained by the contractor;

1.4. Be a secure connection;

1.5. Not allow for purchase orders to be placed for non-contract or excluded items.

1.6. Provide multiple or individual access to the system (agency elect);

2. Eligible agencies may elect, at their own discretion to utilize the contractor's electronic ordering system. Should an eligible agency elect to use the system they shall do so by formal request to the contractor.

2.1. Upon receipt of the request the contractor shall have the system fully installed and functioning within 30 day from receipt of the request, or as mutually agreed upon between the agency and the contractor.

- 2.2. Initial training shall either be performed upon completion of the installation or as mutually agreed upon between the agency and the contractor.
3. Upon contract termination or at the request of an agency the contractor shall uninstall all features of the system within 30 days.
4. Contractors not having electronic ordering systems at time of award but who may wish to offer such, may do so at any time during the contract period by providing a written request to the contract specialist of record. Systems offered shall meet all criteria established above. Incorporation of the offered system shall be in the form of a contract amendment.
5. All cost associated with installation, training, maintenance, support and removal of such systems shall be borne by the contractor

Eligible Agencies (Identified)

This contract shall be for the exclusive use of those State of Arizona departments, agencies, commissions, boards, eligible universities, political subdivisions and nonprofit educational or public health institutions identified in the price sheet section of this solicitation.

Employees

The Contractor shall provide mentally alert, physically fit, adequately trained, experienced, responsible, and qualified adult personnel to perform the required contracted services in a safe, orderly, and timely manner. The State may require that the Contractor remove from the job any employees who endanger persons or property or whose continued employment under this contract is inconsistent with the interest of the State.

Employees, while on duty, shall be appropriately dressed in clothing/uniform and may be required to wear an identification-patch.

Only employees of the Contractor designated with an identification patch/uniform will be allowed in the work locations during working hours. Visitors, wives, husbands, or children of the Contractor or Contractor's employees will not be allowed in the work location.

The Contractor is required to remove any litter associated with Contractor or Contractor's crew, (i.e. trash produced by employees on their break times).

EPA Energy Star Products

HB 2324, Chapter 114, A.R.S. § 34-451 requires that the State of Arizona purchase Energy Star products or products certified by the Federal Energy Management Program as energy efficient for all product classifications available. If an Energy Star product or certified product is available, documentation of the Energy Star status or certification must be submitted with the offer. Failure to submit the required documentation may deem the offer as non-responsive.

Equipment

The Contractor shall be fully aware that work must be started and completed as specified in this contract. It is the responsibility of the Contractor to determine which equipment and methods to use to perform the services required by this contract, unless the contracting agency instructs otherwise in writing.

Escalation

The State may allow for an escalation of the contract price, limited to labor and direct cost increases, provided that the increases can be verified by audit. The Contractor must provide the State with a 30-day written notification requesting an increase. No escalation will be allowed prior to one year from starting date of contract.

#### Escrow

Copies of all source code files required to develop the system object code and firmware; with any compilers, utilities, hardware, and instructions required must be held in escrow for the duration of the contract. Versions of the executables shall also be placed in escrow.

#### Federal Excise Tax Exemption Certificate

It is understood that the exemption from tax in the case of sales of articles to state agencies or political subdivisions thereof is limited to articles purchased for use in the exercise of essential government functions, and it is agreed that where articles purchased tax-free under this exemption certificate are used for purposes other than in the exercise of essential functions, or are sold to employees or others, the agency will report such facts to the vendor.

#### Federal Funding

Funding for this project and/or equipment and services is contingent upon the availability of federal government funding. No commitment of any kind is made by the State concerning this contract unless there are monies provided by a federal grant. The contractor should take this fact into consideration.

#### Federal Immigration and Nationality Act

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. These warranties shall remain in effect through the term of the Contract. 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.

The State may request verification of compliance for any Contractor or subcontractor performing work under the Contract. Should the State suspect or find that the Contractor or any of its subcontractors are not in compliance, the State may pursue any and 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. All costs necessary to verify compliance are the responsibility of the Contractor.

#### Federal Immigration and Nationality Act 2

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.

#### Financial Soundness

The Agency 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 Agency of such a substantial change in financial condition will be sufficient grounds for terminating the Contract.

#### Firm Quantities

This solicitation references quantities as a specific indication of the needs of the state.

#### Gratuities

The State may, by written notice, terminate this Contract, in whole or in part, if the State determines that employment or a Gratuity was offered or made by the Contractor or a representative of the Contractor to any officer or employee of the State for the purpose of influencing the outcome of the procurement or securing the Contract, an amendment to the Contract, or favorable treatment concerning the Contract, including the making of any determination or decision about contract performance. The State, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three times the value of the Gratuity offered by the Contractor.

#### Inclusive Offeror

Offeror(s) are encouraged to make every effort to utilize subcontractors that are small, women-owned and/or minority owned business enterprises. This could include subcontracts for a percentage of Administrative or Billing needs. Offerors who are committing a portion of their work to such subcontractors shall do so by identifying the type of service and work to be performed by providing detail concerning your organization's utilization of small, women-owned and/or minority business enterprises. Emphasis should be placed on specific areas that are subcontracted and percentage of contract utilization and how this effort will be administered and managed, including reporting requirements.

#### Independent Contractor

This contract is for the contractor to provide work under a service agreement with the State and not as an employee or agent of the State. The contractor is solely and exclusively responsible, legally and financially, for wages, per diem, taxes, Social Security payments, health benefits, insurance, bonds, Workmen's Compensation costs, and any other fees or expenses the contractor may be required to pay in his normal course of business.

#### Inspection, Acceptance and Rework

The State Project Manager will conduct the following inspections:

Compliance Inspections. While work is being performed, the State shall perform periodic inspections of the project work sites, without prior notice to the Contractor, and conduct on-site meetings with the Contractor to ascertain the Contractor's compliance with contract requirements and determine if corrective rework is required.

#### Installation

Installation shall include all electrical hook-up, testing procedures and operator training.

### **STANDARD PROFESSIONAL SERVICE CONTRACTS**

#### **INDEMNIFICATION CLAUSE:**

Contractor shall indemnify, defend, save and hold harmless the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Contractor or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of or recovered under the Workers' Compensation Law or arising out of the failure of such contractor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Contractor from and against any and all claims. It is agreed that Contractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. In consideration of the award of this contract, the Contractor agrees to waive all rights of subrogation against the State of Arizona, its officers, officials,

agents and employees for losses arising from the work performed by the Contractor for the State of Arizona.

*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.*

**INSURANCE REQUIREMENTS:**

Contractor and subcontractors 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.

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

**1. Commercial General Liability – Occurrence Form**

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

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

a. The policy shall be endorsed to include the following additional insured language: ***"The State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, 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"***.

b. Policy shall contain a waiver of subrogation against the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

**2. Business Automobile Liability**

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

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

a. The policy shall be endorsed to include the following additional insured language: ***"The State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, 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, involving automobiles owned, leased, hired or borrowed by the Contractor"***.

b. Policy shall contain a waiver of subrogation against the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

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

Workers' Compensation	Statutory
Employers' Liability	
Each Accident	\$ 500,000
Disease – Each Employee	\$ 500,000
Disease – Policy Limit	\$1,000,000

- a. Policy shall contain a waiver of subrogation against the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.
- b. This requirement shall not apply to: Separately, EACH contractor or subcontractor exempt under A.R.S. § 23-901, AND when such contractor or subcontractor executes the appropriate waiver (Sole Proprietor/Independent Contractor) form.

**4. Professional Liability (Errors and Omissions Liability)**

Each Claim	\$1,000,000
Annual Aggregate	\$2,000,000

- a. In the event that the professional liability insurance required by this Contract is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of this Contract; and that 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.
- b. The policy shall cover professional misconduct or lack of ordinary skill for those positions defined in the Scope of Work of this contract.

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

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

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



## 6. Technology Errors & Omissions Insurance

- Each Claim \$2,000,000
  - Annual Aggregate \$2,000,000
- a. Such insurance shall cover any, and all errors, omissions, or negligent acts in the delivery of products, services, and/or licensed programs under this contract.
  - b. Coverage shall include or shall not exclude settlement and/or defense of claims involving copyright and trademark infringement.
  - c. In the event that the Tech E&O insurance required by this Contract is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of this Contract and, either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years, beginning at the time work under this Contract is completed.

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

1. The State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees wherever additional insured status is required. Such additional insured shall be covered to the full limits of liability purchased by the Contractor, even if those limits of liability are in excess of those required by this Contract.
2. The Contractor's insurance coverage shall be primary insurance with respect to all other available sources.
3. Coverage provided by the Contractor shall not be limited to the liability assumed under the indemnification provisions of this Contract.

C. **NOTICE OF CANCELLATION:** With the exception of (10) day notice of cancellation for non-payment of premium, any changes material to compliance with this contract in the insurance policies above shall require (30) days written notice to the State of Arizona. Such notice shall be sent directly to **(State of Arizona Department Representative's Name & Address)** and shall be sent by certified mail, return receipt requested.

D. **ACCEPTABILITY OF INSURERS:** Insurance is to be placed with duly licensed or approved non-admitted insurers in the state of Arizona with 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.

E. **VERIFICATION OF COVERAGE:** Contractor shall furnish the State of Arizona with certificates of insurance (ACORD form or equivalent approved by the State of Arizona) as required by this Contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

All certificates and endorsements are to be received and approved by the State of Arizona before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.

All certificates required by this Contract shall be sent directly to **(State of Arizona Department Representative's Name and Address)**. 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. **DO NOT SEND CERTIFICATES OF INSURANCE TO THE STATE OF ARIZONA'S RISK MANAGEMENT DIVISION.**

F. **SUBCONTRACTORS:** Contractors' certificate(s) shall include all subcontractors as insureds under its policies or Contractor shall furnish to the State of Arizona separate certificates and

endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum requirements identified above.

- G. **APPROVAL:** Any modification or variation from the *insurance requirements* in this Contract shall be made by the Department of Administration, Risk Management Division, whose decision shall be final. Such action will not require a formal Contract amendment, but may be made by administrative action.
- H. **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.

#### Invoicing

The Contractor will invoice the State according to the manner assigned in Exhibit A. All invoices will contain the contract number, contract name, project number, purchase order number, equipment utilized, labor hours, labor rate, materials supplied, Contractor's name and address, a copy of Work Order authorizing work and the name of the Contractor's representative to contact concerning billing questions.

#### IT 508 Compliance

Unless specifically authorized in the Contract, any electronic or information technology offered to the State of Arizona under this solicitation shall comply with A.R.S. § 41-3531 and § 41-3532 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.

#### IT Architecture and Standards

The Arizona Strategic Enterprise Technology (ASET) of the State of Arizona is responsible by law for coordination of a statewide plan for information technology (IT) and development of IT policies, standards and procedures for state agencies. To support IT plan development and to facilitate continuous change toward standardized business processes and common, interoperable IT environments, the State developed an Enterprise Architecture (EA). Political subdivisions may follow some or all of the architecture or the standards, at their discretion. The EA and the standards can be accessed through ASET web page at <https://aset.az.gov>

Technical standards developed under this program shall be followed by the contractor in all decisions and recommendations. The Enterprise Architecture and IT standards developed under ASET's policies, standards and procedures program (PSP) are updated periodically to reflect changes in technology and the needs of the State. Contractor must remain current on its knowledge of the EA and IT standards. The contractor is encouraged to recommend updates to these standards from time to time.

#### Key Personnel

It is essential that the contractor provide an adequate staff of experienced personnel, capable of and devoted to the successful accomplishment of work to be performed under this contract. The contractor must assign specific individuals to the key positions. Once assigned to work under the contract, key personnel shall not be removed or replaced without the prior written approval of the issuing agency and a copy to the procurement office of record.

#### Licenses

Contractor shall maintain in current status all Federal, State and Local licenses and permits required for the operation of a business conducted by the contractor.

### Manuals

Once awarded the supplier shall provide two copies of the user's manual.

Any changes that affect the user's manual shall be given to the Department as applicable and as soon as possible. In addition, the supplier shall revise and develop additions to the manual if requested by the Department.

The user's manual shall also include a customer service contact phone number, e-mail and/or website.

### Manufacturer Full-line Evidence

The State may at any time during the solicitation or after Contract award require evidence that the Vendor is authorized to sell and distribute the full line of products offered by any manufacturer the Vendor is Offering or awarded. This evidence may include a letter from the manufacturer verifying the Vendor's full line authorization.

### New Equipment

All equipment, materials, parts and other components incorporated in the work or an item covered by this contract shall be new, of the latest model and of the most suitable grade for the purpose intended. Any and all work under this contract shall be performed in a skilled and workmanlike manner.

### Non-Collusion

By signing the bid, the bidder certifies that the bid submitted has been arrived at independently and has been submitted without collusion with, and without any agreement, understanding or planned common course of action with, any other vendor of materials, supplies, equipment or services described in the invitation to bid, designed to limit independent bidding or competition.

### Non-Exclusive Contract

This contract has been awarded with the understanding and agreement that it is for the sole convenience of the State of Arizona. The State reserves the right to obtain like goods or services from another source when necessary. Off-contract purchase authorization(s) may be approved by either the agency (within an agencies delegated authority) or by the State Procurement Office. Approvals shall be at the exclusive discretion of the State and shall be final. Off-contract procurement shall be consistent with the Arizona Procurement Code.

### 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.

### Options

A request for the addition of options to particular machines may be submitted at any time during the contract period. The state, at its own discretion, may accept a request for the addition of options. The contractor shall submit, in writing, a request for the addition of options and provide the following:

1. Documentation showing that the option was: 1) Not available for the contract machine at the original time of bid and has not been available for more than 30 days prior to the request, or; 2) The option is made available due to a model substitution.
2. The option is priced at a similar discount to the original options at the original time of bid. Manufacturer's price lists and vendor pricing data shall be submitted as documentation.

3. The option is an enhancement to the machine that will be beneficial to the state and does not significantly hinder the original performance of the machine, as determined by the state.

4. The option does not change the original requirements of the category for which the machine was awarded, as determined by the state.

All additions of options shall become effective upon approval of the state.

#### Organization-Employment Disclaimer

The contract is not intended to constitute, create, give to, or otherwise recognize a joint venture agreement or relationship, partnership or formal business organization of any kind, and the right and obligations of the parties shall be only those expressly set forth in the contract.

The parties agree that no persons supplied by the Contractor in the performance of Contractor's obligations under the contract are considered to be State employees, and that no right of State civil service, retirement or personnel rules accrue to such persons. The Contractor shall have total responsibility for all salaries, wages, bonuses, retirement, withholdings, worker's compensation, occupational disease compensation, unemployment compensation, other employee benefits and all taxes and premiums appurtenant thereto concerning such persons, and shall save and hold the State harmless with respect thereto.

#### Other Contracts

The agency may undertake or award other contracts for additional or related work and the contractor shall fully cooperate with such other contractors and state employees and carefully fit his own work to such additional work. The contractor shall not commit or permit any act which will interfere with the performance of work by any other contractor or by state employees. The agency shall equitably enforce this section as to all contractors to prevent the imposition of unreasonable burdens on any contractor.

#### Overall Quality of Submittal and Conformance with Requirements

The Offeror shall insure that all requested information is provided in format described above.

#### Partial Inspections

If the project is designated on the Work Order to be invoiced using the Partial Completion method, the State Project Manager will contact the Contractor within ten (10) days of receiving the partial invoice, to schedule a mutually acceptable date and time to conduct an on-site meeting with the Contractor, perform the inspection, and make a determination if corrective rework is required. The Contractor must request the partial inspection at the time the invoice is sent. The Contractor will not be paid until the work invoiced has been inspected and approved.

#### Payment

The Contractor shall be paid based on the amount agreed upon in writing. All additional work must be approved by the State in advance and be in accordance with the contract rate.

Work shall be completed in a responsible and professional manner in accordance with the requirements incorporated in the assignment. Determination of acceptability of work will be made by the State. Payment shall be made upon State's receipt of Contractor's invoice. However, should the work products require correction, the State reserves the right to withhold all or partial payment on future assignments until the work product has been reviewed and accepted by the State. Payment of any invoice shall not preclude the Department from making claim for adjustment on any service found to have been in non-compliance with the contract.

#### Payment Indemnification

The Contractor shall be responsible for issuing payment for services performed by the Contractor's employees and will indemnify and save the State harmless for all claims whatsoever growing out of the lawful demands of employees, subcontractors, suppliers or any other third party incurred in the furtherance of the performance of the contract. The Contractor shall, at the State's request, furnish satisfactory evidence that all obligations of the nature hereinabove designated have been paid, discharged, or waived.

#### Performance Standards

The State relies upon the provision of services in accordance with the contract. Therefore, while assignment due dates are variable, the Contractor agrees that time is of the essence, and that contractual commitments shall be met.

Performance of this contract may require the Contractor to have access to and use of data and information which may be considered proprietary to a Government agency or a Government Contractor or which may otherwise be of such a nature that its dissemination or use, other than in the performance of this contract, would be adverse to the interests of the State or others.

The Contractor agrees that Contractor's employees will not divulge or release data or information developed or obtained in connection with the performance of the resulting contract, unless made public by the State, except to authorized State personnel or upon written approval of the State.

#### Post Award Meetings

Upon award, any or all contractors should avail themselves to participating in post award meetings with state and political subdivision users and buyers.

Meetings may be held either as many as two (2) times in metropolitan ('metro') Phoenix during each contract year or once within metro Phoenix and once in another user city within the state each contract year.

The meetings may include a pre-conference with state personnel to discuss mutual contractual responsibilities and other performance related items.

#### Price Reductions

Price reductions may be submitted to the state for consideration at any time during the contract period. The contractor shall offer the state a price reduction on the contract product(s) concurrent with a published price reduction made to other customers. The state at its own discretion may accept a price reduction. The contractor shall request, in writing, a price reduction. The contractor shall request, in writing, a price reduction and provide the following:

1. A formal announcement from the manufacturer that the cost of the contract product has been reduced.
2. Documentation, i.e., published cost lists, from the manufacturer showing, to the satisfaction of the state, the actual cost reduction.
3. Documentation showing that the published cost reductions have been offered to other distributors.

#### Project Administration

The State's Agency's Representative shall be designated at the time of contract award. The State's Agency's Representative will provide general direction as necessary and be responsible for decisions pertaining to work under this contract.

#### Protection of Facilities and Grounds

The contractor shall provide the services contained herein in such a manner that does not result in damage to State and eligible using agency facilities, grounds, landscaping, utilities, or structures. In the event that damage does occur during the performance of this contract, the contractor shall repair or replace the damage at no cost to the State or eligible using agency as specified.

Should the contractor fail or refuse to make proper repairs or replacements, the contractor shall be liable for the cost thereof which may be deducted from unpaid invoices or by any other means provided by law. Any and all equipment (containers) supplied by the contractor(s) for use by an eligible using agency shall remain the property of the contractor.

The State shall be under no obligation to the contractor in regards to any restoration or rehabilitation of the contractor's premise or property during the contract term or after the final contract expiration date.

#### Quality

All equipment and/or services offered in this contract shall meet or exceed the quality requirements specified herein.

#### Quantities (Considerable and Indefinite)

The quantities of supplies and services available under the contract are considerable but indefinite.

#### 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 including the Auditor General's duly authorized representative, at reasonable times. Upon request, the Contractor shall produce and deliver to the State and Auditor General's office, at no charge, a legible copy of any or all such books, documents, records and any other audit documentation that are in any way pertinent to this contract.

#### Reference to Uniform Terms and Conditions

The State of Arizona Uniform Terms and Conditions are incorporated herein by reference (Go to the Arizona Department of Administration website <http://spo.az.gov> Administration & Policy/State Procurement Manual/Standard Forms and Documents/Uniform Terms and Conditions).

#### Relationship With Others

The Contractor shall cooperate fully with the State, the Arizona counties, municipalities and local government officials, and all such others as may be required in the performance of this Contract. This shall include attendance at meetings, discussion, and hearings, as may be required; presentation of data, as may be requested from time to time by the State to effect such cooperation; and compliance with all directives issued by the State.

#### Relocation of Equipment

The State, on occasion, may have reason to require the relocation of equipment. A purchasing entity shall not move or relocate contractor-installed equipment without prior notice to and approval by the contractor. The contractor will prepare the copier for transport, pick-up and deliver, and set the copier up at the new location. The contractor will not charge a relocation fee. Departments must provide the contractor with a minimum fifteen-day written notice when this service is required. This service is available ONLY for copiers and/or multifunctional devices purchased or rented on this contract, under a maintenance agreement purchased under the resulting contract, or still under the initial 90-day manufacturer's warranty. The relocation of equipment does not apply to other copiers that the State may own.

The purchasing entity shall not be responsible for damage caused by the contractor during an approved

relocation of the equipment by the contractor. The contractor shall be responsible for any additional costs associated with restoring the equipment to its original performance.

#### Removal of Contractor's Employees

The Contractor agrees to utilize only experienced, responsible and capable people in the performance of the work. The State may require that the Contractor remove from the job covered by this contract, employees who endanger persons or property or whose continued employment under this contract is inconsistent with the interest of the State.

#### Removal of Equipment

Should the State terminate the requirements of the this contract in accordance with terms and conditions, the Contractor shall retain all rights to rental equipment provided and shall remove such equipment within fifteen (15) days of notice of termination. If the Contractor fails to remove the rental equipment in a timely manner, the State shall dispose of the equipment in accordance with established Surplus Procedures.

#### Review of Contractor's Work

Work performed by the Contractor shall be subject to the periodic reviews and partial acceptance at various stages. The State reserves the right to make such reviews and pass upon the acceptability of Contractor's work. No partial acceptance shall relieve the Contractor's obligation to correct, without charge, any errors in the work on this project.

#### Safety Standards

All items supplied on this contract must comply with the current applicable occupational safety and health standards of the State of Arizona Industrial Commission, The National Electric Code, and The National Fire Protection Association Standards.

#### Scrutinized Business Operations

Pursuant to A.R.S. § 35-391.06 and § 35-393.06; the Contractor certifies that it does not have a scrutinized business operation in Sudan or Iran. For the purpose of this Section the term "scrutinized business operations" shall have the meanings set forth in A.R.S. § 35-391 or and § 35-393, as applicable.

#### Security

Contractor's current and subsequent personnel, as well as those of their duly recognized subcontractors, shall comply with all applicable statutes, administrative regulation, policies, practices and procedures while providing supplies and/or services under the contract. Notwithstanding any additional security requirements in the Scope of Work, as deemed necessary by the State, certain personnel with access to sensitive information and/or infrastructure of the State or an Eligible Agency, shall be subject to background checks.

#### Security Clearance

A security clearance shall be require of the contractor and of all employees of the contractor or subcontractor who will have access to the facilities or operations shall be escorted at all times by a representative of the using agency.

#### Serial Numbers

The contract is for equipment on which the original manufacturers' serial number has not been altered in any way. Throughout the contract term, the state reserves the right to reject any altered equipment.

#### Service Limitations

The award contractor shall not be responsible for any equipment failure and/or damage by cause other than normal wear and care, i.e. inadequate or improper power; improper care or abuse of equipment; unauthorized attempts to repair or modify the equipment; acts of God. Further, painting, refinishing, and

supplying materials for the purpose of painting and/or refinishing shall not be the responsibility of the contractor.

#### Site Clean Up

Supplier shall be responsible for the removal of all materials, debris and residue resulting from the performance of the service. All work areas shall be maintained in a clean and orderly manner throughout each work day.

#### Software Support

The contractor shall provide telephone or computer network support to the State to correct any defect in the software that materially and adversely affects the use of the software. Typical tasks may include nights and weekends to support software failure, testing, modification to existing systems, or other factors that disrupt the agency's use of the software.

#### Software Updates

The contractor shall provide, at no additional charge, all new releases and updates of the software while under a maintenance agreement. Release shall be defined as any collection of enhancements or updates which the contractor generally makes available to its installed base of customers of such programs.

#### State Property Protection (Moving)

Contractor shall protect his equipment from damage and shall protect state property from damage or loss arising in connection with this contract and shall be liable for any damage, injury or loss caused by his operations or those of his employees. To insure that no harm is done to the building, General Services Division, will oversee the removal.

#### Storage

All materials shall have a minimum rated shelf or storage life of three years from the date of delivery.

#### Subcontractors

Supplemental to the Subcontractor term in the Uniform Terms and Conditions, Contractor shall not enter into any Subcontract under this Contract, for the provision of supplies or performance of services under this Contract, without the advance written approval of the Procurement Officer. When requesting the Procurement Officer's approval, the Contractor shall list all new subcontractors, their contact information, certifications required of them, their Minority and Women Owned Enterprise status (cite any certifications use in determining such status) as well as the subcontractor's proposed responsibilities under the Contract. With the request, Contractor shall certify that all Subcontracts incorporate by reference the terms and conditions of this Contract.

#### Suspension or Debarment Certification

By signing the offer section of the Offer and Acceptance page, SPO Form 203, the bidder or offeror certifies that the firm, business or person submitting the bid or offer has not been debarred, suspended or otherwise lawfully precluded from participating in any public procurement activity with any Federal, State or Local Government. Signing the offer section without disclosing all pertinent information about a debarment or suspension shall result in rejection of the bid or offer or cancellation of a contract. The State also may exercise any other remedy available by law.

#### Suspension or Debarment Status

If the firm, business or person submitting this bid or offer has been debarred, suspended or otherwise lawfully precluded from participating in any public procurement activity with any Federal, State or Local Government, the bidder or offeror must include a letter with its bid or offer setting forth the name and address of the governmental unit, the effective date of the suspension or debarment, the duration of the suspension or debarment, and the relevant circumstances relating to the suspension or debarment.



Failure to supply the letter or to disclose in the letter all pertinent information regarding a suspension or debarment shall result in rejection of the bid or offer or cancellation of a contract. The State also may exercise any other remedy available by law.

Telephone Ordering Support

Contractor(s) shall accept collect telephone calls and/or provide and maintain a toll-free number for eligible agency use. Failure to maintain this service may be cause for cancellation of the contract.

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.

Termination for Default

The State reserves the right to terminate the whole or any part of the contract due to failure of the Contractor to carry out any term, promise, or condition of the contract. The State will issue a written ten (10) day notice of default to the Contractor for failure to adequately perform, or there is reason for the State to believe that the Contractor cannot or will not adequately perform the requirements of the contract.

Transition Period

The contractor shall attend transition meetings with the previous contractor if deemed necessary by the State. The State reserves the right to permit the previous contractor to complete necessary work or tasks currently in progress to aid in the transition process.

Waiver and Rejection of Rights

Notwithstanding any other provision of the solicitation, the State reserves the right to waive any immaterial defect or informality; Reject any and all offers or portions thereof; or Cancel a solicitation. The chief procurement officer shall file a written determination specifying the reasons for the decision.

Will Call/Ordering Support

The contractor(s) shall provide and maintain applicable toll-free telephone numbers and facsimile numbers for eligible agency use. Failure to maintain this service may be cause for cancellation of the contract.

Workmanship

The contractor agrees that all work shall be done by skilled and experienced technicians and shall be done in a first-class workman like manner in accordance with the equipment manufacturers recommended procedures.

# UNIFORM TERMS AND CONDITIONS

## Version 9

### 1. Definition of Terms

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

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

### 2. Contract Interpretation

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

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

### 3. Contract Administration and Operation

- 3.1. Records. Under A.R.S. § 35-214 and § 35-215, the Contractor shall retain and shall contractually require each subcontractor to retain all data and other "records" relating to the acquisition and performance of the Contract for a period of five years after the completion of the Contract. All records shall be subject to inspection and audit by the State at reasonable times. Upon request, the Contractor shall produce a legible copy of any or all such records.
- 3.2. Non-Discrimination. The Contractor shall comply with State Executive Order No. 2009-09 and all other applicable Federal and State laws, rules and regulations, including the Americans with Disabilities Act.
- 3.3. Audit. Pursuant to ARS § 35-214, at any time during the term of this Contract and five (5) years thereafter, the Contractor's or any subcontractor's books and records shall be subject to audit by the State and, where applicable, the Federal Government, to the extent that the books and records relate to the performance of the Contract or Subcontract.
- 3.4. Facilities Inspection and Materials Testing. The Contractor agrees to permit access to its facilities, subcontractor facilities and the Contractor's processes or services, at reasonable times for inspection of the facilities or materials covered under this Contract.

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

- 3.5. Notices. Notices to the Contractor required by this Contract shall be made by the State to the person indicated on the Offer and Acceptance form submitted by the Contractor unless otherwise stated in the Contract. Notices to the State required by the Contract shall be made by the Contractor to the Solicitation Contact Person indicated on the Solicitation cover sheet, unless otherwise stated in the Contract. An authorized Procurement Officer and an authorized Contractor representative may change their respective person to whom notice shall be given by written notice to the other and an amendment to the Contract shall not be necessary.
- 3.6. Advertising, Publishing and Promotion of Contract. The Contractor shall not use, advertise or promote information for commercial benefit concerning this Contract without the prior written approval of the Procurement Officer.
- 3.7. Property of the State. Any materials, including reports, computer programs and other deliverables, created by the Contractor specifically for the State and paid for by the State under this Contract are the sole property of the State. The Contractor is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. The Contractor shall not use or release these materials without the prior written consent of the State.
- 3.8. omitted
- 3.9. Federal Immigration and Nationality Act. The contractor shall comply with all federal, state and local immigration laws and regulations relating to the immigration status of their employees during the term of the contract. Further, the contractor shall flow down this requirement to all subcontractors utilized during the term of the contract. The State shall retain the right to perform random audits of contractor and subcontractor records or to inspect papers of any employee thereof to ensure compliance. Should the State determine that the contractor and/or any subcontractors be found noncompliant, the State may pursue all remedies allowed by law, including, but not limited to; suspension of work, termination of the contract for default and suspension and/or debarment of the contractor.
- 3.10. E-Verify Requirements. In accordance with A.R.S. § 41-4401, Contractor warrants compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with Section A.R.S. § 23-214, Subsection A.
- 3.11. Offshore Performance of Work Prohibited. Any services that are described in the specifications or scope of work that directly serve the State of Arizona or its clients and involve access to secure or sensitive data or personal client data shall be performed within the defined territories of the United States.

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

#### 4. **Costs and Payments**

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

#### 5. **Contract Changes**

- 5.1. **Amendments.** This Contract is issued under the authority of the Procurement Officer who signed this Contract. The Contract may be modified only through a Contract Amendment within the scope of the Contract. Changes to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by a person who is not specifically authorized by the procurement officer in writing or made unilaterally by the Contractor are violations of the Contract and of applicable law.

Such changes, including unauthorized written Contract Amendments shall be void and without effect, and the Contractor shall not be entitled to any claim under this Contract based on those changes.

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

## 6. Risk and Liability

- 6.1. Risk of Loss: The Contractor shall bear all loss of conforming material covered under this Contract until received by authorized personnel at the location designated in the purchase order or Contract. Mere receipt does not constitute final acceptance. The risk of loss for nonconforming materials shall remain with the Contractor regardless of receipt.
- 6.2. Indemnification
- 6.2.1. Contractor/Vendor Indemnification (Not Public Agency) The parties to this contract agree that the State of Arizona, its departments, agencies, boards and commissions shall be indemnified and held harmless by the contractor for the vicarious liability of the State as a result of entering into this contract. However, the parties further agree that the State of Arizona, its departments, agencies, boards and commissions shall be responsible for its own negligence. Each party to this contract is responsible for its own negligence.
- 6.2.2. Public Agency Language Only Each party (as 'indemnitor') agrees to indemnify, defend, and hold harmless the other party (as 'indemnitee') from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as 'claims') arising out of bodily injury of any person (including death) or property damage but only to the extent that such claims which result in vicarious/derivative liability to the indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the indemnitor, its officers, officials, agents, employees, or volunteers."
- 6.3. Indemnification - Patent and Copyright. The Contractor shall indemnify and hold harmless the State against any liability, including costs and expenses, for infringement of any patent, trademark or copyright arising out of Contract performance or use by the State of materials furnished or work performed under this Contract. The State shall reasonably notify the Contractor of any claim for which it may be liable under this paragraph. If the contractor is insured pursuant to A.R.S. § 41-621 and § 35-154, this section shall not apply.
- 6.4. Force Majeure.
- 6.4.1 Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes acts of God; acts of the public enemy; war; riots; strikes; mobilization; labor disputes; civil disorders; fire; flood; lockouts; injunctions-intervention-acts; or failures or refusals to act by government authority; and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence.

6.4.2. Force Majeure shall not include the following occurrences:

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

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

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

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

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

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

## 7. Warranties

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

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

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

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

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

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

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

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

7.4. Inspection/Testing. The warranties set forth in subparagraphs 7.1 through 7.3 of this

paragraph are not affected by inspection or testing of or payment for the materials by the State.

- 7.5. Compliance With Applicable Laws. The materials and services supplied under this Contract shall comply with all applicable Federal, state and local laws, and the Contractor shall maintain all applicable license and permit requirements.
- 7.6. Survival of Rights and Obligations after Contract Expiration or Termination.
- 7.6.1. Contractor's Representations and Warranties. All representations and warranties made by the Contractor under this Contract shall survive the expiration or termination hereof. In addition, the parties hereto acknowledge that pursuant to A.R.S. § 12-510, except as provided in A.R.S. § 12-529, the State is not subject to or barred by any limitations of actions prescribed in A.R.S., Title 12, Chapter 5.
- 7.6.2. Purchase Orders. The Contractor shall, in accordance with all terms and conditions of the Contract, fully perform and shall be obligated to comply with all purchase orders received by the Contractor prior to the expiration or termination hereof, unless otherwise directed in writing by the Procurement Officer, including, without limitation, all purchase orders received prior to but not fully performed and satisfied at the expiration or termination of this Contract.

## 8. State's Contractual Remedies

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



concerning the Contractor's non-conforming performance or failure to perform the Contract, including expenses, costs and damages described in the Uniform Terms and Conditions.

## 9. Contract Termination

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

this Contract. The Contractor shall be liable to the State for any excess costs incurred by the State in procuring materials or services in substitution for those due from the Contractor.

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

10. **Contract Claims**

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

11. **Arbitration**

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

12. **Comments Welcome**

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

# Exhibit 2

**ELECTION SYSTEMS & SOFTWARE, LLC.  
VOTER REGISTRATION AND ELECTION MANAGEMENT SYSTEM SOFTWARE LICENSE  
MAINTENANCE AND SUPPORT AND SYSTEM SERVICES AGREEMENT**

This Voter Registration and Election Management System Software License Maintenance and Support and System Services Agreement, including the scope of work described therein (collectively the "Agreement") is made and entered into effective July 1, 2017 (the "Effective Date"),

**BETWEEN:** Election Systems & Software, LLC, a Delaware limited liability company ("ES&S");

**AND:** State of Arizona ("Customer").

**RECITALS:**

A. Customer has agreed to license certain voter registration software from ES&S for use in the State of Arizona (the "Jurisdiction"). The terms and conditions under which such license support and services shall be provided are set forth in the **GENERAL TERMS** attached hereto.

B. The following Exhibits are incorporated into, and constitute an integral part of, this Agreement (check all that apply):

Exhibit A (Pricing and Payment Summary)

Exhibit B (ES&S Software Description)

Exhibit C (ES&S Software License, Maintenance and Support Services)

Exhibit D (Training Services)

Exhibit E (Third Party Products)

Exhibit F (Additional Services)

Exhibit G (State of Arizona Special Terms & Conditions)

Exhibit H (State of Arizona Uniform Terms & Conditions)

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, each of the parties hereto:

- Agrees to the **GENERAL TERMS** and the terms and conditions set forth in each Exhibit attached hereto and incorporated herein. The Agreement is contingent upon the Arizona Department of Administration, State Procurement Office, approving Customer's Competition Impracticable request through SPO Form 101.
- Agrees that at all times, this Agreement shall be governed by and construed in accordance with the laws of the **State of Arizona**, without regard to conflicts of law principles that would require the application of the laws of any other state.
- Represents and warrants to the other party that as of the date of its signature below it has full power and authority to enter into and perform this Agreement, and that the person signing below on its behalf has been properly authorized to execute this Agreement.
- Acknowledges that it has read this Agreement, understands it and intends to be bound by it.

ELECTION SYSTEMS & SOFTWARE, LLC.  
11208 John Galt Boulevard  
Suite 201 Omaha, NE 68137  
Fax No.: (402) 970-1291

STATE OF ARIZONA  
100 N. 15<sup>th</sup> Avenue,  
Phoenix, AZ 85007  
Fax No. (602) 542-5508

\_\_\_\_\_  
Signature  
\_\_\_\_\_  
Name (Printed or Typed)  
\_\_\_\_\_  
Title  
\_\_\_\_\_  
Date

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Signature  
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Name  
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Title:  
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Date

**GENERAL TERMS  
ARTICLE 1  
DEFINITIONS**

1.1 The following capitalized terms used, but not defined, in these General Terms or on an Exhibit shall have the following meanings:

- a. "Documentation" means the operating instructions, user manuals or training materials for ES&S Software.
- b. "ES&S Software" means ES&S' proprietary voter registration software as set forth on Exhibit B as well as all Updates and items delivered to Customer under this Agreement.
- c. "ES&S Software license, maintenance and support" means those services described on Exhibit C.
- d. "Poller Software" Shall mean that certain software specifically developed for the Customer by a separate third party and utilized in conjunction with the ES&S Software.
- e. "System" means, collectively, the ES&S Software and Third Party Products.
- f. "Third Party Products" means hardware, software and equipment which have been manufactured, created and/or licensed by persons other than ES&S.

**ARTICLE 2  
LICENST OF ES&S SOFTWARE AND SERVICES TO BE PROVIDED BY ES&S**

2.1. **Grant of License.** Subject to the terms and conditions of this Agreement, ES&S hereby grants to Customer nonexclusive, nontransferable licenses for its bona fide full-time employees and its local State of Arizona County Recorders Offices, with the exception of Pima and Maricopa Counties (who each may have only two (2) bona-fide full time employees utilize the ES&S Software), to use the ES&S Software, described on Exhibit B, and related Documentation in the Jurisdiction. The License allows Customer to use and copy the ES&S Software (in object code only) and the Documentation, solely for the purposes of managing the voter registration process and other election-related activities in the Jurisdiction. The licenses granted in this Section 2.1 do not permit Customer to use the source code for the ES&S Software.

2.2. **Prohibited Uses.** Customer shall not take any of the following actions with respect to the ES&S Software or the Documentation:

- a. Reverse engineer, decompile, disassemble, re-engineer or otherwise create, attempt to create, or permit, allow or assist others to create, the source code or the structural framework for part or all of the ES&S Software;
- b. Cause or permit any use, display, loan, publication, transfer of possession, sublicensing or other dissemination of the ES&S Software or Documentation, in whole or in part, to or by any third party, including, but not limited to, any transfer of possession to, or use of the ES&S Software or Documentation by any third party to perform any services for Customer without ES&S' prior written consent; or
- c. Cause or permit any change to be made to the ES&S Software without ES&S' prior written consent; or
- d. Cause or permit any copying, reproduction or printing of any output generated by the ES&S Software in which ES&S owns or claims any registered or common law proprietary intellectual property rights (e.g., copyright, trademark, patent or patent pending). This section shall not prohibit Customer from copying, reproducing or printing any voter registration reports, records or information stored in or generated by the System.

2.3. **License Fee.** In consideration for ES&S' grant of the License for the ES&S Software described in Section 2.1, Customer shall pay ES&S the ES&S Software License Fees set forth on Exhibit A.

2.4. **Term of License.** As the Customer has previously received the ES&S Software described in Section 2.1, the licenses granted in Section 2.1 shall commence upon the Effective Date of this Agreement and shall continue for the Term of the Agreement. ES&S may terminate the license if Customer fails to pay the consideration due for, or breaches Sections 2.2, 2.5 or 3.4 with respect to, such license. Upon the termination of the license granted in Section 2.1 for ES&S Software or upon Customer's discontinuance of the use of any ES&S Software, Customer shall immediately return such ES&S Software and the related Documentation (including any and all copies thereof) to ES&S, or (if requested by ES&S) destroy such ES&S Software and Documentation and certify in writing to ES&S that such destruction has occurred.

2.5. **Source Code.** The License granted in Section 2.1 does not permit Customer to use the source code for the ES&S Software. ES&S has placed the source code in escrow with its third party escrow agent and will likewise place in escrow the source code for all Updates, Add-Ons and New Products (as defined below) provided to Customer. ES&S's third party escrow agent is Iron Mountain Intellectual Property Management, Inc. with offices located at 2100 Norcross Parkway, Suite 150, Norcross, Georgia 30071. Should ES&S cease operations and become unable to maintain and support any of the ES&S Software, Updates, Add-Ons or New Products provided to Customer while under an obligation to do so, Customer may obtain the source code for such item(s) for the sole purpose of enabling the continuing use of such item(s) in accordance with this Agreement. Except as set forth in this section, the source code will remain the property of ES&S and may not otherwise be used by Customer. The cost of using an alternative third party escrow agent shall be borne by Customer. Notwithstanding the foregoing, the restrictions set forth herein shall not apply to the Poller Software as such Software is owned by the Customer. The Customer shall at all times remain the owner of the Poller Software source code. ES&S is not licensing the Poller Software source or object code to the Customer and has no responsibility for such code except as otherwise set forth herein. On or before the Effective Date of this Agreement, Customer shall provide ES&S with a copy of the Poller Software source and object code in order for ES&S to provide the maintenance and support for such Poller Software as set forth in Exhibit C during the Term of this Agreement.

2.6. **Updates, Add-Ons and New Products.**

a. **Updates.** During the Term of the Agreement, ES&S may provide new releases, upgrades or maintenance patches to the ES&S Software, together with appropriate Documentation ("Updates"), on a schedule defined by ES&S. Customer and ES&S shall mutually agree upon the date upon which any such Updates shall be provided and installed by ES&S. Customer is responsible for obtaining any upgrades or purchases of third party items required to operate the Updates. All Updates shall be deemed to be ES&S Software for purposes of this Agreement upon delivery. Customer shall be responsible for any claim, damage, loss, judgment, penalty, cost, amount paid in settlement or fee which is caused by Customer's failure to install and use the most recent Update provided to it by ES&S, but only if such Update was necessary to operate Customer's System, and not because the Update was requested for another state's benefit. If Customer proposes changes in the ES&S Software to ES&S, such proposals will become ES&S' property. ES&S may, in its sole discretion, elect to make or not to make such changes without reference or compensation to Customer or any third party. ES&S represents to Customer that the Updates will comply with all applicable state law requirements at the time of delivery. Customer shall be responsible to ensure that it has installed and is using only certified versions of ES&S Software in accordance with applicable law. Customer shall report any failure of performance of an Update within ten (10) business days after the Update is, or is required to be, installed.

b. **Add-Ons and New Products.** From time to time, ES&S may offer new features which can be added on to the ES&S Software ("Add-Ons") or new software products ("New Products") to Customer. Customer may elect to license an Add-On or New Product upon the

payment of a license fee to ES&S. Unless any such license is effectuated pursuant to a separate license agreement, the Add-On or New Product shall be deemed to be part of the ES&S Software upon payment of such license fee.

c. Testing. Updates, Add-Ons and New Products shall be fully tested by ES&S prior to release to Customer. ES&S may provide optional test decks and scripts to Customer, but otherwise all Updates, Add-Ons and New Products shall perform in accordance with their specification upon release to Customer and Arizona county recorder's office personnel.

## 2.7. Services.

a. ES&S Software License, Maintenance and Support Services. During the Term of this Agreement, ES&S shall provide license, maintenance and support services for the ES&S Software ("Software License, Maintenance and Support") (a) to enable the ES&S Software to perform in all material respects in accordance with its Documentation, as provided by ES&S, and (b) to cure any defect in material or workmanship. The specific ES&S Software License, Maintenance and Support services provided by ES&S and each party's obligations with respect to such services are set forth on Exhibit C. In consideration for ES&S providing Software License, Maintenance and Support, the Customer agrees to pay ES&S the fees set forth on Exhibit A.

b. Training Services. During the Term of the Agreement, ES&S may, upon request by the Customer, provide training services to the Customer and Arizona county recorder's office personnel in accordance with the terms set forth on Exhibit D. In exchange for ES&S providing such training services, the Customer shall pay ES&S the fees set forth per a signed change order by both parties according to the rates outlined in Exhibit D. ES&S and the Customer shall mutually agree upon the date and time upon which such training services shall be provided.

c. Additional Services. During the Term of the Agreement, ES&S may, upon request by the Customer, provide those additional services as set forth on Exhibit F. In consideration for ES&S providing such additional services, the Customer agrees to pay ES&S the fees set forth per a signed change order by both parties according to the rates outlined in Exhibit F. ES&S and the Customer shall mutually agree upon the date and time in which ES&S will provide the requested services.

## ARTICLE 3 MISCELLANEOUS

3.1 Term; Termination. This Agreement shall be effective on the Effective Date, and shall terminate on June 30, 2019 (the "Term"). The parties acknowledge and agree that certain of the Exhibits contain separate termination provisions, and that the termination of any Exhibit shall not constitute a termination of any other Exhibit or of the Agreement as a whole. The obligations of ES&S and the Customer may be terminated prior to the termination or expiration of the Agreement as follows:

a. By either party if the other party breaches any material provision hereof and does not cure such breach within thirty (30) days after it receives notification thereof from the non-breaching party; or

b. By either party in the event that funds are not appropriated or otherwise made available to support the continuation of performance by the Customer hereunder in any subsequent fiscal period. Either party may notify the other of the termination. Upon termination, ES&S shall be reimbursed to the extent of available appropriations for the reasonable value of any nonrecurring costs incurred, but not amortized, in the price of the products and services delivered to the Customer hereunder. Both parties agree that such costs will include the unrecovered ES&S Software costs (if applicable) and reasonable exit costs incurred by ES&S. The amount of any reimbursement may be paid from any appropriations available for such purposes, and Customer's highest ranking officer or official shall use his/her best efforts to



timely and sufficiently request the appropriation necessary to pay such amount. The Customer acknowledges and agrees that its estimated requirements cover the period of this Agreement and are reasonably firm and continuing, that sufficient funds to pay for the first twelve (12) months of this Agreement are available.

3.2 **Limitation of Liability.** Neither party will be liable for any indirect, incidental, punitive, exemplary, special or consequential damages of any kind whatsoever arising out of or relating to this Agreement. Neither party shall be liable for the other party's negligent or willful misconduct. ES&S' total liability to the Customer arising out of or relating to this Agreement shall not exceed the aggregate amount to be paid to ES&S hereunder. By entering into this Agreement, The Customer agrees to accept responsibility for (a) the use of the System; and (b) the selection of, use of and results obtained from any equipment, software or services not provided by ES&S and used with the System. ES&S will not be liable under this Agreement for any claim, damage, loss, judgment, penalty, cost, amount paid in settlement or fee which is caused by (y) the Customer's failure to install and use the most recent Update, or the second most recent Update, provided to it by ES&S or (z) the Customer's election not to receive, or to terminate, the License and Maintenance Services provided under Exhibit C.

3.3 **Proprietary rights.** ES&S shall own the entire right, title and interest in the ES&S Software and all corrections, programs and Work Product (which shall be defined as inventions, discoveries, developments, modifications, procedures, ideas, innovations, systems, programs, know-how, literary properties and other work products) conceived, created or developed alone or with Customer or others, which are based on, related to or arising out of the ES&S Software, including all proprietary rights therein or based thereon. Subject to the payment of all Software License, Maintenance and Support Fees, ES&S hereby grants to Customer a non-exclusive license to use the ES&S Software and such corrections, programs and Work Products which are based on, related to or arising out of the ES&S Software that ES&S actually delivers to Customer pursuant to this Agreement. All licensed items shall be deemed to be ES&S Software for purposes of this Agreement. Except and to the extent expressly provided herein, ES&S does not grant to Customer any right, license, or other proprietary right, express or implied, in the ES&S Software or any corrections, programs, information, or Work Product based on, related to or arising out of the ES&S Software covered by this Agreement.

3.4 **Confidentiality.** During the term of this Agreement, each party (the "Disclosing Party") may provide the other (the "Receiving Party") with certain confidential and proprietary information ("Confidential Information"). Confidential Information includes the Documentation, the information imparted during training provided by ES&S, and any other information relating to the Customer's or ES&S' operations, services, products, research or development. In the event that the Disclosing Party makes an oral or visual disclosure of information which it considers to be Confidential Information, it shall confirm the confidentiality of such disclosure in writing to the Receiving Party within fifteen (15) calendar days after its initial disclosure. "Confidential Information" will not include information that (a) is publicly known at the time of its disclosure; (b) is lawfully received by the Receiving Party from a third party not under an obligation of confidentiality to the Disclosing Party; (c) is published or otherwise made known to the public by the Disclosing Party; or (d) was generated independently by the Receiving Party before disclosure by the Disclosing Party. The Receiving Party will refrain from using the Disclosing Party's Confidential Information except to the extent necessary to exercise its rights or perform its obligations under this Agreement. The Receiving Party will likewise restrict its disclosure of the Disclosing Party's Confidential Information to those who have an absolute need to know such Confidential Information in order for the Receiving Party to perform its obligations and enjoy its rights under this Agreement. Such persons shall be informed of and will agree to the provisions of this Section, and the Receiving Party will remain responsible for any unauthorized use or disclosure of the Confidential Information by any of them. The Receiving Party may also disclose Confidential Information of the Disclosing Party pursuant to the requirement or request of a governmental agency, a court or administrative subpoena, an order or other legal process or requirement of law, or in order to defend its rights hereunder, so long as it shall (x) first notify the Disclosing Party of such request, requirement or proposal for use in defense; (y) in the case of a required disclosure, furnish only such portion of the Confidential Information as it is advised in writing by counsel that it is legally required to disclose; and (z) cooperate with the Disclosing Party in its efforts to obtain an order or other reliable assurance that confidential treatment will be accorded to that portion of the Confidential Information that is required to be disclosed. Upon the termination of this Agreement in its entirety, each Receiving Party

shall return all Confidential Information of the Disclosing Party which is in its possession or under its control.

3.5 **Taxes; Interest.** Subject to the "Taxes" section in the Special Terms and Conditions and § 4.3 of the Uniform Terms and Conditions, Customers shall not be responsible for sales and use, excise or other similar taxes that may be imposed on the transactions contemplated by this Agreement, nor shall Customer be liable for taxes imposed on ES&S' income. Any undisputed payment which is past due to ES&S will bear interest at the rate of one and one-half percent per month (or such greater amount as may be permitted by applicable) for each month or portion thereof during which it remains unpaid.

3.6 **Excusable Nonperformance.** If ES&S is delayed or prevented from performing its obligations under this Agreement due to any cause beyond its reasonable control, including natural disaster, fire, flood, unusually severe weather, Acts of God, labor disputes and governmental regulations, the delay shall be excused during the continuance of, and to the extent of, such cause, and the period of performance shall be extended to the extent necessary to allow performance after the cause of delay has been removed. ES&S agrees to work with Customer, at Customer's request, to develop mutually agreeable alternatives in order to minimize the negative impact of any such delay.

3.7 **Counterparts; Execution By Facsimile.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument. The parties may execute this Agreement and exchange counterparts of the signature pages by means of facsimile transmission, and the receipt of such executed counterparts by facsimile transmission shall be binding on the parties. Following such exchange, the parties shall promptly exchange original versions of such signature pages.

3.8 **Independent Contractor.** In performing its obligations or enjoying its rights under this Agreement, each party shall comply with all applicable laws and regulations. ES&S is providing the ES&S Software and services to Customer as an independent contractor, and shall not be deemed to be a "state actor" for purposes of 42 U.S.C. § 1983. ES&S will not be responsible for (a) user errors or (b) compatibility problems encountered through the use of the Software with equipment or software not meeting ES&S's specifications.

3.9 **Assignment.** Except in the case of a sale, transfer or assignment of all or substantially all of the assets of ES&S to a successor who has asserted its intent to continue the business of ES&S, neither party may assign or transfer this Agreement or assign, subcontract or delegate any of its rights, duties or obligations hereunder without the prior written consent of the other party hereto, such consent not to be unreasonably withheld or conditioned, nor unduly delayed.

3.10 **Remedies.** Except as specifically provided herein, the remedies provided to the parties under this Agreement shall be cumulative and non-exclusive, and the parties shall be entitled to seek any other rights to which they may be entitled at law or in equity, subject to the terms of this Agreement.

3.11 **Notice.** Any notice or other communication required or permitted hereunder shall be in writing, and will be deemed given when delivered personally, sent by confirmed fax and sent by commercial overnight courier (with written verification of receipt) or sent by registered or certified mail, return receipt requested, postage prepaid. All communications shall be sent to the attention of the persons listed below unless other names, addresses or fax numbers are provided by either or both parties. Copies of such notices shall be delivered by email, in addition to the other methods set forth above, to the persons identified below.

If to the Customer:  
State Election Director  
Arizona Secretary of State  
1700 W. Washington, 7<sup>th</sup> Floor  
Phoenix, AZ 85007  
Fax Number (602) 364-2087

If to ES&S:

Office of General Counsel  
Election Systems & Software, Inc.  
11208 John Galt Boulevard  
Omaha, NE 68137  
Fax Number: (402) 970-1291

3.12 **Disputes.**

a. **Payment Disputes.**

i. **Payment of Undisputed Amounts.** In the event of a dispute between the parties regarding (1) a product or service for which payment has not yet been made to ES&S, (2) the amount due to ES&S for any product or service, or (3) the due date of any payment, Customer shall timely pay all other undisputed amounts to ES&S. Such payment shall not constitute a waiver by Customer or ES&S of any of its rights and remedies against the other party.

ii. **Remedies for Past Due Undisputed Payments.** If any undisputed payment to ES&S is past due more than thirty (30) days, ES&S may suspend performance under this Agreement until such amount is paid. If Customer's payment is past due for more than sixty (60) days and is undisputed, ES&S may, with demand and notice to Customer and as applicable, declare the total amount immediately due and payable.

b. **Dispute Resolution Process.** Time is of the essence in resolving disputes. The initiating party shall notify the responding party of any dispute, including all relevant information (e.g. the nature of the dispute, dates, times, persons involved). The responding party shall respond to the notification within ten (10) business days. Thereafter, the parties shall use their good faith efforts to resolve the dispute within a reasonable period of time.

3.13 **Entire Agreement.** This Agreement, including Exhibits A through H (which are specifically incorporated herein by this reference) contains the entire agreement of the parties with respect to the subject matter hereof and supersedes and replaces any and all other prior or contemporaneous discussions, negotiations, agreements or understandings between the parties, whether written or oral, regarding the subject matter hereof. Any provision of any purchase order, form or other agreement which conflicts with or is in addition to the provisions of this Agreement shall be of no force or effect. In the event of any conflict between a provision contained in this Agreement, the Special Terms & Conditions and the Uniform Terms & Conditions, the conflict shall be resolved in the following order of precedence: (1) the order of precedence outlined in § 2.2 of the Special Terms & Conditions. ES&S may engage duly qualified subcontractors to perform certain of the services to be provided hereunder, but shall remain fully responsible for such performance. The provisions of Article 2, 3.2-3.4, 3.11, 3.12 this Section 3.13 shall survive the termination of this Agreement, to the extent applicable. This Agreement shall be governed by and construed in accordance with the laws of the State in which the Customer resides, without regard to its conflicts of laws principles.

**[END OF GENERAL TERMS]**

**EXHIBIT A  
PRICING AND PAYMENT SUMMARY**

<b>Fee Summary:</b>			
<b>Software License, Maintenance and Support Fees</b>			
<b>Coverage Dates 07/01/2017 – 06/30/2018</b>			
<b>Description</b>	<b>Refer to</b>	<b>Amount</b>	<b>Taxable</b>
License to use the PowerProfile product and all specifically named modules	Exhibit B	594,050.00	X
Customer and technical support of the PowerProfile application, including 24/7 access to Voter Registration expertise via 800 number.		Included	
Bi-annual releases of the software (January and July)		Included	
Limited system monitoring and support of VRAZII infrastructure		Included	
Primary account manager		79,950.00	
Custom documentation for Arizona-specific business requirements and software functions such as HEI (HAVA Exceptions Interface) and Zia		10,000.00	
Required database licenses for VRAZII use		28,000.00	
Maintenance and support of the IBM poller application and its source code		58,000.00	
<b>Total Cost for FY18</b>		<b>770,000.00</b>	
<b>Software License, Maintenance and Support Fees</b>			
<b>Coverage Dates 07/01/2018 – 06/30/2019</b>			
<b>Description</b>	<b>Refer to</b>	<b>Amount</b>	<b>Taxable</b>
License to use the PowerProfile product and all specifically named modules	Exhibit B	594,050.00	X
Customer and technical support of the PowerProfile application, including 24/7 access to Voter Registration expertise via 800 number.		Included	
Bi-annual releases of the software (January and July)		Included	
Limited system monitoring and support of VRAZII infrastructure		Included	
Primary account manager		79,950.00	

Custom documentation for Arizona-specific business requirements and software functions such as HEI (HAVA Exceptions Interface) and Zia		10,000.00	
Required database licenses for VRAZII use		28,000.00	
Maintenance and support of the IBM poller application and its source code		58,000.00	
Total Cost for FY19		770,000.00	
<ul style="list-style-type: none"> <li>Software License, Maintenance and Support Fees</li> </ul>			
<b>Total Fees For the Term</b>		<b>\$1,540,000.00</b>	
Training Fees	Exhibit D	Change Order	
Additional Services Fees:	Exhibit F	Change Order	

<b>Terms and Conditions:</b>
<p><b>Note 1:</b> State and local taxes are not included but are subject to the Special Terms and Conditions and Uniform Terms and Conditions. See Section 3.6. Premium or rush transportation services incurred in connection with deliverables included in the Total Fees are additive and will be billed as incurred.</p>
<p><b>Note 2:</b> Customer acknowledges and agrees that after the Effective Date, Customer shall not modify or remove any items set forth above and that Customer shall remain responsible for the payment of all items set forth herein during the Term of the Agreement.</p>
<p><b>Note 2:</b> Payment Terms for the Services Provided herein shall be as follows:</p> <ul style="list-style-type: none"> <li>Software License, Maintenance and Support Fees: These fees will be billed monthly. The first payment shall be due upon the Effective Date. Thereafter, the monthly payments will be due on the first day of each new month during the Term.</li> <li>Training Fees: Due within thirty (30) days of Customer's receipt of ES&amp;S invoice which shall be provided by ES&amp;S upon the completion of the applicable training service.</li> <li>Additional Services Fees: Due within thirty (30) days of Customer's receipt of ES&amp;S invoice which shall be provided by ES&amp;S upon the completion of the applicable service.</li> </ul>

**EXHIBIT B**  
**ES&S Software Modules Licensed by the Customer**  
**PowerProfile EE Module**

(Check all that apply)

- X Voter Registration Module
- X Absentee Module
- X HEI
- X Election Worker Module
- X NVRA
- X Election Management Module
- X Polling Place Module
- X Street File Module
- X Mass Changes
- X Notices Module
- X Image Indexing Module
- X Job Processor
- X Petitions Module
- X Public Service Requests Module
- X Export Files
- X Voter View
- X Agency Central Interface Module
- X VRS
- X ZIA
- X Power Lock
- X Power Scan

**EXHIBIT C**  
**ES&S Software License, Maintenance & Support**

1. **SERVICES PROVIDED.** Upon Customer's payment of the Software License, Maintenance and Support fees set forth on Exhibit A (the "Maintenance Fee"); ES&S shall provide Software License, Maintenance and Support during the Term. ES&S shall support the following environments under this Agreement: (1) Production, and (2) User Acceptance Testing. ES&S shall only be obligated to provide support to the foregoing environments under this Agreement. The respective support responsibilities of the parties for license, maintenance and support are set forth herein.

2. **SYSTEM ADMINISTRATORS.** The customer shall always have two (2) designated State System Administrators. ES&S shall be notified of their names, telephone numbers and email addresses.

3. **UPDATES.** During the Term of the Agreement, Updates will be provided in accordance with Section 2.6(a) of the General Terms.

4. **CONDITIONS.** ES&S shall not be obligated to provide Software License, Maintenance and Support services if:

- (a) the ES&S Software is not used with hardware and software meeting specifications supplied by ES&S.
- (b) the hardware and software used with the ES&S Software is not in good operating order or is not installed in a suitable operating environment;
- (c) the hardware does not have a current warranty or support agreement by the original vendor;
- (d) the ES&S Software or any hardware or software with which the ES&S Software is used is modified, changed or altered without ES&S' prior authorization or approval in writing;
- (e) the data and/or the database structure used in conjunction with the ES&S Software is manipulated using application software other than the ES&S Software;
- (f) the failure of performance is caused by Customer, its employees or authorized representatives, or any third party;
- (g) Customer does not notify ES&S of the failure of performance within ten (10) business days after it occurs and is otherwise not in compliance with its obligations hereunder; or
- (h) Customer does not pay any Maintenance Fee on a timely basis.

5. **SUPPORT HOURS.** ES&S will maintain support Monday – Friday from 7:00 am – 6:00 pm CST, including a specific primary account manager during the hours of 8:00 am CST and 5:00 pm CST. A support member or an automated voice mailbox will greet the toll-free help-line call. Outside of the times noted, ES&S provides after-hours emergency help line support. When calling ES&S' toll-free help-line outside of regular hours, an on-call Support Specialist will return the call and work to resolve the problem. Response times on all calls during non-business hours will be within 2 hours. Priority 1 calls will still be a 30 minute call back time.

6. **SUPPORT CONTACT INFORMATION.** The following is the support contact information for ES&S.

Primary account manager James Zook: Toll-free help line: 1-800-353-2832

Fax: 1-402-970-1284

Email: [helpdesk@essvote.com](mailto:helpdesk@essvote.com)

Only send non-critical support request to our helpdesk e-mail address. Upon receipt, your request will be entered into our call tracking system and will follow the same process had you called the helpdesk from our toll-free number.

ES&S reserves the right to replace the Customer's primary account manager at any time during the Term of the Agreement as ES&S' business needs may arise. ES&S shall notify the Customer, in writing, of any change to the Customer's primary account manager and shall provide a replacement account manager with the same or greater skills than the primary account manager which is being replaced.

7. **SUPPORT.** ES&S provides four tiers of support and corresponding support representatives defined below:

- **Tier 1** – used during high volume times, Tier 1 will be used to answer calls, log tickets, and determine prioritization of calls.
- **Tier 2** – incidents / requests are normally resolved by our customer service representative. Occasionally, coordination with other ES&S departments is necessary.
- **Tier 3** – incidents / requests require resolution by a dedicated Customer Account Specialist experienced in troubleshooting software and hardware issues.
- **Tier 4** – incidents require support from senior network or application software engineers and / or skilled database administrators.

ES&S incorporates a prioritized response process to manage maintenance issues and hardware or software enhancement / defect submittals. Incidents and service requests are escalated to the appropriate resource based on the level of support required. During the mission critical time periods, ES&S works to resolve issues within 24 hours. Below are descriptions of each support level.

**The level of call escalation priorities are defined as follows:**

Priority 1 – URGENT Users are experiencing an urgent software or hardware technical failure which is inhibiting the ability to perform election-critical functions. (Priority 1 often indicates an entire system failure and all users have no capabilities). Priority 1 calls are returned within 30 minutes and resolved as quickly as possible. In order to decrease downtime, workarounds may be necessary.

Priority 2 – SERIOUS Users are experiencing a serious software or hardware technical failure, causing loss of productivity during election-critical periods. Priority 2 calls are returned within 1 hour.

Priority 3 – IMMEDIATE Users are experiencing a software or technical malfunction or are in need of assistance with a process, which is causing loss of productivity during election critical periods. Priority 3 calls are returned within 1 hour.

Priority 4 –QUESTION Users have questions related to software or hardware technical function. Priority 4 calls will be returned within a 2 hour timeframe to answer basic system questions or to set a time for a "walk thru" of a process.

Priority 5- MINOR Users are experiencing a minor software or technical problem which is causing loss of productivity during non-election periods. Priority 5 calls will be returned within a 2 hour timeframe



Priority 9 CLIENT IN THE OFFICE Users have an immediate need because you have a registrant, a candidate or some other individual in the office and you need information from the application at that moment. Examples might be help with a PSR, Printing a report, printing an ID card. These tickets are handled with a high priority. Priority 9 calls will be returned within minutes.

Responsibilities of ES&S	Responsibilities of Customer
<ul style="list-style-type: none"> <li>▪ VR software support as outlined in Agreement</li> <li>▪ Installation of database software upgrades</li> <li>▪ Database analysis and recommendation of tuning parameters as needed</li> <li>▪ Implement tuning recommendations approved by customer as needed</li> <li>▪ Outline operational and technical requirements for a Backup and Recovery Strategy</li> <li>▪ Outline procedures and provide scripts for performing routine database exports</li> <li>▪ Assist Customer in its performance of the following: <ul style="list-style-type: none"> <li>▪ Hardware problem diagnosis</li> <li>▪ Software problem diagnosis</li> </ul> </li> <li>▪ Support of ES&amp;S approved third-party software required to run VR Products Upgrade, impact planning, and assistance</li> <li>▪ Server recovery, provided backups are available</li> <li>▪ Database recovery or database restore if needed, provided a backup is available</li> <li>▪ Work with technicians to resolve problems after the customer has contacted the appropriate vendor</li> <li>▪ Coordinate with the customer to set a schedule when routine maintenance or upgrades will be performed</li> <li>▪ Limited support of approved client operating systems – Windows 7, 8.1, 10 (Professional/Enterprise)</li> <li>▪ Support of ES&amp;S approved third-party software required to run VR Products, contacting the appropriate vendor if replacement of parts are necessary</li> <li>▪ Backup and archiving of voter registration data and associated meta-data</li> <li>▪ Maintain existing custom product documentation developed specifically for the Customer by a separate third party</li> <li>▪ Provide specifications for the System as it directly relates to Arizona-specific enhancements</li> <li>▪ Provide an Arizona-specific user guide for the System, including Arizona-specific business requirements and software functions</li> <li>▪ Provide Customer the capability to create/troubleshoot Citrix log-ins in order to assist Arizona county recorder's office personnel that experience problems logging into the System.</li> <li>▪ Provide updates to the Arizona specific User Guide for each major release which generally occurs twice a year.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Understand proper use of VR application functions and proper use of VR application in the conduct of election management and administration</li> <li>▪ Inquire directly with ES&amp;S support for questions regarding use of VR application</li> <li>▪ Customer or end-users are required to provide adequate access to system with all necessary logins and passwords. All required admin-level passwords are needed by the Effective Date.</li> <li>▪ Validate any data input and output in the day to day use of VR application</li> <li>▪ Responsible for maintaining and managing State purchased software licenses and hardware warranty agreements</li> <li>▪ Responsible for connectivity</li> <li>▪ Responsible for Business Continuity plan</li> <li>▪ Customer-installed third-party software on end-user workstations</li> <li>▪ Cost associated with any additional hardware or software required to perform required upgrades</li> <li>▪ Damage caused by misuse, abuse, or neglect</li> <li>▪ Damage caused when warranted parts were repaired or replaced by an organization other than those approved by the hardware manufacturer</li> <li>▪ Customer shall have the capability to create/troubleshoot Citrix log-ins in order to assist Arizona county recorder's office personnel that experience problems logging into the System.</li> </ul>

**EXHIBIT D**  
**Training Services**

**PURPOSE**

ES&S will provide training to the State of Arizona and County personnel for the use of the Voter Registration Power Profile software as needed and upon request. All training will be provided in accordance with the terms set forth herein. The dates for any requested training will be mutually agreed upon by the parties. All training services will be invoiced at the completion of each training session.

**ES&S OVERALL TRAINING APPROACH**

Our comprehensive training program has been developed to promote a strong level of competency for all intended users. A series of training modules will be developed that provide participants with the skills to perform necessary operations.

Individuals attending the training sessions should have a general understanding of their roles and responsibilities and their local voter registration and election processes. Members of the staff responsible for the operations of the Power Profile system should have a basic knowledge of computer operations and Microsoft Windows applications. All individuals scheduled for training should be prepared to use the training manuals and checklists provided to compliment the instructor's presentations.

**INSTRUCTORS AND RESOURCES**

ES&S will utilize a diverse team of knowledgeable and experienced trainers to manage all aspects of the training process.

Once training is authorized by the Customer, ES&S will work directly with each user to confirm the training participants and environment setup as their time for training draws near for the on-site training. The ES&S trainer will be responsible for communicating all training invitations and communications.

**REQUIREMENTS/FEEES**

- A 30-day notice should be given to ES&S prior to requesting a training session to allow for proper planning of the class.
- ES&S shall invoice the Customer upon completion of each individual training session. Payment shall be due within thirty (30) days of Customer's receipt of ES&S' invoice.
- For release notes review sessions that usually have a Q&A period, and are held via conference call / Webex, no charge will be incurred. Otherwise, training options are:
  1. Customer Onsite Training in the State of Arizona - \$1,575 per day, one (1) trainer;
  2. Customer Onsite Training in Omaha, Nebraska - \$1,000 per day, one (1) trainer; and
  3. Customer Webex Training - \$150 per hour, one (1) trainer, and maximum of 15 participants per session.

Option 1 is an on-site classroom environment with hands-on access to PowerProfile in a training environment. Class size shall be limited to no more than 12 people per class. Customer is responsible for facilities, workstations and connectivity. Course lengths are a minimum of three (3) days.

Option 2 is an on-site classroom environment with hands-on access to PowerProfile in a training environment in ES&S's corporate HQ in Omaha, Nebraska. Class size shall be limited to no more than 12 people per class. ES&S is responsible for facilities, workstations, and connectivity. Customer is responsible for transportation, lodging, and meals. Course lengths are a minimum of two (2) days.

Option 3 permits users to ask the ES&S instructor about specific issues and have the instructor demonstrate on the screen in real-time. Class size shall be limited to no more than 15 people per class

**EXHIBIT E**  
**Third Party Products**

The chart below outlines the Third Party Products necessary to run the System. The chart outlines the responsible party that should manage and pay for each of the license renewals.

3 <sup>rd</sup> party license	Licenses Managed/Paid by ES&S or AZ SOS
Symantec Backup Exec V-Ray Edition	AZ SOS
Symantec Backup Exec Linux Agent	AZ SOS
Double Take Availability for Windows	AZ SOS
VMware Enterprise Edition	AZ SOS
Tricerat Screwdrivers	AZ SOS
Database License for use with PowerProfile (State)	ES&S
Database License for use with PowerProfile for Maricopa and Pima Counties	ES&S
Citrix XenApp and Netscaler Virtual Appliance Licenses	AZ SOS
Trend Micro Deep Security	AZ SOS
Required SSL Certificates	AZ SOS
IBM Proprietary monitoring software	AZ SOS
Red Hat Enterprise Linux	AZ SOS
Crystal Reports	AZ SOS

Note 1: From time to time, third party vendors will discontinue maintenance on third party products. If we are notified that a third party product will be discontinued, ES&S will discuss a replacement product with the Customer. The Customer will then need to purchase and renew the licenses based on a timeframe that ES&S will provide.

**EXHIBIT F**  
**ADDITIONAL SERVICES**

1. **SYSTEM ENHANCEMENTS.** From time to time, the Customer may request enhancements to the system. Enhancements can be requested due to changes in state or federal law, as well as modifications the state or county would like to the system. When an enhancement is needed, it should be requested through the ES&S helpdesk as they will log an enhancement into the ES&S' tracking system. Thirty days prior to ES&S scoping the next general release, the state enhancement list will be submitted to the state administrators. The state administrators will prioritize the enhancement request, notate the ones that are being requested specifically for the next general release, and return the list within thirty days of receipt. ES&S will then evaluate the enhancement list, estimate the level of effort, and formulate a plan for release inclusion. A change order will then be presented to the Customer for signature that outlines the work level for each enhancement.
  
2. **SERVICE FEES.** Additional Services may be requested by Customer from time to time under this Agreement. All additional changes will be presented through the change order process and subject to the service fees outlined below. Customer shall only pay for those services which Customer requests and for which services are performed.

All additional services not otherwise set forth herein shall be performed by ES&S and through the change order process and subject to the rate of \$150.00 per hour.