



Special Terms and Conditions

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P15 is for a 2 year period TO the end of FY 2015. The 2 years + the months of May through August 2013

1. Purpose

Pursuant to provisions of the Arizona Procurement Code, A.R.S. § 41-2501 et seq., the State of Arizona intends to establish a Contract for the materials or services as listed herein in service to the Arizona Department of Education.

2. Order Process

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

3. Non-Exclusive Contract

Remove MCESA!

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

4. Contract Type

Fixed Price

5. Term of Contract

3 year term possible 2 year extension negotiated after

The term of any resultant Contract shall commence on date of award and shall continue for a period of five (5) years thereafter, unless terminated, canceled or extended as otherwise provided herein.

6. Contract Extensions Five (5) Year Maximum

CHANGE! Be able to renew for less than a year to finish out fiscal year

The Contract term is for the stated period of five (5) years. However, the Contract shall be subject to additional successive periods of twelve (12) months per extension with a maximum aggregate including all extensions not to exceed five (5) years.

7. Volume of Work

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

8. Key Personnel

It is essential that the Contractor provide adequate experienced personnel, capable of and devoted to the successful accomplishment of work to be performed under this Contract. The Contractor must agree to assign specific individuals to the key positions if required.

8.1 The Contractor agrees that, once assigned to work under this Contract, key personnel shall not be removed or replaced without written notice to the State.

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8.2 Key personnel who are not available for work under this Contract for a continuous period exceeding thirty (30) calendar days, or are expected to devote substantially less effort to the work than initially anticipated, the Contractor shall immediately notify the State, and shall, subject to the concurrence of the State, replace such personnel with personnel of substantially equal ability and qualifications.

9. Employees of the Contractor

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

10. Licenses

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

11. Warranty

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

12. Quality

Unless otherwise modified elsewhere in the terms and conditions, the Contractor warrants that, for one (1) year after acceptance by the State, the Materials shall be:

- 12.1 Of a quality to pass without objection in the trade under the Contract description;
- 12.2 Fit for the intended purposes for which the Materials are used;
- 12.3 Conform to the written promises or affirmations of fact made by the Contractor; and
- 12.4 Fully compatible with the State's computer hardware and software environment.

13. Fitness

The Contractor warrants that any Materials 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.

14. Inspection/Testing

The warranties set forth in the Uniform Terms and Conditions Subparagraphs 7.1 through 7.3 are not affected by inspection or testing of or payment for the Materials by the State.

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15. Compliance with Applicable Laws

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

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

Contractor represents and warrants that the Materials provided through this Contract and Statement of Work shall be free of viruses, backdoors, worms, spyware, malware and other malicious code that will hamper performance of the Materials, collect unlawful personally identifiable information on users or prevent the Materials from performing as required under the terms and conditions of this Contract.

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

16.1 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.

16.2 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.

17. Cooperation with Other Contractors and Subcontractors

The Contractor shall fully cooperate with other State Contractors, Subcontractors and Assigns and carefully plans and performs its own work to accommodate the work of other Contractors. The Contractor shall not intentionally commit or permit any act which will interfere with the performance of work by any other State Contractors.

Note! 17. Lupita updated this 12/21, I do not have the new version - See notes from 12/21 mtg w/ Jolene!

18. Changes

The State reserves the right to revise the delivery schedule and make other changes within the Scope of Work as may be deemed necessary to best serve the interest of the State. All changes shall be documented by formal amendments to the Contract. Changes made without benefit of a formal amendment will not be valid.

19. Indemnification

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

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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.

20. Indemnification - Patent and Copyright

With respect solely to Materials provided or proposed by Contractor or Contractor's agents, employees, or subcontractors (each a "Contractor Party") for performance of this Contract, Contractor shall indemnify, defend and hold harmless the State, its departments, agencies, boards, commissions, universities, officers, agents and employees (collectively, the "Indemnitee"), against any third-party claims for liability, including, but not limited to, reasonable costs and expenses, including attorneys' fees, for infringement or violation of any patent, trademark or, copyright or trade secret, by such Materials or the State's use thereof. In addition, with respect to claims arising from computer hardware or software manufactured or developed solely by a third party, Contractor shall pass through to the State such indemnity rights as it receives from such third party (the "Third Party Obligation") and will cooperate in enforcing them; provided, however, that (i) if the third party manufacturer fails to honor the Third Party Obligation, or (ii) the Third Party Obligation is insufficient to fully indemnify the State, Contractor shall indemnify, defend and hold harmless the State against such claims in their entirety or for the balance of any liability not fully covered by the Third Party Obligation.

The State shall reasonably notify the Contractor of any claim for which Contractor may be liable under this section. If the Contractor is insured pursuant to A.R.S. § 41-621 and § 35-154, this section shall not apply. Contractor shall have control, subject to the reasonable approval of the State, of the defense of any action on such claim and all negotiations for its settlement or compromise, provided, however, that when substantial principles of government or public law are involved or when involvement of the State is otherwise mandated by law, the State may elect, in its sole and absolute discretion, to participate in such action at its own expense with respect to attorneys' fees and costs, but not liability, and the State shall have the right to approve or disapprove any settlement, which approval shall not be unreasonably withheld or delayed. The State shall reasonably cooperate in the defense and any related settlement negotiations.

If Contractor believes at any time that any Materials provided or in use pursuant to this Contract infringe a third party's intellectual property rights; Contractor shall, at Contractor's sole cost and expense, and upon receipt of the State's prior written consent, which shall not be unreasonably withheld, (i) replace an infringing Material with a non-infringing Material; (ii) obtain for the State the right to continue to use the infringing Material; or (iii) modify the infringing Material to be non-infringing, provided that following any replacement or modification made pursuant to the foregoing, the Material continues to function in accordance with the Contract. Contractor's failure or inability to accomplish any of the foregoing shall be deemed a material breach of this Contract.

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Notwithstanding the foregoing, Contractor shall not be liable for any claim for infringement based solely on any Indemnitee's:

- 20.1 modification of Materials provided by Contractor other than as contemplated by the Contract or the specifications of such Materials or as otherwise authorized or proposed in any way by Contractor or a Contractor Party;
- 20.2 use of the Materials in a manner other than as contemplated by this Contract or the specifications of such Materials, or as otherwise authorized or proposed in any way by Contractor or a Contractor Party; or
- 20.3 use of the Materials in combination, operation, or use with other products in a manner not contemplated by the Contract, or, the specifications of such Materials, or as otherwise authorized or proposed in any way by Contractor or a Contractor Party.

Contractor certifies, represents and warrants to the State that it has appropriate systems and controls in place to ensure that State funds will not be used in the performance of the Contract for the acquisition, operation or maintenance of Materials in violation of intellectual property laws.

21. 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. Contractor shall also procure and maintain coverage for financial loss arising out of the Contractors or subcontractors acts errors or omissions that result in a financial loss.

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.

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

Commercial General Liability – Occurrence Form policy shall include bodily injury, property damage personal injury and broad form contractual liability coverage.

General Aggregate	\$10,000,000
Products – Completed Operations Aggregate	\$ 1,000,000
Personal and Advertising Injury	\$10,000,000
Blanket Contractual Liability – Written and Oral	\$10,000,000
Damage to Rented Premises	\$ 50,000
Each Occurrence	\$10,000,000

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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"***. 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.

Policy shall contain a waiver of subrogation endorsement in favor of 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.

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

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"***. 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.

Policy shall contain a waiver of subrogation endorsement in favor of 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. Policy shall contain a severability of interests provision.

Worker's Compensation and Employers' Liability

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

Policy shall contain a waiver of subrogation endorsement in favor of 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.

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.

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Professional Errors and Omissions (Technology Errors and Omissions Insurance)

The policy shall cover actual or alleged acts, errors or omissions committed by the Contractor, its subcontractors, agents or employees, arising out of the performance of this Agreement. The policy coverage shall also extend to include personal injury, bodily injury, property damage and financial loss from the performance of professional service and/or arising out of the program.

Each Claim	\$20,000,000
Annual Aggregate	\$20,000,000

Coverage to include:

- Systems analysis;
- Software design;
- Systems programming;
- Data processing;
- Systems integration;
- Outsourcing including outsourcing development and design;
- Systems design, consulting, development and modification;
- Training services relating to computer software or hardware;
- Management, repair and maintenance of computer products, networks and systems;
- Marketing, selling, servicing, distributing, installing and maintaining computer hardware or software; and
- Data entry, modification, verification, maintenance, storage, retrieval or preparation of data output.

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 insured's with respect to liability arising out of the activities performed by or on behalf of the Contractor"***. 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. Said policies to contain no provision that would prevent, preclude or exclude a claim brought by the State of Arizona.

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.

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

Computer Security and Privacy Liability

The policy shall cover actual or alleged acts, errors or omissions committed by the Contractor, its subcontractors, agents or employees. The policy shall also extend to include the intentional, fraudulent or criminal acts of the Contractor, its subcontractors, agents or employees. The policy shall expressly provide, but not be limited to, coverage for the following perils:

- Unauthorized use/access of a computer system;
- Defense of any regulatory action involving a breach of privacy;
- Failure to protect confidential information (personal and commercial information) from disclosure;
- Notification costs, whether or not required by statute.

Each Claim	\$20,000,000
Annual Aggregate	\$20,000,000

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"***. 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. Said policies to contain no provision that would prevent, preclude or exclude a claim brought by the State of Arizona.

The Contractor shall be responsible for all claims expenses and loss payments within the policy deductible. If the policy is subject to an aggregate limit, replacement insurance will be required if it is likely such aggregate will be exceeded. Such insurance shall be subject to the terms and conditions and exclusions that are usual and customary for this type of insurance.

If this insurance is provided on a claims-made basis, the Contractor shall maintain continuous insurance coverage during the term of this Contract and in addition to the coverage requirements above, such policy shall provide that:

Policy retroactive date coincides with or precedes the insureds' initial services under the Contract and shall continue until the termination of the Contract (including subsequent policies purchased as renewals or replacements);

Policy allows for reporting of circumstances or incidents that might give rise to future claims; and

Not less than a three (3) year extended reporting period with respect to events which occurred but were not reported during the term of the policy or ongoing coverage is maintained.

Employee Dishonesty/Fidelity or Crime Insurance

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Annual Policy Limit

\$ 10,000,000

The policy shall include coverage for all directors, officers, agents and employees of the Contractor. The definition of Employee shall include any individuals whom the Contractor retains as consultants or independent contractors.

The policy shall include coverage for third party or client coverage.

The policy shall include coverage for theft and mysterious disappearance.

The policy shall include coverage for property that is owned by the State of Arizona, held by the Contractor or for which the Contractor is legally liable.

The policy shall contain no requirement for arrest and conviction prior to payment of a claim.

The policy shall not contain any requirement for "manifest intent" by any insured to prove a claim.

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

The Contractor's policies shall stipulate that the insurance afforded the Contractor shall be primary insurance and that any insurance carried by the Department of Administration, its agents, officials employees or the State of Arizona shall be excess and not contributory insurance, as provided by Arizona Revised Statutes Section 41-621 (C).

Coverage provided by the Contractor shall not be limited to the liability assumed under the indemnification provisions of this Contract.

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 the Department of Administration, Risk Management Division and shall be sent by certified mail, return receipt requested.

ACCEPTABILITY OF INSURERS: Contractors insurance shall be placed with companies duly licensed in the State of Arizona or hold approved non-admitted status on the Arizona Department of Insurance List of Qualified Unauthorized Insurers. Insurers shall have an "A.M. Best" rating of not less than A- VII. The State of Arizona in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

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 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.

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All certificates required by this Contract shall be sent directly to **Terri Johnson, 100 N 15th Ave, Suite 201, Phoenix AZ 85007**. The State of Arizona project/contract number and project description shall be noted on the certificate of insurance. The State of Arizona reserves the right to require complete copies of all insurance policies required by this Contract at any time.

SUBCONTRACTORS: Contractors' certificate(s) shall include all subcontractors as insureds under its policies or Contractor shall maintain and 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 by the Contractor and approved in advance by the Arizona Department of Administration, State Purchasing Office in consultation with Risk Management Division.

APPROVAL: Any modification or variation from the *insurance requirements* in this Contract shall be made by the contracting agency in consultation with the Department of Administration, Risk Management Division. Such action will not require a formal Contract amendment, but may be made by administrative action.

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.

22. Limitation of Liability

Contractor's liability for first party damages to the State arising from this Contract shall be limited to three (3) times the maximum-not-to-exceed amount of this Contract. The foregoing limitation of liability shall not apply to (i) liability, including indemnification obligations, for third party claims, including but not limited to; infringement of third party intellectual property rights; (ii) claims covered by any specific provision of the Contract calling for liquidated damages or other amounts, including but not limited to, performance requirements; or (iii) costs or attorneys' fees that the State is entitled to recover as a prevailing party in any action.

23. Intellectual Property - Ownership of Intellectual Property

Any and all intellectual property, including but not limited to copyright, invention, trademark, trade name, service mark, or trade secrets created or conceived solely pursuant to or as a result of this Contract and any related subcontract (collectively, the "Intellectual Property"), shall be work made for hire and the State shall be the owner of such Intellectual Property. The agency, department, division, board or commission of the State of Arizona requesting the issuance of this Contract shall own (for and on behalf of the State) the entire right, title and interest to the Intellectual Property throughout the world. Software and other Materials developed or otherwise obtained by or for Contractor or its affiliates independently of this Contract ("Independent Materials") do not constitute Intellectual Property. If Contractor creates derivative works of Independent Materials, then the elements of such derivative works created pursuant to this Contract shall constitute Intellectual Property owned by the State. Contractor shall notify the State, within thirty (30) days, of the creation of any Intellectual Property by it or its subcontractor(s). Contractor, on behalf of itself and any subcontractor(s), agrees to execute any and all document(s) necessary to assure ownership of the Intellectual Property vests in the State and shall take no affirmative actions that might have the effect of vesting all or part of the Intellectual Property in any entity other than the State. The Intellectual Property shall not be disclosed by Contractor or its subcontractor(s) to any entity not the State without the express written authorization of the agency, department, division, board or commission of the State of Arizona requesting the issuance of this Contract.

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Notwithstanding the foregoing, if the State elects, in its sole and absolute discretion, to relinquish its ownership interest in any or all of the Intellectual Property, the State shall have the rights to use, modify, reproduce, release, perform, display, sublicense or disclose such Intellectual Property within State government and operations without restriction for any activity in which the State is a party (collectively, "Government Purpose Rights").

24. Information Disclosure

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

25. Data Privacy and Security

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

26. Data Privacy/Security Incident Management

Contractor and its agents shall use a communication and escalation procedure approved by the State's designated Information Security and Privacy Officers to notify appropriate State personnel of an information security or data privacy related incident, including a breach of confidential information. Contractor and its agents shall cooperate and collaborate with appropriate State personnel to identify and respond to an information security or data privacy incident, including a data breach, as required by State policy and state and federal law.

27. Security Requirements for Offeror Personnel

Offeror personnel, agents or sub-contractors that have administrative access to the State's networks shall be subject to any additional security requirements of the Agencies as may be required for the performance of the contract. Offeror, its agents and sub-contractors shall provide documentation to the State confirming compliance with all such additional security requirements for performance of the contract. Additional security requirements include but are not limited to the following:

27.1 Criminal History Report and Fingerprint Background Check (ARS 41-777);

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

28. Access Constraints and Requirements

Contractor access to State facilities and resources shall be properly authorized by State personnel, based on business need and will be restricted to least possible privilege. Upon approval of access privileges, the Contractor shall maintain strict adherence to all policies, standards, and procedures. Policies / Standards, ADOA/ASET Policies / Procedures, and Arizona Revised Statutes (ARS) 28-447, 28-449, 28-450, 38-421, 13-2408, 13-2316, 41-770).

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

Any and all recovery or reconstruction costs or other liabilities associated with an unlawful breach or harmful access shall be paid by the Contractor.

29. Offshore Performance of Work Prohibited

Due to security and identity protection concerns, direct services under this contract shall be performed within the borders of the United States. Any services that are described in the specifications or scope of work that directly serve the State of Arizona or its clients and may involve access to secure or sensitive data or personal identifying information or development or modification of software for the State shall be performed within the borders of the United States. Unless specifically stated otherwise in the specifications, this definition does not apply to indirect or "overhead" services, redundant back-up services or services that are incidental to the performance of the contract. This provision applies to work performed by subcontractors at all tiers.

30. Contractor Skill and Knowledge

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

31. Free of Malicious Code

Contractor represents and warrants that the Materials provided through this Contract and Statement of Work shall be free of viruses, backdoors, worms, spyware, malware and other malicious code that will hamper performance of the Materials, collect unlawful personally identifiable information on users or prevent the Materials from performing as required under the terms and conditions of this Contract.

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32. Functional and General/Technical Requirements and Responses

The Functional and General/Technical Requirements, including attachments and Offeror Responses, constitute a contractual obligation for the Contractor to deliver a system to the State that meets the requirements in the manner as designated by the Contractor in the Support response.

In addition, responses of Next Release (NR) for any requirement will financially obligate the implementation services vendor to provide that functionality through the normal and expected configuration of the ERP Software by a trained, functionally-oriented support person if the requested functionality is not fully met by a formal release within twelve (12) months of the response date and incorporated into the version of the software implemented. In addition, for any delays in project schedule that result from requirements represented as NR, which upon additional discovery are determined not to be fully met by a formal release within twelve (12) months, the implementation services vendor will be responsible for vendor and client resource costs associated with delivering required functionality and any delay in the project schedule.

Moreover, responses of Standard Functionality (SF) or Meets Requirement (MR) for any requirement shall financially obligate the implementation services vendor to provide that functionality through the normal and expected configuration of the ERP Software by a trained, functionally-oriented support person. In addition, any delays in project schedule that result from requirements represented as SF or MR, which upon additional discovery, require development, the implementation services vendor shall be responsible for vendor and client resource costs associated with delivering required functionality and any delay in the project schedule.

33. Acceptance

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

34. Performance

Contractor agrees that, from and after the date that the applicable services commence, its performance of the Scope of Services will meet or exceed each of the applicable Service Levels (see Scope of Work and this Section) subject to the limitations and in accordance with the provisions set forth in this Contract. If the Services provided pursuant to this Contract are changed, modified or enhanced (whether by Change Order or through the provision of new Services), the State and the Contractor will review the Service Levels then in effect and will in good faith determine whether such Service Levels should be adjusted and whether additional Service Levels should be implemented.

34.1 Performance Bond

The Contractor shall be required to furnish an irrevocable security in the amount of \$5,000,000.00 payable to the State of Arizona, binding the Contractor to provide faithful performance of the Contract.

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Performance security shall be in the form of a performance bond, certified check or cashier's check. This security must be in the possession of the State within ten (10) calendar days from receipt of notice of award. If the Contractor fails to execute the security document, as required, the Contractor may be found in default and Contract terminated by the State. In case of default, the State reserves all rights to recover as provided by law.

34.2 Failure to Perform

If Contractor fails to meet any Service Level, then Contractor shall:

- 34.2.1 Promptly perform a root-cause analysis to identify the cause of such failure;
- 34.2.2 Use commercially reasonable efforts to correct such failure and to begin meeting the Service Levels as promptly as practicable;
- 34.2.3 Provide the State with a report detailing the cause of, and procedure for correcting, such failure; and
- 34.2.4 If appropriate under the circumstances, take action to avoid such failure in the future.

34.3 Measurement

Contractor shall produce service level reports and measurement data to provide an objective basis for evaluating the Contractor's performance. Service level reports will also be used as a component of shared management that is a joint responsibility of the Contractor and the State as in the Scope of Work. The State requires the Contractor to provide all required summary service level reports routinely, as part of its normal management reporting to the State. The State will have the right to receive detailed Contractor service level reports and measurement data from the Contractor upon request. The State will have the right to receive additional Contractor service level data and reports, to the extent the State can define and the Contractor can reasonably provide. All required measurement data, summary and detail reports and other requested information will be provided in a timely manner by the Contractor at no additional cost to the State to the extent the State can define and the Contractor can reasonably provide.

34.4 Continuous Improvement and Best Practices

On an annual basis during the Contract, the Parties shall jointly review:

- 34.4.1 The then-current Service Levels;
- 34.4.2 The percentage difference between Contractor's actual performance and the then-current Service Levels;
- 34.4.3 Generally available information indicating industry-wide improvements of delivery of substantially similar services;
- 34.4.4 Improved performance capabilities, including those associated with advances in technology and methods used to provide the Services;

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34.4.5 Reduced performance capabilities, including those associated with resource reductions requested or approved by the State.

The Service Levels may be adjusted on an optional basis, as shall be mutually agreed based on the preceding review with the objective of obtaining annual performance improvements.

34.5 Root-Cause Analysis

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

35. Performance Criteria (Post Go-Live)

The IIS- Instructional Support Tools, as stated, shall be available and afford a production ready state twenty-four (24) hours a day, seven (7) days a week, excluding mutually scheduled downtime for scheduled maintenance, not to exceed the agreed to maintenance time limit per month.

35.1 Any enhancements or updates shall have passed rigorous quality assurance reviews and testing. In these instances, the standard shall be delivery of a final working product per established delivery schedule, and one hundred percent (100%) functionality.

35.2 Any unscheduled service interruption that exceeds the service levels described herein shall result in the actions as outlined in the final service level and penalty structure negotiated with the awarded Offeror .

35.3 Every reported problem shall immediately be assigned a severity level according to the reported business risk and potential impact of the problem. The Contractor shall incorporate the following severity level categorization, response and resolution time scheme:

Severity Level	Severity Level Description	Response Time*	Resolution Time**
Severity 1	Entire system is down (all users affected)	Immediate, upon receipt of notification	8 Regular Business Hrs
Severity 2	Major System breakdown (>2 users of a single office)	Immediate, upon receipt of notification	12 Regular Business Hrs
Severity 3	Significant Impact to the System (1-2 users of a single office)	Immediate, upon receipt of notification	16 Regular Business Hrs
Severity 4	Limited impact to the System (partial features and or functionality failure, with available work around)	Immediate, upon receipt of notification	24 Regular Business Hrs

* Response Time: The time elapsed between the report of a problem and the time it takes a technical support person to take action.

**Resolution Time: The total time required to identify, diagnose, restore and permanently resolve the problem. All problems will remain open until satisfactory resolution is affirmed by the State.

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36. Contractor Performance Reports

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

37. Licensing Restrictions and or Use

37.1 Use of Software in Other Environments and Platforms

The license of the IIS and its supporting tools and other third party products shall not prohibit or add costs to the State from moving the software to operate on other operating system, database, or hardware platforms or from having the software hosted by another third party. The license shall allow for installation and usage of the software for disaster recovery and business continuity purpose with no additional costs or constraints of the level of service determined by the State to be necessary to meet operational needs. The license shall allow for the creation of additional instances of the software (e.g. baseline, testing, training, production, etc.) as is necessary to support the production, maintenance, and upgrade activities of the State.

37.2 Use of Software Data Warehouse, Business Intelligence, and Integration Platform Applications

The licensing for the software and/or applications shall not in any way limit the functionality or add additional cost to the State for adding data sources to these applications, receiving data from these applications, or establishing a means of exchanging data with these or other applications.

37.3 Right to Remove and Reinstate Modules/Licenses

The State shall have the right to remove and reinstate software modules/licenses from maintenance at known fees.

37.4 Precedence of State's License Agreement

The terms and conditions of the State's license agreement with the software provider shall take precedence over any standard form or contract used by the software provider.

38. Section 508 Compliance

Any electronic or information technology offered to the State of Arizona under this Contract 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. Any exceptions shall be declared in writing in the Contract and approved by the State.

39. Health Insurance Portability and Accountability Act of 1996

The Contractor warrants that it is familiar with the requirements of HIPAA, as amended by the Health Information Technology for Economic and Clinical Health Act (HITECH Act) of 2009, and accompanying

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

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

40. Standards for Attestation Engagements 16 (SSAE 16)

The Contractor shall provide a complete copy of the SSAE 16 attestation, Type Two (2) to the State within six (6) months of the commencement of processing production data, whether it be for hosting or disaster recovery operations. Throughout the balance of the Contract, the Contractor shall provide the SSAE 16 every other year or as required by the State.

41. Compensation

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

41.1 The Contractor shall fulfill their contractual requirements including the Deliverables identified in the Statement of Work and Deliverable Payment Schedule and fulfill the roles and responsibilities described in the Statement of Work for a firm fixed price, inclusive of travel and travel-related expenses. The fixed amount shall be inclusive of the software license and maintenance fees.

41.2 Fixed Price Payment Terms

An amount representing fifteen percent (15%) of the contract resulting from this RFP for implementation services shall be withheld by the State.

For retainage purposes, upon formal acceptance of the system by the State using the System Acceptance Criteria established in the Final System Acceptance of the Statement of Work, the

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State will release the retainage. Upon termination of the Contract for reasons other than the Contractor's uncured material breach of the Contract, retained fees for accepted work will be released to the Contractor.

Retainage withheld from post go-live services shall be released on a quarterly basis subsequent to a determination by the State that Offeror performance in responding to system issues is satisfactory and the performance of the system continues to be acceptable.

41.3 Fixed Price Payment Milestones

The fixed price amount shall be divided into payment milestones per the Deliverable Payment Schedule. The payment milestones are based upon specific Deliverables and will be invoiced as completed.

41.4 Payment Procedures

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

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

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