



Uniform Terms and Conditions Invitation for Bid

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Uniform Terms and General Conditions Invitation for Bid

1) DEFINITION OF TERMS

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

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| 1.1. Acceptance | “Acceptance” means the “Offer and Acceptance Form” bearing the State Contract number, once Procurement Officer has signed it to signify (a) the Agency’s formal acceptance of the Accepted Offer and (b) the formation of the Contract. |
| 1.2. Additional Work | “Additional Work” means the addition of any Work, not described as Basic Work, to be provided to the Agency by the Construction Contractor that is contemplated by, but not specifically described in, an Exhibit to this Contract. Compensation for Additional Work must be approved through a Change Order or Contract Amendment. |
| 1.3. Agency | “Agency” is used with the same meaning as “State” in definition below. |
| 1.4. Agency Designated Representative | “Agency Designated Representative” means the assigned representative of the Agency to monitor the progress and Schedule of the Work for the Project. |
| 1.5. Allowance | “Allowance” means construction funds established by the Agency to compensate for a portion of the Work which cannot sufficiently be specified or determined before such Costs are incurred. The Construction Contractor shall place any and all Allowances within separate line items in the Construction Contractor’s Contract Cost at time of offer submission. |
| 1.6. Application for Progress Payment | “Application for Progress Payment” means Contractor’s monthly invoice request for payment that includes any and all portions of the Work in a Contract that have been completed and accepted by the Agency for which an invoice has not been previously submitted in accordance with the requirements of the Contract Documents. Progress Payments for Contractor Work approved and certified by the Contractor and Agency signature, shall be paid less deductions to pay the expenses the Agency reasonably expects to incur in correcting a deficiency set for in an Agency written finding in accordance with A.R.S. §41-2577, and retained percentage in accordance with A.R.S. §41-2576. |
| 1.7. Application for Final Payment | “Application for Final Payment” means Construction Contractor’s final invoice for payment. The Application for Final Payment shall meet all the requirements of Applications for Payment, but shall also include any and all remaining open invoices under the Contract. After a Construction Contractor’s Application for Final Payment is approved by the Agency, the Agency shall not release any additional payments to that Construction Contractor under the Contract. |
| 1.8. Arizona Procurement Code; A.R.S., A.A.C. | “Arizona Procurement Code” means, collectively, Arizona Revised Statutes (“A.R.S.”) Title 41 Chapter 23, Section 2501, <i>et seq.</i> , and the rules promulgated thereunder, Arizona Administrative Code (“A.A.C.”) R2-7-101, <i>et seq.</i> NOTE: There are frequent references to the Arizona Procurement Code throughout the Solicitation, therefore, you will need to be familiar with its provisions to be able to understand the Solicitation fully. Links for obtaining copies are given below. The Arizona Department of Administration State Procurement Office provides a reference compilation of the Arizona Procurement Code on its website: https://spo.az.gov/administration-policy/state-procurement-resource/procurement-regulations The Arizona State Legislature provides the official A.R.S. online at: http://www.azleg.gov/arstitle/ The Office of the Arizona Secretary of State provides the official A.A.C. online at: http://www.azsos.gov/rules/arizona-administrative-code |
| 1.9. Arizona TPT | “Arizona TPT” means Arizona Transaction Privilege Tax. For information, refer to the Arizona Department of Revenue (DOR) website at: https://www.azdor.gov/business/transactionprivilegetax.aspx . |
| 1.10. As-builts | “As-builts” shall mean the marked-up version of the Drawings and Specifications Contract Documents prepared by the Construction Contractor to record As-built conditions, current changes, and selections made during construction. |
| 1.11. Attachment | “Attachment” means any item that the Offeror is required to submit as part of the provision of services required to design or engineer or construct the Project, as detailed in Exhibit A, “Construction Contractor Agreement”. |



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| 1.12. Basic Work | "Basic Work" means the services to be provided to the Agency by the Construction Contractor described in an Exhibit. |
| 1.13. Bidding Documents | "Bidding Documents" means those documents prepared and furnished by the Design Professional for the purpose of obtaining bids from Construction Contractors to construct the Work. |
| 1.14. Building Work | "Building Work" means everything covered by the definitions in A.R.S. § 41-2503 [Definitions] of the terms "Construction" (4), "Maintenance Services" (26), and "Operations Services" (28). |
| 1.15. Change Order | "Change Order" means the instrument by which the Agency authorizes Construction Contractor to perform some or all of the Work, including but not limited, Construction Change Orders, Design Change Notices, and Field Order Directives. Consistent with A.R.S. § 41-2503(3), only the Procurement Officer responsible for this Contract has the authority to modify or amend this Contract through a signed Change Order or Contract Amendment. The Agency will only compensate Construction Contractor for Work that has been approved by the Agency through a fully authorized Change Order or Contract Amendment. |
| 1.16. Change Order Request | "Change Order Request" means a document that informs Agency of a proposed change in the Work and appropriately describes or otherwise documents such change including Construction Contractor(s)'s response of pricing for the requested change. |
| 1.17. Close Out Documents | "Close Out Documents" means those items required by Exhibit M-Contractor Project Closeout, and as may be further defined, identified, and required by the Contract Documents. |
| 1.18. Conditional Waiver of Lien | "Conditional Waiver of Lien" has the meaning defined in A.R.S §33-1008 which, for convenience of reference only, is a: Conditional Waiver and release on Progress Payment "where the claimant is required to execute a waiver and release in exchange for or in order to induce the payment of a progress payment and the claimant is not in fact paid in exchange for the waiver and release or a single payee check or joint payee check is given in exchange for the waiver and release"; and Conditional Waiver and release on Final Payment "where the claimant is required to execute a waiver and release in exchange for or in order to induce payment of a final payment and the claimant is not paid in exchange for the waiver and release or a single payee check or joint payee check is given in exchange for the waiver and release". |
| 1.19. Construction | "Construction" as defined in A.R.S. § 41-2503(4) means the process of building, altering, repairing, improving or demolishing any public structure or building or other public improvements of any kind to any real property in which the public has an interest. |
| 1.20. Construction Contract | "Construction Contract" means any contract between the State and a Person that has or will engage in Construction Services for the benefit of the State. |
| 1.21. Construction Contractor | "Construction Contractor" is a Person that has or had a contract with the State to engage in Construction Services for the benefit of the State. |
| 1.22. Construction Documents | "Construction Documents" means any and all documents created by the Design Professionals that describe the Work in detail, including but not limited to, plans, specifications, revisions, addenda, and Change Orders, issued to build the project. Construction Documents created after the Contract is signed may be integrated into the Contract if, and only if, there is a properly executed Contract Amendment or Change Order to verify that integration. |
| 1.23. Contingency | "Contingency" means an amount associated with Costs that were unforeseen by the Construction Contractor when it submitted its offer which may be authorized by the Agency through a Change Order. Construction Contractor may not proceed with Work on Contingencies without prior authorization from the Agency through a Field Order Directive or Change Order. The Agency will not compensate Construction Contractor for unauthorized Contingency Work. |
| 1.24. Contract | "Contract" means, collectively, the entire agreement between Agency and Construction Contractor, including all of the Contract Documents, the Acceptance, the Solicitation Documents, the Construction Contractor Agreement, any and all authorized Change Orders, and any Contract Amendments. |



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| | The Contract is identified as a "Purchase Order" in APP, since that is the terminology used in the software; use of that term in APP is not, in any way, an attempt by the Agency to change the contractual term "Order" as defined in (paragraph 44). The terms of this Contract are defined in this document alone. The use of different terminology, or the same terminology with a different meaning, in any State eProcurement system (including, but not limited to, APP) does not override any term in this Contract. The Construction Contractor should contact the relevant Procurement Officer if it has any questions regarding the meaning of terms in the State's eProcurement System. |
| 1.25. Contract Amendment | "Contract Amendment" means a document signed by Procurement Officer that has been issued for the purpose of making changes to the Contract after execution without changing the general scope. Only the Procurement Officer responsible for this Contract has the authority to modify or amend this Contract. The term "Change Order" in APP is synonymous with "Contract Amendment." |
| 1.26. Contract Cost | "Contract Cost" means the amount for which a Construction Contractor agrees to perform the Work as set forth in its Contract with the Agency. |
| 1.27. Contract Terms and Conditions | "Contract Terms and Conditions" means the <u>Special Terms and Conditions</u> and these Uniform Terms and Conditions taken collectively. |
| 1.28. Contractor | For the purpose of this Contract, "Contractor" refers to any Person who has entered into a Contract with the Agency, including, but not limited to, a Design Professional or Construction Contractor. |
| 1.29. Contractor Indemnitor | "Contractor Indemnitor" means Construction Contractor and/or any of its owners, officers, directors, agents, employees, or Subcontractors and, if applicable, their respective spouses. |
| 1.30. Cost | <ol style="list-style-type: none"> 1) "Cost" as defined by A.R.S. § 41-2571(2), means the aggregate Cost of all Materials and services, including labor performed by force account. The Agency shall only pay for expenses explicitly authorized as part of the Work under the Contract. 2) For any changes, subject to Markup, in the Work or additional charges sought by Construction Contractor under the contract, "Cost" shall only mean actual direct labor, material, and service Costs incurred by Construction Contractor at the construction site and which are necessary to complete the Work. Such Costs shall include those from subcontractors, vendors, and material suppliers. 3) Costs, for the purpose of this section, shall exclude markup for, including but not limited to, Costs incurred for general conditions, bonds, insurance, contingency, overhead or profit. |
| 1.31. Day | "Day" means a calendar day unless otherwise specified in a particular context. |
| 1.32. Design Change Notice | "Design Change Notice" refers to an agreement that records a change to the time for Work completion, price, and/or change in design after the initial completion of the design was reviewed and approved by the Statutory Review. The purpose of the Design Change Notice is to ensure: the changes are re-reviewed and approved by Statutory Review and the Procurement Officer; and the Contract Documents are revised in a manner that is consistent with the Design Requirements under the Contract. |
| 1.33. Design Professional | "Design Professional" means the individual or firm with which the Agency has entered into a written Design Professional Services Contract. |
| 1.34. Design Professional Services | "Design Professional Services" as defined in A.R.S. § 41-2571(4), means architect services, engineer services, land surveying services, geologist services or landscape architect services or any combination of those services performed by or under the supervision of a Design Professional or employees or Subconsultants of the Design Professional. |
| 1.35. Design Requirements | <p>"Design Requirements" means, at a minimum, the purchasing Agency's written description of the Work by the Design Professional including: the required features, functions, characteristics, qualities and properties; the anticipated Schedules, including start, duration and completion; and estimated budgets applicable to the specific procurement for design and Construction and, if applicable, for operation and maintenance, and plans and specifications for the project.</p> <p>"Design requirements" may also include the following, at the purchasing Agency's discretion: Drawings and other documents illustrating the scale and relationship of the features, functions and characteristics of the project, which shall all be prepared by a</p> |



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| | design professional who is registered pursuant to A.R.S. § 32-121; and/or additional design information or documents. |
| 1.36. Drawings | “Drawing” means the Work product of the Design Professional which graphically depicts the Work. |
| 1.37. Estimated Project Construction Cost | “Estimated Project Construction Cost” shall mean Design Professional’s written estimate in the form specified by the Agency of the total Construction Cost of the Project at the various stages of the design process. |
| 1.38. Excusable Delay | “Excusable Delay” means a delay to the Schedule approved through a Change Order that entitles the Construction Contractor to an adjustment of the Contract time for Substantial Completion, but not an adjustment of the Contract Cost. |
| 1.39. Exhibit | “Exhibit” means any item labeled as an Exhibit in the Solicitation or placed in the Exhibits section of the Contract Documents. |
| 1.40. Field Order Directive | “Field Order Directive” refers to written directives used in advance of a Construction Change Order, as more specifically prescribed in these Uniform Terms and General Conditions. |
| 1.41. Final Completion | “Final Completion” means the date upon which the Work is complete in accordance with the terms and conditions of the Contract, including punch list items. The date of Final Completion shall be set by the Agency as a certain number of days after Substantial Completion. Any additional or supplemental Work after this date due to Construction Contractor error or omission shall be completed by the Construction Contractor without additional compensation. |
| 1.42. Final Completion Certificate | The “Final Completion Certificate-Exhibit L” is the certificate issued by the Design Professional and/or the Agency Designated Representative that documents, to the best of the Design Professional’s and/or the Agency Designated Representative’s knowledge and understanding, that Construction Contractor has completed all Work required by the Contract Documents, including, but not limited to: all of the Punch List items and pre-final Punch List items for which it is responsible; final cleanup; and Construction Contractor’s provision of Record Documents, operations manuals, maintenance manuals, and any and all other Close Out Documents required by the Contract Documents and list on Exhibit M-Contractor Project Closeout. |
| 1.43. General Conditions of Contractor | “General Conditions of Contractor” means the Construction Contractor’s resources, equipment, and items used by the Construction Contractor in the Work of the Project that is used to complete the Project. The General Conditions Fee will be based on actual itemized, documented Cost. |
| 1.44. Gratuity | “Gratuity” means a payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received. |
| 1.45. Hazardous Waste; Release | “Release” means any discharging, disposing, dumping, emitting, emptying, escaping, injecting, leaching, leaking, pouring, pumping, releasing, spilling, or similar action or event. “Construction Contractor Hazardous Waste Release” means any Release of a Hazardous Substance on Agency’s property or adjoining property during the Work arising, in whole or in part, from acts or omissions of Construction Contractor or any Subcontractor. |
| 1.46. Hazardous Substance | “Hazardous Substance” means a substance, material or hazardous waste which, by reason of being explosive, flammable, poisonous, corrosive, oxidizing, irritating or otherwise harmful, is likely to cause death or injury. |
| 1.47. Hazardous Waste | “Hazardous Waste” means “hazardous waste”, as defined in the Resource Conservation and Recovery Act of 1976 and the Solid Waste Disposal Act (42 U.S.C. 6901, <i>et seq.</i>) and any successor statutes and any regulations, rules or guidelines promulgated pursuant thereto as in effect from time to time (including, without limitation, any such waste resulting from removal of, demolition or modifications of or additions to part or all of any existing structure, facility or equipment). “Contractor Hazardous Waste” means any Hazardous Waste arising during or from Work that is generated, in whole or in part, by the acts or omissions of Construction Contractor or a Subcontractor. |
| 1.48. Indemnified Basic Claims | “Indemnified Basic Claims” means any and all claims, actions, liabilities, damages, losses, or expenses, including court costs, expert fees, attorneys’ fees, and costs of claim processing, investigation and litigation, for any and all damage or equitable claims made against the Agency, including, but not limited to, personal injuries, death, |



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| | property damages (real, personal, tangible or intangible), and injunctive relief. See paragraph 6.22. |
| 1.49. Instructions to Offerors | "Instructions to Offerors" are those instructions in the Solicitation Documents. |
| 1.50. Materials | "Materials" means, as defined in A.R.S. § 41-2503(7) "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." Materials includes software, unless the software is sold or provided as a service under the Contract. Software sold or provided as a service under the Contract is both a Material (to the extent it consists of encoded information or computer instructions) and a service, as described in "Services." |
| 1.51. Negotiation | "Negotiation" means, as defined in A.A.C. R2-7-101(32), an exchange or series of exchanges between the Agency and an offeror or Construction Contractor that allows the Agency or the offeror or Construction Contractor to revise an offer or Contract, unless revision is specifically prohibited by the Arizona Procurement Code. |
| 1.52. Notice to Cure | "Notice to Cure" means a written letter from a Procurement Officer to cure an event of default and/or an anticipatory breach of Contract setting forth a time limit in which the cure is to be completed or commenced and diligently prosecuted. |
| 1.53. Notice to Proceed | "Notice to Proceed" means the written document from the Project Manager, by letter or email, informing Design Professional and/or Construction Contractor of the date designated as the date of commencement of construction and the date of Substantial Completion. |
| 1.54. Offer; Best and Final Offer (BAFO) | "Offer," and "Best and Final Offer" ("BAFO") are each defined in the <u>Instructions to Offerors</u> . |
| 1.55. Payment Bond | "Payment Bond" means a bond issued by a surety authorized to transact business in this State, issued in the amount for the Contract Cost and is payable to Agency, solely for the protection and use of payment bond beneficiaries pursuant to A.R.S. § 41-2574. |
| 1.56. Performance Bond | "Performance Bond" means a bond issued by a surety authorized to transact business in this State, issued in the amount for the Contract Cost and is payable to State, to guarantee the faithful performance of the Work by the Construction Contractor in accordance with the Contract Documents pursuant to A.R.S. § 41-2574. |
| 1.57. Person | "Person" means any corporation, business, individual, firm, partnership, association, union, committee, club, or other organization or group of individuals. |
| 1.58. Preconstruction Services | "Preconstruction Services" means services and other activities during the Design Phase. |
| 1.59. Procurement Officer | "Procurement Officer" means the person, or his or her designee, who has been duly authorized by Agency to enter into and administer the Contract and to make written determinations with respect to the Contract. Procurement Officer is as identified on the Acceptance unless subsequently changed by Contract Amendment. |
| 1.60. eProcurement System (APP) | "eProcurement System" means State's official electronic procurement system, established pursuant to A.A.C. R2-7-201, as set forth in the Arizona Department of Administration State Procurement Office policy document Technical Bulletin No. 020, APP – The Official State eProcurement System. NOTE (1): Technical Bulletin No. 020 is available online at: https://spo.az.gov/administration-policy/state-procurement-resource/procurement-regulations NOTE (2): The URL for APP itself is: https://appstate.az.gov/ |
| 1.61. Product Data | "Product Data" means illustrations, Schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Construction Contractor to illustrate Materials or equipment for some portion of the Work. |
| 1.62. Project | "Project" means any and all activities necessary for realization of the Work. This includes but is not limited to design, Contract award(s), execution of the Work itself, and fulfillment of all Contract and warranty obligations. |
| 1.63. Punch List | "Punch List" means a list of items of Work to be completed or corrected by Construction Contractor after Substantial Completion. Punch Lists indicate items to be finished, remaining Work to be performed, or minor Work that does not meet quality or quantity requirements as required in the Contract Documents. |
| 1.64. Record Documents | The term "Record Documents" shall mean those documents including, but not limited to, the updated version of the Construction Documents prepared by the Construction |



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| | Contractor incorporating any Attachments, Exhibits, Change Orders, and information from the As-Builts and other data furnished by Construction Contractors to the Agency. |
| 1.65. Request for Information | “Request for Information” (RFI) means a written request by Construction Contractor directed to the Agency or Agency Designated Representative for a clarification of the information provided in the Contract Documents or direction concerning information necessary to perform the Work that may be omitted or unclear from the Contract Documents. |
| 1.66. Reimbursable Expenses | <p>“Reimbursable Expenses” means a limited range of Costs approved by the Agency for which the Construction Contractor can receive compensation under the Contract for amounts expended in the interest of the Project. Unless otherwise detailed in the Scope of Work or limited by other Agency policies, and subject to review and approval by the Agency, the following, and only the following, are the categories of Costs which may be Reimbursable Expenses:</p> <p>Subject to the cost limitation of the State of Arizona Travel Policy, transportation costs accrued in furtherance of Work and under the Contract and Agency authorized out-of-town travel and subsistence;</p> <p>Fees paid to governmental entities that ensure Agency compliance with any applicable laws or codes;</p> <p>Costs paid toward reproduction, plots, standard form documents, postal charges;</p> <p>If requested and approved by the Agency, costs paid for surveys, requests and special requests.</p> <p>Construction Contractor shall not exceed the approved Reimbursable Expense amount stated in the Contract without prior written approval of the Agency through a Contract Amendment.</p> |
| 1.67. Samples | “Samples” mean representative physical examples of Materials, equipment, or workmanship used to confirm compliance with requirements and/or to establish standards for use in execution of the Work. |
| 1.68. Schedule | “Schedule” means the timetable which sets forth pertinent milestones, reviews, critical path of activities and other deadlines for timely completion of the Work for the Project prepared by Construction Contractor and accepted by Agency. The Schedule shall not exceed the time limit currently under the Contract Documents unless approved by Agency through a Contract Amendment. |
| 1.69. Schedule of Values | “Schedule of Values” means the detailed breakdown of the original Contract Cost for the Materials, labor, and equipment necessary to accomplish the Design and/or Construction Work. |
| 1.70. Scope of Work | “Scope of Work” means the Requirements Document of the Solicitation Documents. Scope of Work is inclusive of the Project program for design Work and the Construction Documents for performance of the construction Work. |
| 1.71. Secure Locations | “Secure Locations” means those buildings and grounds (Sites) that require specific security-related criteria where access to the Work Site or the Site’s daily operations negatively affects the Construction Contractor’s productivity on a daily basis. |
| 1.72. Services | “Services” as defined in A.R.S. § 41-2503(35), means “the furnishing of labor, time, or effort by [the] [C]ontractor or [S]ubcontractor 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.” Services includes Building Work and the service aspects of software described in Materials. |
| 1.73. Shop Drawings | “Shop Drawings” mean the drawings, diagrams, illustrations, schedules, performance charts, brochures, and other data prepared by Construction Contractor or its Subcontractors which detail a portion of the Work. |
| 1.74. Site | “Site” means the geographical location of the Work for the Project. |
| 1.75. Solicitation; Solicitation Documents | “Solicitation” and “Solicitation Documents” are defined in the <u>Uniform Instructions to Offerors</u> . |
| 1.76. Special Terms and Conditions | “Special Terms and Conditions” are contained in the Special Terms and Conditions section of the Solicitation Documents. |
| 1.77. Specification | “Specification” has the meaning given in A.R.S. § 41-2561, which, for convenience of reference only, is “... any description of the physical or functional characteristics, or of the nature of a Material, service or construction item. Specification may include a description of any requirement for inspecting, testing or preparing a Material, service or construction item for delivery.” Specifications (if any are included in the Contract), |



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| | are indexed in the <u>Scope of Work</u> and could be bound separately from the other documents forming the Contract. |
| 1.78. State | With respect to the Contract generally, "State" means the State of Arizona and its department, agency, university, commission, or board that has executed the Contract. With respect to administration or rights, remedies, obligations and duties under the Contract for a given Order, "State" means each eligible Agency who has issued the Order. |
| 1.79. State Indemnitees | "State Indemnitees" means, collectively, the State of Arizona, its departments, agencies, universities, commissions, and boards and, and their respective officers, agents, and employees. |
| 1.80. State Fiscal Year | "State Fiscal Year" means the period beginning each July 1 and ending each June 30. |
| 1.81. Stipulated Sum (Fixed Price/Lump Sum) | "Stipulated Sum (Fixed Price/Lump Sum)" means the complete and total amount the Construction Contractor is obligated to complete the Work barring unforeseen conditions, Agency change to the Scope of Work, or other circumstances set forth in the Contract. |
| 1.82. Subconsultant | "Subconsultant" as defined in A.R.S. § 41-2571, means any person, firm, partnership, corporation, association or other organization, or a combination of any of them, that has a direct Contract with Construction Contractor or another subconsultant to perform a portion of the Work. |
| 1.83. Subcontract | "Subcontract" means any Contract, express or implied, between Construction Contractor and another party or between a Subcontractor and/or Subconsultant and another party delegating, in whole or in part, the making or furnishing of any Materials, the performing of any Services, or the carrying out of any other aspect of the Work. |
| 1.84. Subcontractor | "Subcontractor" as defined in A.R.S. § 41-2503(38), is "... a person who contracts to perform Work or render service to ... [C]ontractor or to another [S]ubcontractor as a part of a Contract with a state governmental unit . . ." The Contract is to be construed as "a Contract with a state governmental unit" for purposes of the definition. Any Person carrying out an element of the Work who is neither a Construction Contractor nor a representative of the State is a Subcontractor from the moment that Person first carries out that element of the Work, regardless of whether a Contract exists between that Person and the Construction Contractor, then or subsequently. |
| 1.85. Submittal Register | "Submittal Register" means a list provided by Construction Contractor of all items to be furnished for review and approval by Construction Contractor and/or Agency and as identified in the Contract Documents including submittal dates. |
| 1.86. Substantial Completion | "Substantial Completion" means the date determined and certified by the Design Professional's and/or Agency Designated Representative's signature, when the Work, or a designated portion thereof, is sufficiently complete, in accordance with the Contract, so as to be operational, fit for the use intended, and so the Agency may occupy the Work. |
| 1.87. Unconditional Waiver of Lien | "Unconditional Waiver of Lien" has the meaning defined in A.R.S. §33-1008. An Unconditional Waiver of Lien on Progress Payment is "where the claimant is required to execute a waiver and release in exchange for or in order to induce the payment of a Progress Payment and the claimant asserts in the waiver that it has been paid the Progress Payment". Unconditional Waiver of Lien on Final Payment is "where the claimant is required to execute a waiver and release in exchange for or in order to induce payment of a Final Payment and the claimant asserts in the waiver that it has been paid the Final Payment". |
| 1.88. Uniform Terms and Conditions | The "Uniform Terms and Conditions" are made up of this document and whichever of the <u>Appendices</u> are indicated in the <u>Special Terms and Conditions</u> as being applicable. |
| 1.89. Unit Price Work | "Unit Price Work" means the Work, or a portion of the Work, paid for based on incremental units of measurement. |
| 1.90. Work | "Work" means the totality of the Materials and the Services and all the acts of administration, creation, production, and performance necessary to fulfill and incidental to fulfilling all of Construction Contractor(s)'s obligations and duties under the Contract in conformance with the Contract and applicable laws. "Work" shall refer to any and all authorized Basic and/or Additional Work. |
| 1.91. Work Progress Schedule | "Work Progress Schedule" means the continually updated time Schedule prepared and monitored by Construction Contractor that accurately indicates all necessary appropriate revisions as required by the conditions of the Work and the Project while maintaining a concise comparison to the Schedule. |



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2.0 Contract Interpretation

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| 2.1 Arizona Law | The Contract is governed by, and is to be interpreted in accordance with, the laws of the State of Arizona, including, but not limited to the Arizona Procurement Code, without consideration of conflict of laws principles |
| 2.2 Contract Order of Precedence | <p>1) COMPLEMENTARY DOCUMENTS. All of the documents forming the Contract are complementary and all provisions are to be interpreted as a single, united contract. If certain Work, requirements, obligations, or duties are set out only in one but not in another, Construction Contractor shall carry out the Work as though the relevant Work, requirements, obligations, or duties had been fully described in all, consistent with the other documents forming the Contract and as is reasonably inferable from them as being necessary to produce complete results.</p> <p>2) CONFLICTS. In case of any inconsistency, conflict, or ambiguity among the documents forming the Contract and their provisions, Contractor shall i) provide the better quality or greater quantity of Work or ii) comply with the more stringent requirements. If the foregoing requirements do not resolve the issue of inconsistency, conflict, or ambiguity, then the following contract documents and their provisions are to prevail in the following order, descending from most dominate to most subordinate, provided that, among categories of documents or provisions within the same sub-section below, the document or provision with the latest date prevails; information being identified in one document but not in another is not to be considered a conflict or inconsistency:</p> <ul style="list-style-type: none"> a) Change Orders, in reverse chronological order; b) Solicitation Documents, in this order: <ul style="list-style-type: none"> i) Special Terms and Conditions; ii) Exhibits to the Special Terms and Conditions; iii) Federal Terms and Conditions (for any Projects with federal funding) iv) Uniform Terms and Conditions; v) Scope of Work; vi) Exhibits to the Scope of Work; and vii) Any other documents referenced or included in the Solicitation; c) Accepted Offer d) Any Contract created as a result of an IGA and Project Proposal including Task Orders, Attachments, Exhibits, and Schedules created as part of, or under any Contract; e) Design Requirements; <ul style="list-style-type: none"> i) Specifications ii) Drawings (given dimensions take precedence over scaled measurements); f) Notice to Proceed; and g) Schedule |
| 2.3 Implied Terms | Each provision of law and any terms required by law to be in the Contract are a part of the Contract as if fully stated in it. |
| 2.4 References to Statute | The above Definitions of Terms includes statutory language for convenience. If any definition in the Contract references a statute without modification, the current statutory language, not the stated definition in the Contract, will take priority in any interpretation of the Contract. |
| 2.5 Usage | <p>1) Where the Contract:</p> <ul style="list-style-type: none"> a) Assigns obligations to the Construction Contractor, any reference to "Construction Contractor" is to be construed to be a reference to "Construction Contractor" and all Subconsultants and/or Subcontractors whether or not they are first-tier, suppliers, sub-suppliers, consultants, or sub-consultants, as well as all of Construction Contractor's and the Subconsultants and/or Subcontractors respective agents, representatives, and employees" in every instance unless the context plainly requires that it is a reference only to Construction Contractor as apart from Subconsultants and/or Subcontractors; |



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| | <ul style="list-style-type: none"> b) Uses the permissive “may” with respect to a party’s actions, determinations, etc., the term is to be interpreted as in A.A.C. R2-7-101(31) [Definitions]. For clarity of intent, any right given to Agency using “State may” or a like construction, denotes discretion and freedom to act so far as any regulatory or operative constraints permit in the relevant circumstances, provided that the Agency’s discretion extends to whatever is in the best interest of the Agency; c) Uses the imperative “shall” with respect to a party’s actions, duties, etc., the term is to be interpreted as in A.A.C. R2-7-101(43) [Definitions]. Conversely, the phrase “shall not” is to be interpreted as an imperative prohibition; d) Uses the term “must” with respect to a requirement, criterion, etc., the term is to be interpreted as conveying compulsion or strict necessity, and is to be read as though written “must, if [the subject] is to be entitled to have [the object] considered or credited as being compliant with, conforming to, or satisfying [the requirement, criterion, constraint, etc.], otherwise, [the object] will be considered or debited as being non-compliant, non-conforming, or unsatisfactory for its Contract-related purposes” in every instance; e) Uses the term “might” with respect to an event, outcome, action, etc., the term is to be interpreted as conveying contingency or non-discretionary conditionality; and f) Uses the term “will” or the phrases “is to be” or “are to be” with respect to an event, outcome, action, etc., the term or phrase is to be interpreted as conveying such certainty or imperativeness that “shall” is either unnecessary or irrelevant in that instance. |
| 2.6 Independent Contractor | Construction Contractor is an Independent Contractor and shall act in an independent capacity in performance under the Contract. Neither party is, or is to be construed to be, the employee or agent of the other party, and no action, inaction, event, or circumstance will be grounds for deeming it to be so. |
| 2.7 Severability | The provisions of this Contract are severable to the extent allowed under Arizona contract law. Any term or condition deemed or adjudged illegal or invalid is thereby stricken from the Contract and will not affect any other term or condition of the Contract. |
| 2.8 Complete Integration | The Contract, including any documents incorporated into the Contract by reference and any authorized Contract Amendments and Change Orders, is intended by the parties to be a final and complete expression of their agreement. There are no prior, contemporaneous, or additional agreements, either oral or in writing, pertaining to the Contract. 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 can independently bind the Agency to changes to the Contract. The Agency may avoid any unauthorized modifications to the Contract. |
| 2.9 No Waiver of Rights | Either party’s failure to insist on strict performance of any term or condition of the Contract is not, and is not to be construed as being, nor will it be deemed, a waiver of that term or condition or a bar to, or diminishment of the right of, subsequent enforcement of any term or condition. |
| 3.0 Contract Administration and Operation | |
| 3.1. Term of Contract | The term of the Contract will commence on the date indicated on the Acceptance and continue for the period specified in the <u>Special Terms and Conditions</u> unless canceled, terminated, or permissibly extended. If the <u>Special Terms and Conditions</u> do not specify a period, then the Contract will remain in force for that period required for Final Completion of the Work for the Project, including required extensions thereto, unless discontinued by any of the several provisions contained elsewhere in the Contract, but no longer than 5 years total. Agency has no obligation to extend or renew the Contract past the initial term. |
| 3.2. Contract Extensions | Agency may at its discretion extend the initial Contract term in increments of one or more months and do so one or more times, provided that, the maximum aggregate term of the Contract including extensions cannot exceed the period specified in the <u>Special Terms and Conditions</u> . If the <u>Special Terms and Conditions</u> do not specify a period, then a reasonable period of time, but no more |



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| | <p>than an aggregate of 5 (five) years. Nothing herein shall negate Construction Contractor's obligation to continuously perform the Work with adequate manpower and due diligence.</p> |
| <p>3.3. Notices and Correspondence</p> | <p>1) TO CONSTRUCTION CONTRACTOR. Unless stated otherwise in the <u>Special Terms and General Conditions</u>, Agency shall:</p> <ul style="list-style-type: none"> a) Address all Contract correspondence other than formal notices to the email address indicated as "Default for Type" for "General Mailing Address" in Contractor's corresponding APP Vendor Profile; and b) Address any required notices to Contractor to the "Contact Name and Title" at the "Mailing Address" indicated in the Construction Documents. <p>2) TO AGENCY. Unless stated otherwise in the Special Terms and General Conditions, Contractor shall:</p> <ul style="list-style-type: none"> a) Address all Contract correspondence and formal notices to the Agency Procurement Officer indicated in Exhibit A "Agreement." b) CHANGES. Agency may change the designated Procurement Officer, update contact information, or change the applicable mailing address. <p>3) Notice is deemed served when emailed or mailed.</p> |
| <p>3.4. Contractor Performance Evaluation</p> | <p>The Agency may evaluate the Construction Contractor's performance during the progress of the Work, at completion of a phase of Work for the Project, completion of the Work, or any of the foregoing. The Agency shall retain the evaluation(s) in the procurement file. The Agency will use the evaluation(s) in determining the responsibility of the Construction Contractor for any award of a future contract for the next five (5) years. If the Construction Contractor or any of the Construction Contractor's Subconsultants and/or Subcontractors commit a breach of the contract for the project, the Agency will use the responsibility analysis for future projects for five (5) years after the date of breach of the Construction Contractor's Subconsultants and/or Subcontractors (where applicable) for future contract awards with the Agency or Subcontracts on Agency Projects. Construction Contractor may comment or take exception to any rating in accordance with the State's protest policies.</p> |
| <p>3.5. Signing of Contract Amendments</p> | <p>1) Construction Contractor's counter-signature – or "approval" in APP, in the case of a Change Order – is not required to give effect if the Contract Amendment only covers either:</p> <ul style="list-style-type: none"> a) Extension of the term of the Contract within the maximum aggregate term; b) Revision to Procurement Officer appointment or contact information; or c) Modifications of a clerical nature that have no effect on terms, conditions, price, scope, or other Material aspect of the Contract. <p>2) In every case other than those listed in a), b), and c) above, the signatures of all required parties – or "approval" in APP, in the case of a Change Order – is necessary to give it effect.</p> <p>3) If the initial scope of the Project is changed materially by the Agency, the Construction Contractors compensation will be equitably adjusted through negotiation upon execution of a Contract Amendment.</p> |
| <p>3.6. Click-Through Terms and Conditions</p> | <p>Unless expressly stated otherwise in the <u>Special Terms and Conditions</u>, if either party uses a web based ordering system, an electronic purchase order system, an electronic order acknowledgement, a form of an electronic acceptance, or any software based ordering system with respect to the Contract (each an "Electronic Ordering System"), the parties acknowledge and agree that an Electronic Ordering System is for ease of administration only, and Construction Contractor is hereby given notice that the persons using Electronic Ordering Systems on behalf of Agency do not have any actual or apparent authority to create legally binding obligations that vary from the terms and conditions of the Contract. Accordingly, where an authorized Agency user is required to "click through" or otherwise accept or be made subject to any terms and conditions in using an Electronic Ordering Systems, any such terms and conditions are deemed void upon presentation. Additionally, where an authorized Agency user is required to accept or be made subject to any terms and conditions in accessing or employing any Materials or Services, those terms and conditions will also be void.</p> |



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| <p>3.7. Books and Records</p> | <ol style="list-style-type: none"> 1) RETAIN RECORDS. By A.R.S. § 41-2548(B), Construction Contractor shall retain and shall contractually require each Subconsultant and/or Subcontractor to retain books and records relating for any Cost and pricing data submitted in satisfaction of § 41-2543 for the period specified in the statute. 2) RIGHT TO AUDIT. The retained books and records are subject to audit by Agency during that period. By A.R.S. § § 35-214 and 41-2548(B), Construction Contractor shall retain and shall contractually require each Subconsultant and/or Subcontractor to retain books and records relating to performance under the Contract for the period specified in the statute and those retained books and records are subject to audit by Agency during that period. 3) AUDITING. Construction Contractor or Subconsultant and/or Subcontractor shall either make all such books and records under subparagraphs 2) and 3) available to Agency at all reasonable times or produce the records at a designated Agency office on Agency's demand, the choice of which being at Agency's discretion. For the purpose of this paragraph, "reasonable times" are during normal business hours and in such a manner so as to not unreasonably interfere with normal business activities. Any Person who obstructs or impairs an audit being conducted or about to be conducted in relation to any contract or subcontract with the State may be found guilty of a class 5 felony under A.R.S. § 35-215. |
| <p>3.8. Contractor Licenses and Registration</p> | <p>Construction Contractor shall maintain current all federal, state and local licenses, registrations and permits required for the operation of its business in general, for its operations under the Contract, and, unless expressly stated otherwise in the <u>Special Terms and Conditions</u>, for the Work itself.</p> |
| <p>3.9. Ownership of Intellectual Property</p> | <ol style="list-style-type: none"> 1) PRE-EXISTING MATERIAL. All pre-existing software and other Materials developed or otherwise obtained by or for Construction Contractor or its affiliates independently of the Contract are not part of the Work instruments of service to which rights are granted state under subparagraph 2) below, and will remain the exclusive property of Construction Contractor, provided that: <ol style="list-style-type: none"> a) any derivative Works of such pre-existing Material or elements thereof that are created pursuant to the Contract are part of the Work instruments set forth below; b) any elements of derivative Work of such pre-existing Material that was not created pursuant to the Contract are not part of that Work instrument; and c) except as expressly stated otherwise, nothing in the Contract is to be construed to interfere or diminish Construction Contractor's or its affiliates' ownership of such pre-existing Materials. 2) JOINT DEVELOPMENTS. The parties may each use equally any ideas, concepts, know-how, or techniques developed jointly during the course of the Contract, and may do so at their respective discretion, without obligation of notice or accounting to the other party. 3) DEVELOPMENTS OUTSIDE OF CONTRACT. Unless expressly stated otherwise in the <u>Special Terms and Conditions</u>, the Contract does not preclude Construction Contractor from developing competing Materials outside the Contract, irrespective of any similarity to Materials delivered or to be delivered to Agency hereunder. 4) OWNERSHIP AND USE OF DOCUMENTS. The Construction Contractor agrees all Project information, including but not limited to, notes, plans, Drawings, Specifications photos, studies, computer programs, Schedules, technical reports, prototypes and AutoCAD design backgrounds, or other Work instruments produced by the Construction Contractor under this Contract necessary to complete the Work, are the property of the Agency. The Construction Contractor agrees to continue to supply the Project AutoCAD design backgrounds to the Agency for other projects outside the scope of this Contract, as requested by the Agency. The Construction Contractor shall also provide the Agency high quality copies on Agency-approved media of updated drawings and reproducible copies of specifications as specified. The cost of such copies will be reimbursed by the Agency to the Construction Contractor as a Reimbursable Expense. The Construction Contractor may not provide copies of or otherwise use the Work instruments in any format for the Project without the express prior written approval of the Agency. |



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| | <p>5) The Construction Contractor agrees that items such as plans, Drawings, Specifications photos, studies, computer programs, Schedules, technical reports, or other Work products which is/are specified to be delivered under this Contract, and which is/are to be paid for by the Agency, is/are subject to the rights of the Agency in effect on the date of this Contract. These rights include the right to use, duplicate and disclose such items in whole or in part, in any manner and for whatever purpose, and to have others do so. The Construction Contractor shall not copyright or otherwise claim Ownership of the Work instruments of service for the Project. The Construction Contractor shall include in its Subconsultants and/or Subcontractors Contracts appropriate provisions to achieve the purpose of this section.</p> <p>6) Construction Contractor shall give Agency full ownership of, including any and all necessary permissions to use, every aspect of the Work, unless explicitly excluded by law or contract, including the ability to create new structures based on the design Specifications and Drawings.</p> <p>7) In the event of any dispute with the Construction Contractor regarding any breach or default of this Contract, the Agency shall have the right to possess and use any and all plans, Specifications, Drawings, documentation, reproducibles, Design Requirements, and any other Materials necessary to complete the project.</p> <p>8) Notwithstanding anything to the contrary, Agency, at all times, shall have unlimited rights to copy and use in connection with the Project any and all Design Requirements and/or Materials prepared by Construction Contractor for the Project at no additional Cost to Agency, regardless of degree of completion. Construction Contractor also grants to Agency a royalty free license to all such any and all Design Requirements and/or Materials to which Construction Contractor may assert any rights under patent or copyright laws.</p> <p>a) Construction Contractor hereby assigns outright and exclusively to Agency all copyrights to any and all Design Requirements and/or Materials created for, or used in, the Project.</p> <p>b) Construction Contractor, as part of its agreements with any Subcontractors and/or Subconsultants, will secure such license and use rights from each such entity to all copyrights to any and all Design Requirements and/or Materials created for, or used in, the Project, and shall defend, indemnify and hold Agency harmless from any claims by such entities for copyright or patent infringement.</p> |
| <p>3.10. Inspection and Testing</p> | <p>By A.R.S. § 41-2547, State may at reasonable times inspect the part of Construction Contractor 's or Subcontractor's or Subconsultant's plant or places of business related to performance under the Contract. Accordingly, Construction Contractor agrees to permit (for itself) and ensure (for Subcontractors or Subconsultants) access for inspection at any reasonable time to its facilities, processes, and services. State may inspect or test, at its own cost, any finished goods, Work-in-progress, components, or unfinished Materials that are be supplied under the Contract or that will be incorporated into something to be supplied under the Contract. If the inspection or testing shows non-conformance or defects, then Construction Contractor will owe State reimbursement or payment of all Costs it incurred in carrying out or contracting for the inspection and testing, as well as for any re-inspection or re-testing that might be necessary. Neither inspection of facilities nor testing of goods, Work, components, or unfinished Materials will of itself constitute acceptance by State of those things. State inspection of, or failure to detect an issue, error, or omission at, the place of business or plant of a Construction Contractor, Subcontractor, or Subconsultant does not, in any way, excuse that Construction Contractor, Subcontractor, or Subconsultant from any obligation under this Contract.</p> |
| <p>3.11. Subcontracts and Subconsultants</p> | <p>1) INITIAL LIST. Prior to Contract execution, Construction Contractor's candidate Subcontractors and/or Subconsultants were identified their Offer if required.</p> <p>2) ADDITIONAL NAMES. Construction Contractor shall not enter into a Subcontract without first obtaining Procurement Officer's written consent with any prospective Subcontractor or Subconsultant that (a) was not listed at time of Contract execution or (b) is for any Materials or Services categories other than the ones for which they were previously consented. For either case (a) or (b), Construction Contractor shall submit a written request sufficiently in advance of the need date for those Materials or services so that performance under the Contract is not</p> |



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| | <p>impaired. Procurement Officer may request any additional information he or she determines is necessary to assess the submittal, and may withhold consent pending it.</p> <p>3) FLOW-DOWN. Construction Contractor shall incorporate the provisions, terms, and conditions of the Contract into every Subcontractor and/or Subconsultant agreement by inclusion or by reference. Subconsultants and/or Subcontractors shall incorporate the provisions, terms, and conditions of the Contract into their Subcontracts. When making any post-execution consent requests, Construction Contractor shall include its warrant that it will do the same for the pending Subcontractor and/or Subconsultant covered by the request. Entering into Subcontract and/or Subconsultant agreement will not relieve Construction Contractor of any of its obligations or duties under the Contract, including, among other things, the duty to supervise and coordinate the Work of Subconsultants and/or Subcontractors. Nothing contained in any Subcontract and/or Subconsultant agreement will create or is to be construed as creating any contractual relationship between Agency and the Subconsultants and/or Subcontractors.</p> |
| 3.12. Non-Discrimination | <p>Construction Contractor shall comply with [Arizona] State Executive Order No. 2009-09 and all other applicable federal and state laws, rules, and regulations regarding non-discrimination and equal opportunity, including the Americans with Disabilities Act.</p> |
| 3.13. E-Verify Requirements | <p>As required by A.R.S. § 41-4401, Construction Contractor and each Subconsultants and/or Subcontractors warrants compliance with A.R.S. § 23-214(A) and all federal immigration laws and any regulations relating to the immigration status of their employees. Construction Contractor and each Subconsultants and/or Subcontractors acknowledge that under A.R.S. § 41-4401, Agency retains the legal right to inspect the papers of any Construction Contractor or Subconsultants and/or Subcontractors employee who Works under the Contract to ensure that Construction Contractor or Subconsultants and/or Subcontractors employee is in compliance with the foregoing warranty and understands that a breach of the foregoing warranty under shall be deemed a Material breach of the Contract that is subject to penalties up to and including termination of the Contract.</p> |
| 3.14. Offshore Performance of Certain Work Prohibited | <p>Construction Contractor shall only perform those portions of the Work that directly serve the Agency or its clients and involve access to secure or sensitive data or personal client data within the defined territories of the United States. Unless specifically stated otherwise in the <u>Specifications</u> or the <u>Scope of Work</u>, this paragraph does not apply to indirect or overhead services, redundant back-up services, or services that are incidental to performance under the Contract. This provision applies to Work performed by Subconsultants and/or Subcontractors at all tiers.</p> |
| 3.15. Other Contractors | <ol style="list-style-type: none"> 1) Agency may undertake with its own forces or award other contracts to the same or Other Contractors for additional or related Work. 2) In such cases, Contractor shall cooperate fully with Agency's employees and such Other Contractors and carefully coordinate, fit, connect, accommodate, adjust, or sequence its Work to the related Work by others. 3) Where the Contract requires handing-off Contractor's Work to others, Contractor shall cooperate as Agency instructs regarding the necessary transfer of its Work product, services, or records to Agency or the Other Contractors. 4) Contractor shall not commit or permit any act that interferes with the Agency's or Other Contractor's performance of their Work, provided that, Agency shall enforce the foregoing section equitably among all its Contractors so as not impose an unreasonable burden on any one of them. 5) Agency shall be reimbursed by Contractor for Costs incurred by Agency which are payable to an Agency separate Contractor because of delays, improperly timed activities, or defective design or construction by Contractor. Agency will equitably adjust the Contract by Change Order for Costs incurred by Contractor because of delays, improperly timed activities, damage to the Work or defective design or construction by an Agency separate Contractor. 6) Should the Work be interrupted or hindered by the Agency or Contractor, the Contractor shall be entitled to an extension of time pursuant to the paragraph |



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| | <p>“Change Orders” in an amount equal to such interruption or hindrance but such interruption or hindrance shall not constitute a claim for damages nor for loss of anticipated profits by the Contractor.</p> |
| 3.16. Work on State Premises | <ol style="list-style-type: none"> 1) COMPLIANCE WITH RULES. Construction Contractor is responsible for ensuring that its personnel comply with Agency’s rules, regulations, policies, documented practices, and documented operating procedures while delivering or installing Materials or performing Services on State’s grounds or in its facilities. Construction Contractor shall comply with State security requirements in order to deliver, install, or perform at that particular location without entitlement to any additional compensation or additional time for performance even if those particular requirements are not expressly stated in the Contract. 2) PROTECTION OF GROUNDS AND FACILITIES. Construction Contractor shall deliver and perform the Services without damaging any State grounds or facilities. Construction Contractor shall promptly repair or replace any damage caused by Construction Contractor, or any of its Subcontractors or Subconsultants, at its own expense, subject to whatever instructions and restrictions Agency needs to make to prevent inconvenience or disruption of operations. If Construction Contractor fails to make the necessary repairs or replacements in a timely manner, Agency will be entitled to exercise its remedies available under the Contract. |
| 3.17. Background Checks | <ol style="list-style-type: none"> 1) Each of Construction Contractor’s personnel who is performing Work with information technology, correctional facilities, proprietary and sensitive data or confidential or access-restricted or in an Agency defined secured area, or as otherwise requested by Agency, must undergo the security clearance and background check procedure, which includes fingerprinting. 2) Construction Contractor shall obtain and pay for the security clearance and background check and shall incorporate Cost in the Construction Contractor’s offer submitted to perform the Work. 3) Construction Contractor personnel who will have administrator privileges on a State network must additionally provide identity and address verification and undergo State-specified training for unescorted access, confidentiality, privacy, and data security. |
| 3.18. Advertising, Publishing and Promotion of Contract | <p>Contractor shall not advertise, promote, or otherwise use information concerning the Contract for commercial benefit without the prior written approval of Procurement Officer. The Procurement Officer may withhold approval at his or her discretion.</p> |
| 4.0 Costs and Payments | |
| 4.1. Additional Work | <ol style="list-style-type: none"> 1) Compensation for Additional Work will be in accordance with basis for compensation established in the Contract. 2) Compensation for Additional Services will be determined either on a Standard Hourly Rate with a Not-to-Exceed-Maximum-Amount (“Standard Hourly Rate”) fee basis in Contract or as a Stipulated Sum fee basis, as amended to the Contract, through Contract Amendment or Change Order, by the Procurement Officer. 3) Before Additional Work may be performed or additional Costs incurred beyond the specified approved Contract for the Project, both the Agency and Construction Contractor must execute a written Contract Amendment or Change Order. 4) The Agency is not responsible for actions of the Construction Contractor or its Subconsultants and/or Subcontractors for any Costs incurred by the Construction Contractor or its Subconsultants and/or Subcontractors relating to Additional Work prior to the execution of a Contract Amendment or Change Order. 5) Any Additional Work must be performed within the time period established in the Contract Amendment or Change Order for the Project. 6) The Agency shall only approve of requests for Additional Work due to: <ol style="list-style-type: none"> a) need for additional design; b) acts or omissions of the Agency; c) significant changes to the Project; or d) need to provide services due to the default of another Contractor. |
| 4.2. Applicable Taxes | <ol style="list-style-type: none"> 1) CONSTRUCTION CONTRACTOR TO PAY ALL TAXES. Agency is subject to Arizona Transaction Privilege Tax (TPT). Therefore, Arizona TPT applies to all sales under the Contract and Arizona TPT is Construction Contractors’ |



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| | <p>responsibility (as seller) to remit. Construction Contractor's failure to collect Arizona TPT or any other applicable sales or use taxes from Agency will not relieve Construction Contractor of any obligation to remit sales or use taxes that are due under the Contract or laws. Unless stated otherwise in the <u>Commercial Document</u>, all prices therein include Arizona TPT as well as every other manner of transaction privilege or sales/use tax that is due to a municipality or another state or its political subdivisions. Construction Contractor shall pay all federal, state, and local taxes applicable to its operations and personnel.</p> <p>2) TAX INDEMNITY. Construction Contractor shall hold Agency harmless from any responsibility for taxes or contributions, including any applicable damages and interest, that are due to federal, state, and local authorities with respect to the Work and the Contract, as well any related Costs; the foregoing expressly includes Arizona TPT, unemployment compensation insurance, social security, and workers' compensation insurance.</p> |
| <p>4.3. Application for Payment, Construction Contractor</p> | <p>1) The Construction Contractor shall submit to the Agency an itemized Application for Payment completed and accepted in accordance with the Schedule of Values. Such application shall be supported by such data substantiating the Construction Contractor's right to payment as the Agency requires below, and reflecting retainage, if applicable.</p> <p>2) The Application for Payment (Exhibit H) shall:</p> <ul style="list-style-type: none"> a) be an accurate reflection of the progress of the Work; b) contain line items based on the Schedule of Values; c) bear the notarized signature of Construction Contractor; d) bear the signature of the Design Professional if contracted to perform Construction Phase Services; e) only be paid after approval by the Agency Designated Representative; and f) not include Subcontracted items or any other items for which Construction Contractor does not intend to pay. <p>3) Unless otherwise stated in the Special Terms and Conditions, the Construction Contractor is required to include the following, at a minimum:</p> <ul style="list-style-type: none"> a) Construction Contractor Name and Address; b) Subcontractor's Name, Remit to Address and Contact Information, and c) All backup documentation to Application for Payment, detailed prior to showing subtotals for each item for Construction Contractor and Subcontractor (e.g., labor detail, Materials, and tax listed in separate line items). <p>4) Applications for Payment may include requests for payment on account of changes in the Work which have been properly authorized and executed by the Agency in Change Orders.</p> <p>5) Applications for Payment may not include requests for payment of amounts the Construction Contractor does not intend to pay to a Subcontractor or Material supplier because of a dispute or other reason.</p> <p>6) Applications for payment shall be made on account of Materials and equipment delivered and suitably stored at the Site for subsequent incorporation in the Work.</p> <ul style="list-style-type: none"> a) If approved in advance by the Agency, payment may similarly be made for Materials and equipment suitably stored off the Site at a location agreed upon in writing in accordance with Arizona General Accounting Office policies. b) Payment for Materials and equipment stored on or off the Site shall be conditioned upon compliance by the Construction Contractor with procedures to establish the Agency's title to such Materials and equipment or otherwise protect the Agency's interest, and shall include applicable insurance, storage and transportation to the Site for such Materials and equipment stored off the Site. <p>7) The Construction Contractor further warrants that upon submittal of any Progress Application for Payment all Work for which Applications for Payment have been previously issued and payments received from the Agency shall, to the best of the Construction Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests, or encumbrances in favor of the Construction Contractor, Subcontractors, Material suppliers, or other persons or entities making a claim by reason of having provided labor, Materials, and equipment relating to the Work by also submitting a Conditional Waiver of Lien form with the Application for Payment.</p> |



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| | <ul style="list-style-type: none">8) At the time of submittal for payment of retainage, if requested by the Construction Contractor prior to the Final Application for Payment, and at Final Application for Payment, Construction Contractor shall provide the Agency with all items contained in Contractor Project Closeout-Exhibit M.9) Agency shall not accept improper or incorrect Application for Payment until corrections have been made.10) A Progress Payment shall not be made to Construction Contractor until the Application for Payment has been certified.11) Final Payment shall not be made to Construction Contractor until a Final Completion Certificate has been issued. |
| 4.4. Automated Clearing House | Agency may pay invoices through an Automated Clearing House (ACH). In order to receive payments in this manner, Construction Contractor must complete an ACH Vendor Authorization Form (form GAO-618) within 30 (thirty) days after the effective date of the Contract. The form is available online at: https://gao.az.gov/afis/vendor-information |
| 4.5. Availability of Funds | By A.R.S. § 35-154, every State payment obligation under the Contract is conditioned on the availability of funds appropriated for payment of that obligation. If funds are not appropriated and available for continuance of the Contract, State may terminate the Contract at the end of the period for which funds are available, or, at State's discretion, allow appropriate amendment to the Contract. No liability will accrue to State if it exercises the foregoing right or discretion, and State will have no obligation or liability for any future payments or for any damages as a result of having exercised it. |
| 4.6. Contract Payment Retention | <ul style="list-style-type: none">1) To the extent that Contracts for Construction do not include Design Services, preconstruction services, finance services, maintenance services, operations services or any other related Services, retention amounts in Progress Payments will be made or paid in accordance with A.R.S. § 41-2576.2) Construction Contractor may elect to substitute security in the same amount as the retainer in lieu of retention pursuant to A.A.C. R2-7-509 and R2-7-510. The Agency shall not accept any substitute security unless it is accompanied by a signed and acknowledged waiver of any right or power of the obligor to set off any claim against either the Agency or the Construction Contractor in relationship to the security assigned pursuant to A.R.S. § 41-2576(D).3) The Agency will retain 10% of the amount of each estimated Progress Payment until final completion and acceptance unless, upon written request from the Construction Contractor, at the half-way point of the Project (as determined by the Work Progress Schedule) if the Agency has determined that the Work is satisfactory, then half of the retainer will be released to the Construction Contractor.4) If the Agency determines that this condition has been met, then the percentage of subsequent retainers will decrease from 10% to 5%.5) At any subsequent point in the Project, if the Agency finds that the Construction Contractor's Work is less than satisfactory, then the retainer will revert to 10%.6) Absent a specific written finding by the Agency with a reason to delay the release of the retained amount, the retainer described in this section will be released within sixty (60) days of the Agency's acceptance of the Work and approval of the Application for Final Payment.7) If the Agency determines that the Work is not acceptable for any reason, it must make a specific written finding of the reason why the Work is not acceptable; then may retain an amount of payments sufficient to pay or discharge the expenses the Agency reasonably expects to incur to correct the issue with the Work that was set forth in the written finding. |
| 4.7. Final Completion and Payment | <ul style="list-style-type: none">1) When Construction Contractor deems Work fully complete, Construction Contractor will notify Agency.2) A Certificate of Final Completion shall set forth the date of Final Completion and shall be executed by Agency and/or Design Professional.3) Neither Final Payment nor any final release of retention will be made until Construction Contractor submits the following documents to Agency:<ul style="list-style-type: none">a) Affidavit that payments, bills for equipment and Materials, and all indebtedness incurred for Construction have been paid or satisfied; |



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| | <p>b) Certificate evidencing that insurance required by Contract Documents remains in force pursuant to the terms of the Contract and will not expire until 30 days written evidence is given to Agency; and</p> <p>c) Any items required by Exhibit M-Contractor Project Closeout.</p> |
| <p>4.8. Delay</p> | <p>1) Pursuant to A.R.S. § 41-2617, if the Construction Contractor incurs damages due to a delay for which the Agency and the Construction Contractor agree is (a) the fault of the Agency, (b) unreasonable under the circumstances, and (c) was not already contemplated by the terms of the agreement, then the Agency and the Construction Contractor may negotiate for the recovery of those damages. In this case, if the Construction Contractor sustains damages, which could not have been avoided by the judicious handling of forces, equipment and materials; or by reasonable revision in the Construction Contractor's schedule of operation, the compensation for such damages will be negotiated. The Construction Contractor shall notify the Agency of the condition in writing by the next work day. Failure to notify the Agency within this time may be just cause to reject any claims for such damages.</p> <p>2) DELAYS THAT RESULT IN A MATERIAL CHANGE TO THE DATE OF SUBSTANTIAL COMPLETION MAY RESULT IN LIQUIDATED DAMAGES. Agency may assess Liquidated Damages (as detailed in the Special Terms and General Conditions) for unexcused and/or unauthorized delays, caused by the Construction Contractor, or any of its Subconsultants or Subcontractors, that result in a material change to the date of Substantial Completion of the Work. Construction Contractor is responsible for any reasonably foreseeable causes of delay.</p> <p>3) TIME EXTENSION. Within one business day after the Construction Contractor should have reasonably known of the occurrence prompting the request for an extension of time, the Construction Contractor must deliver a preliminary written notice to the Agency describing the general nature of the request. Within a reasonable time after the preliminary notice, the Construction Contractor must provide the Agency written supporting documentation stating all known time extensions to which the Construction Contractor is entitled. Construction Contractor may submit written time extension requests to the Agency for approval if the Construction Contractor is delayed through no fault of its own.</p> <p>4) CONCURRENT DELAYS. To the extent the Construction Contractor is entitled to an extension of time due to an Excusable Delay but the performance of the Work would have been suspended, delayed or interrupted by the fault or neglect of the Construction Contractor and/or any of its subcontractors/subconsultants, and suppliers, the Construction Contractor shall not be entitled to any additional Costs for the period of such concurrency.</p> <p>5) CHANGE ORDER. Any requests for time extensions must be approved by Agency and/or Design Professional through the use of a Change Order.</p> |
| <p>4.9. Equipment Rental</p> | <p>Construction Contractor rental of construction equipment to perform the Work shall be recorded and billed to the Agency to the nearest one-half hour and shall cease when equipment is no longer necessary for the Work. Billing shall include sales tax, the cost of transportation, loading, unloading, and dismantling and removal thereof in accordance with the rental agreement terms and Agency approved Construction Contractor markup for overhead and profit. Rates for Construction Contractor owned equipment shall be approved by Agency prior to equipment use. Construction Contractor shall not charge Agency for equipment that is inoperable due to breakdown or used for Work not related to the Project.</p> |
| <p>4.10. Interest</p> | <p>Payments to Construction Contractor are issued pursuant to A.R.S. § 35-342. If payments to Contractor are allowable and 30 days past due, interest shall accrue at the rate detailed in A.R.S. § 44-1201.</p> |
| <p>4.11. Payment and/or Application for Payment</p> | <p>1) PAYMENT NOT ACCEPTANCE. Agency payment of any invoice or Application for Payment shall not be construed to be acceptance of the Work.</p> <p>2) PAYMENT DEADLINE. Agency shall make payments in compliance with Arizona Revised Statutes Titles 35 and 41. Unless and then only to the extent expressly stated otherwise in the Contract, Agency shall make payment in full for Materials that have been delivered and accepted and Work that has been performed and</p> |



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| | <p>accepted within the time specified in A.R.S. § 35-342 after both of the following become true:</p> <ul style="list-style-type: none"> a) All of the Materials being invoiced have been delivered or installed (as applicable) and accepted and all of the Work being invoiced have been performed and accepted; and b) Contractor has provided a complete and accurate invoice and/or Application for Payment in the form and manner called for in the Contract and reasonably required by Agency, provided that the Agency will not make or be liable for any payments to Contractor until Contractor has registered properly in APP and provided a current IRS Form W-9 to Agency unless excused by law from providing one. <p>3) PAYMENTS ONLY TO CONTRACTOR. Unless compelled otherwise by operation of law or order of a court of competent jurisdiction, Agency shall make payment to Contractor under the federal tax identifier provided.</p> |
| 4.12. Project Suspension by Agency | <p>If the Project is suspended or abandoned in whole or in part for more than six (6) months by the Agency, the Construction Contractor will be compensated for only the following: all Work performed prior to receipt of written notice from the Agency of such suspension or abandonment together with Reimbursable Expenses then due. The Agency will not be liable for any additional expenses or any damages, including but not limited to consequential damages. If the Project is resumed after having been suspended for more than six (6) months, the Construction Contractor's compensation may be equitably adjusted through negotiation. If the parties cannot agree on an adjustment, Agency may terminate the Agreement.</p> |
| 4.13. Recovery of Overpayment | <p>If Agency determines that an over-payment has been made to Construction Contractor on any prior invoice, it shall inform Construction Contractor of the amount and date of the over-payment and may deduct the over-paid amount from amounts then or thereafter due to Construction Contractor.</p> |
| 4.14. Reimbursable Expenses | <p>Reimbursable expenses may be billed in accordance with Uniform Terms and Conditions for amounts expended in the interest of the Project. Construction Contractor shall not exceed the approved reimbursement amount without prior written approval of the Agency through a Contract Amendment.</p> |
| 4.15. Scrap or Surplus Material | <p>Pursuant to A.R.S. 41-2602, <i>et seq.</i>, The Construction Contractor may not sell any scrap or surplus materials resulting from production under this Contract without requesting the Procurement Officer's approval, unless stated otherwise in the <u>Special Terms and Conditions</u>.</p> |
| 4.16. Standard Hourly Rate Basis for Work | <p>For Projects compensated on a Standard Hourly Rate basis, the invoice statement for all Applications for Payment must show the name of all employees and Subconsultants and/or Subcontractors charging time to the Project, the amount of time billed, the fully burdened hourly rates, and the activities performed by each person listed. If requested by Agency, payroll time sheets and any other documents reasonably requested by Agency to verify amounts requested, shall be provided.</p> |
| 4.17. Stipulated Sum (Fixed Price/Lump Sum) Basis for Work | <p>For Projects compensated on a Stipulated Sum basis, the invoice statement for Application for Payment must include a brief summary of the progress and completion of tasks in accordance with the Work to substantiate the percentage of completion of Work by phase during the time period covered by the Application for Payment. Any Costs in excess of approved maximum not to exceed Contract amount incurred prior to Agency's written consent will not be paid unless Costs were incurred at the Agency's direction.</p> |
| 4.18. Notification of Payments | <p>Any Construction Contractor, Subconsultants and/or Subcontractors, or Subcontractor may notify the Agency in writing requesting that it be notified by the Agency in writing within five days from payment of each progress payment made to the Construction Contractor. If a request is made to the Agency as described in this paragraph, the request remains in effect for the duration of the requestor's Work related to this Contract pursuant to A.R.S. § 41-2577. Note that this paragraph in no way limits the Construction Contractor's and/or Construction Contractor's ability to withhold any application or certification due to issues related to the Work of a Construction Contractor, Subconsultants and/or Subcontractors, or Subcontractor as described in A.R.S. § 41-2577(D).</p> |



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5.0 Contract Changes

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| <p>5.1. Assignments and Delegation</p> | <p>1) NOTICE AND ASSIGNMENT OF TRANSFER OF OWNERSHIP. In additions to Sections 5.2 and 5.3 below, the Agency will require immediate notice and explicit assignment, pursuant to this Section, of any change to the underlying ownership of the Construction Contractor. For the purpose of this Section, a change in ownership is defined by the transfer of any ownership interest or control of fifty percent or more of the Construction Contractor, regardless of the form under which the Construction Contractor conducts its business.</p> <p>2) IN WHOLE. Construction Contractor shall not assign in whole or in part its rights or delegate in whole or in part its duties under the Contract without (a) notifying the Procurement Officer in advance and (b) obtaining the Procurement Officer's prior written consent, which the Procurement Officer may withhold at his or her discretion. If Construction Contractor's proposed assignment or delegation stems from a split, sale, acquisition, or any other change in control, then no such consent will be given in any event without the assignee or delegate giving the Agency satisfactory and equivalent evidence or assurance of its financial soundness, competency, capacity, and qualification to perform as that which Construction Contractor possessed when Agency first awarded it the Contract. Such determinations shall be made by the Procurement Officer in its sole discretion.</p> |
| <p>5.2. Contract Amendments</p> | <p>The Contract is issued for Agency under the authority of Procurement Officer. Only a Contract Amendment can modify the Contract, and then only if it does not change the Contract's general scope.</p> |
| <p>5.3. Unauthorized Contract Amendments or Orders are Void</p> | <p>Purported changes to the Contract by a person not expressly authorized by Procurement Officer or made unilaterally by Construction Contractor will be void and without effect; Construction Contractor will not be entitled to any claim made under the Contract based on any such purported changes. The Construction Contractor is on notice that any course of conduct dealings cannot bind the Agency to any changes to the Contract; the Agency may avoid any unauthorized modifications to the Contract, Contract Amendments, or Change Orders.</p> |
| <p>5.4. Change Orders</p> | <p>1) The Agency will only compensate for and the Construction Contractor shall only deliver or perform Additional Work that has been approved by the Agency through a fully authorized Change Order.</p> <p>2) CHANGE ORDER TERMS. All Change Orders are subject to the Contract Terms and Conditions except to the extent they are modified by Change Order.</p> <p>3) REASONABLE TIME FOR REVIEW. Both parties to the Contract agree to allow a reasonable period of time for the review and consideration of any requested Change Orders.</p> <p>4) FIELD ORDER DIRECTIVES (See Exhibit I). Field Order Directives should be followed by a Change Order within a reasonable time. The Not-to-Exceed Cost detailed in the Field Order Directive is enforceable against the Construction Contractor if the Agency and Construction Contractor are unable to agree to a price through a Construction Change Order.</p> <p>5) ITEMIZATION OF WORK. The Construction Contractor shall include the proposed Cost itemized breakout including Subcontractor or Subconsultant pricing by Work division labor and Materials, at a minimum to include: General Conditions, Overhead and Profit, Total- Labor Costs, Total Materials Cost, Equipment, Field Office and Job Site Supervision, Bonds, Insurance, and applicable tax. Failure of Construction Contractor to submit itemized Cost information with the Change Order Request will delay processing through no fault of the Agency.</p> <p>6) ADDITIONAL TIME FOR DELAY. Construction Contractor must submit any request for an Excusable Delay within one business day after the Construction Contractor should have reasonably known of the occurrence prompting the request for an extension of time.</p> <p>a) Any Construction Contractor request for an Excusable Delay must be made through Construction Contractor initiation of a Change Order Request and written notice to the Agency.</p> |



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| | <ul style="list-style-type: none"> b) Failing to timely and properly provide written notice of the Delay, which must include a request through a Change Order Request, will waive Construction Contractor's ability to negotiate increased time to complete the Work. c) The Construction Contractor's request shall include an estimate of Cost and of probable effect of delay on the Work Progress Schedule. Adverse weather conditions shall not be a basis for a claim for additional Costs. <p>7) FUEL SURCHARGES. Under no circumstances will the Agency accept any fuel surcharges on any Change Order request or Construction Contractor Pay Applications</p> <p>8) CONSTRUCTION CONTRACTOR AND SUBCONTRACTOR MARKUP. The combination of overhead and profit shall not exceed the original percentage mutually agreed upon value of labor and Material for Work performed by any Construction Contractor or subcontractor for any Change Order or 5%, whichever is greater.</p> <p>9) CONSTRUCTION CONTRACTOR ADDITIONAL WORK. Any Additional Work caused by Construction Contractor error, inconsistency, ambiguity, or otherwise conduct of Construction Contractor shall not constitute a change, and such Work will be performed at no additional cost to Agency.</p> <p>10) AGREEMENT ON CHANGE ORDER. Agreement on any Change Order shall constitute a final settlement of any and all matters relating to the change in the Work which is the subject of the Change Order including, but not limited to, any and all direct and indirect costs associated with such change and any and all adjustments to the Contract sum and the Schedule.</p> |
| <p>5.5. Field Order Directive</p> | <ul style="list-style-type: none"> 1) The Agency may order changes in the Work within the general scope of the Contract, consisting of additions, deletions or other revisions, the Contract Cost and time for Substantial Completion being adjusted accordingly. 2) A Field Order Directive (Exhibit I) shall be used in the absence of total agreement on the terms of a Change Order. 3) If the Agency and the Construction Contractor cannot agree as to what amount should be charged for the Field Order Directive, Construction Contractor shall only be entitled to be reimbursed for actual direct labor and material Costs incurred at the construction site attributable to the change plus 5% for overhead and profit. Construction Contractor shall keep detailed records of all such Costs and submit such records to the Agency on a weekly basis. Within ten (10) days of completion of the change and the submission of all Cost data to the Agency, the Agency shall determine the total allowable Costs for the purpose of pricing and paying for the additional work required by the Field Order Directive and advise the Construction Contractor of such determination in writing. This determination shall be final and binding unless Construction Contractor objects in writing within ten (10) days of this determination. The written objection shall contain a detailed statement of those elements and items of the determination with which the Construction Contractor disagrees with an adequate explanation forming the bases of the disagreement. The parties shall then make a good faith effort to resolve the disagreement within fifteen (15) days. If the parties still fail to agree, the dispute shall be submitted to the Procurement Officer. The Procurement Officer shall determine the Costs and notify the Construction Contractor in writing of his or her determination. If the Construction Contractor disagrees with the Procurement Officer's determination, the Construction Contractor shall immediately initiate the contract claims resolution process in the Arizona Procurement Code (A.A.C. R2-7-B901, <i>et seq.</i>) 4) When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change. 5) The amount of credit to be allowed by the Construction Contractor to the Agency for a deletion or change which results in a net decrease in the Contract Cost shall be actual net Cost as determined by the Design Professional and/or Agency. 6) Pending final determination of Cost to the Agency, amounts not in dispute may be included in applications for payment. |



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| | <p>7) For any disagreement between the Construction Contractor and Agency on the adjustment in Contract time or the method for determining it, the adjustment or the method shall be referred to the Agency for determination.</p> <p>8) When the Agency and Construction Contractor agree with the determination made by the Construction Contractor concerning the adjustments in the Contract Cost and Contract time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.</p> |
| <p>5.6. Minor Changes in the Work</p> | <p>1) The Design Professional, with the Agency's approval, has the authority to order minor changes in the Work not involving adjustment in the Contract Cost or extension of the Contract time and consistent with the intent of the Contract. Such changes shall be effected by written order and shall be binding on the Agency and Construction Contractor.</p> <p>2) The Construction Contractor shall carry out such written orders promptly.</p> |
| <p>5.7. Claims</p> | <p>If Construction Contractor is aware of any act, omission, or condition that would give rise to a breach of Contract or a Change Order and/or claim, Construction Contractor shall notify Agency in writing within 48 hours after becoming aware of such act, omission, or condition. This notice shall provide sufficient detail so that the claim may be properly evaluated by the Agency in a timely manner. Failure to give such notice shall be deemed a waiver of the right of the Construction Contractor to recover.</p> |
| <p>6.0 Risk and Liability</p> | |
| <p>6.1. Risk of Loss</p> | <p>If applicable, Construction Contractor shall bear all risk of loss and damages caused by Drawings, Specifications, Design Requirements or other documents prepared by Construction Contractor and used by Construction Contractor in bidding, designing and/or constructing the project to the extent that such documents are ambiguous, incomplete, contain errors or inconsistencies or fail to comply with any applicable codes, regulations and laws.</p> |
| <p>6.2. Basic Indemnification</p> | <p>1) CONTRACTOR/VENDOR (NOT PUBLIC AGENCY). If a Construction Contractor provides Work, services, studies, planning, surveys or other preparatory Work in connection with a public building or improvement, the Contractor, and any and all of its Subconsultants and/or Subcontractors under this Contract, shall indemnify and hold harmless the State of Arizona and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees, from liabilities, damages, losses and Costs, including reasonable attorney fees and court costs (including, but not limited to, primary loss investigation, judgment costs, expert witness fees, and any and all fees and costs from appellate proceedings), for any and all acts arising from or connected to the performance of this Contract but only to the extent caused by the negligence, recklessness, or intentional wrongful conduct of such Contractor or other persons employed or used by such Contractor or Subconsultants and/or Subcontractors in the performance of the Contract or subcontract, as allowed under A.R.S. Section 41-2586 (C) and A.R.S. Section 34-226. The Construction Contractor additionally agrees to indemnify the State of Arizona and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for any vicarious liability for the tortious conduct of the Construction Contractor's actions including the actions of any of the Construction Contractor's personnel or Subcontractors and/or Subconsultants. The amount and type of insurance coverage requirements set forth in the Contract shall not be construed as limiting the scope of the indemnity in this paragraph.</p> <p>2) This indemnity shall not apply if the Contractor or Subconsultant(s) and/or Subcontractor(s) is/are an agency, board, commission or university of the State of Arizona.</p> |
| <p>6.3. Patent and Copyright Indemnification</p> | <p>1) CONSTRUCTION CONTRACTOR/VENDOR (NOT PUBLIC AGENCY). With respect to Materials or Services provided or proposed by a Construction Contractor Indemnitor for performance under the Contract, Construction Contractor shall indemnify, defend and hold harmless the State of Arizona and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees against any third-party claims for liability, Costs, and expenses, including, but not limited to reasonable attorneys' fees, for infringement</p> |



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| | <p>or violation of any patent, trademark, copyright, or trade secret by the Materials and the Services. With respect to the defense and payment of claims under this subparagraph:</p> <ul style="list-style-type: none"> a) Agency shall provide reasonable and timely notification to Construction Contractor of any claim for which Construction Contractor may be liable under this paragraph; b) Construction Contractor, with reasonable consultation from Agency, shall have control of the defense of any action on an indemnified claim including all negotiations for its settlement or compromise. Construction Contractor shall provide the Agency with notice of settlement negotiations and allow the Agency to participate in negotiations, if Agency so chooses; c) Agency may elect to participate in such action at its own expense; and d) Agency may approve or disapprove any settlement or compromise, provided that, Agency shall not unreasonably withhold or delay such approval or disapproval and Agency shall cooperate in the defense and in any related settlement negotiations. <p>2) If Construction Contractor is a public agency, this paragraph does not apply.</p> |
| <p>6.4. Force Majeure</p> | <ul style="list-style-type: none"> 1) DEFINITION. For this paragraph, "force majeure" means an occurrence that is <ul style="list-style-type: none"> a) beyond the control of the affected party, b) occurred without the party's fault or negligence, and c) something the party was unable to prevent by exercising reasonable diligence. 2) Without limiting the generality of the foregoing, force majeure expressly includes acts of God, acts of the public enemy, war, riots, strikes, mobilization, labor disputes, civil disorders, fire, flood, lockouts, injunctions-intervention-acts, failures or refusals to act by government authorities, and subject to paragraph 6.5 "Performance in Public Health Emergency," declared public health emergencies. 3) Force majeure expressly does not include late delivery caused by congestion at a manufacturer's plant or elsewhere, an oversold condition of the market, late performance by a Subcontractor unless the delay arises out of an occurrence of force majeure. 4) RELIEF FROM PERFORMANCE. Except for payment of sums due at the time of Force Majeure, the parties are not liable to each other if an occurrence of force majeure prevents its performance under the Contract. If either party is delayed at any time in the progress of their respective performance under the Contract by an occurrence of force majeure, the delayed party shall provide written notice to the other no later than the following working day after the occurrence, or as soon as it could reasonably have been expected to recognize that the occurrence had effect in cases where the effects were not readily apparent. In any event, the notice must make specific reference to this paragraph specifying the causes of the delay in the notice and, if the effects of the occurrence are on-going, provide an initial notification and thereafter the delayed party shall provide regular updates until such time as the effects are fully known. To the extent it is able, the delayed party shall cause the delay to cease promptly and notify the other party when it has done so. The parties shall extend the time of completion by Contract Amendment for a period equal to the time that the results or effects of the delay prevented the delayed party from performing. 5) DELAY CAUSED BY FORCE MAJEURE IS NOT DEFAULT. Failure in performance by either party will not constitute default hereunder or give rise to any claim for damages or loss of anticipated profits or any other consequential damages if and to the extent that such failure was or is being caused by an occurrence of force majeure. 6) DEFAULT DIMINISHES RELIEF. Entitlement to relief from the effects of an occurrence of force majeure is diminished to the extent that the delay did or will result from the affected party's default unrelated to the occurrence, in which case and to that extent the other party's normal remedies and the affected party's obligations would apply undiminished. |
| <p>6.5. Performance in Public Health Emergency</p> | <ul style="list-style-type: none"> 1) Construction Contractor warrants that it will: |



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| | <p>a) Have in effect promptly after commencement a plan for continuing performance in the event of a declared public health emergency that addresses, at a minimum:</p> <ul style="list-style-type: none"> i) identification of response personnel by name; ii) key succession and performance responses in the event of sudden and significant decrease in workforce; and iii) alternative avenues to keep the project consistent with its Schedule or sufficient product on hand or in the supply chain; and iv) Provide a copy of its current plan to Agency within three (3) business days after Agency's written request. If Construction Contractor claims relief under the paragraph "Force Majeure" for an occurrence of force majeure that is a declared public health emergency, then that relief will be conditioned on Construction Contractor having first implemented its plan and exhausted all reasonable opportunity for that plan implementation to overcome the effects of that occurrence, or mitigate those effects to the extent that overcoming entirely is not practicable. <p>2) For clarification of intent, being obliged to implement the plan is not of itself an occurrence of Force Majeure, and Construction Contractor will not be entitled to any additional compensation or extension of time by virtue of having to implement it. Furthermore, failure to have or implement an appropriate plan will be a Material breach of contract.</p> |
| 6.6. Safety Standards | <p>1) Construction Contractor shall provide Materials and Services under this Contract that comply with all current applicable safety standards and regulations, including but not limited to, the Occupational Safety and Health Standards of the State of Arizona Industrial Commission, the National Electric Code and the National Fire Protection Association Standards and any other standard references in the Contract.</p> <p>2) Construction Contractor shall provide necessary protection, take all precautions for and monitor the safety of Construction Contractor personnel, Subcontractors, and Subconsultants and/or Subcontractors during the performance of Work.</p> <p>3) Construction Contractor is obligated to act to prevent threatened damage, injury or loss of persons, the Work, or property at the Site or adjacent thereto in emergencies affecting the safety or protection thereof.</p> |
| 6.7. Third Party Antitrust Violations | <p>Construction Contractor assigns to Agency any claim for overcharges resulting from antitrust violations to the extent that those violations concern Materials or services supplied by third parties to Construction Contractor toward fulfillment of the Contract.</p> |
| 7.0 Warranties | |
| 7.1 Liens | <p>Construction Contractor warrants that the Materials and Services when accepted will be and will remain free of liens or other encumbrances.</p> |
| 7.2 Guarantees and Warranties | <p>1) Construction Contractor warrants that it has carefully conducted and performed internal checking of any and all Design Requirements to ensure proper layouts and dimension completeness and clarity, and through due diligence has no knowledge of any inconsistencies, ambiguities, errors, omissions, or conflicts with regard to such Design Requirements.</p> <p>2) Construction Contractor warrants that it has advised Agency in writing of the need for any tests, studies, analysis or subconsultant services for the development of design documents.</p> <p>3) Construction Contractor warrants that construction drawings and specifications submitted for bidding or negotiation with a Construction Contractor are complete, accurate, unambiguous and in compliance with all applicable codes, laws and ordinances.</p> <p>4) Construction Contractor warrants that it is financially solvent and possesses sufficient experience, licenses, personnel, and capital to complete the services for the Agency.</p> <p>5) Construction Contractor warrants that it has visited the Project Site, is thoroughly familiar with the conditions of the Site, and will correlate its observations with the construction drawings and specifications.</p> <p>6) Construction Contractor warrants that it shall be responsible for any and all defects in the construction drawings and specifications, and other design documents</p> |



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| | <p>prepared by Construction Contractor and/or Subconsultants and/or Subcontractors, that are caused by the Construction Contractor, Subconsultants and/or Subcontractors, or any other person or firm hired by the Construction Contractor.</p> <ol style="list-style-type: none">7) Construction Contractor warrants that the Design Requirements are sufficient for the intended purpose of any and all improvements under the Contract.8) Construction Contractor warrants that the construction drawings and specifications may be built at the Site and that construction and completion of the project will not violate any zoning ordinance or use restrictions imposed by any governing authority.9) Construction Contractor warrants that all personnel or Subconsultants and/or Subcontractors used for construction administration services shall have sufficient knowledge and experience to properly carry out the duties required for the Work.10) Construction Contractor shall provide any written and signed standard warranty, and any written notarized and signed special warranty document(s) required for the Project after substantial completion but prior to final acceptance of the Work, stating warranty coverage for Materials and defects in accordance with the plans and specifications. Warranty requirements not listed in the plans and specifications shall be the greater duration of either the manufacturer standard warranty period or such duration allowed by law.11) Construction Contractor warrants that Work performed under this contract shall conform to the contract requirements and be free of any defect in equipment, Material, or design furnished, or workmanship performed by the Construction Contractor or any subcontractor or supplier at any tier. This workmanship warranty shall continue for a period of at least two (2) years or such time as permitted by law, whichever is greater.12) Construction Contractor warrants that it has reviewed the Site and found that it is suitable for the Project.13) The Construction Contractor shall repair or replace such defective Materials, equipment or workmanship to the full satisfaction of the Agency within the stipulated guarantee period without Cost to the Agency. In addition, the Construction Contractor shall remedy at the Construction Contractor's expense any damage to Agency-owned or controlled real or personal property, when that damage is the result of:<ol style="list-style-type: none">a) The Construction Contractor's failure to conform to contract requirements;b) Construction Contractor's Work; orc) Any defect or failure of equipment, Material, workmanship, or design furnished by the Construction Contractor or Subcontractor or supplier at any tier.14) This warranty shall not limit the Agency's rights under any other clause of this contract with respect to latent defects, gross mistakes, or fraud.15) The Construction Contractor shall restore any Work damaged in fulfilling the terms and conditions of this clause. The Construction Contractor's warranty with respect to Work repaired or replaced will run for two (2) years from the date of repair or replacement or such greater period as allowed by law.16) The Procurement Officer or the Agency's designated representative shall notify the Construction Contractor, in writing, within a reasonable time after the discovery of any failure, defect, or damage.17) If the Construction Contractor fails to remedy any failure, defect, or damage with regard to any item or part of the Work caused by the Construction Contractor or its respective subcontractors or suppliers at any tier within a reasonable time after receipt of notice, the Agency shall have the right to replace, repair, or otherwise remedy the failure, defect, or damage at the Construction Contractor's expense.18) GUARANTEES ACCEPTANCE OF GOODS AND SERVICES. Goods and services delivered will be subject to a complete inspection by the Agency. Acceptance criteria shall include, but is not limited to, conformity to the specifications, workmanship, quality, and material requirements. The Construction Contractor shall be responsible for the transport of the Material to and from the delivery point of any items not in compliance with the requirements of the Contract. Product returned for corrective action may delay payment. Invoices/Applications for Payment will be processed for payment only after the product is accepted. |
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| | <p>19) LATENT DEFECTS. Materials and equipment incorporated into the Work may have, or as a result of the construction process, may develop hidden defects known as latent defects. Construction Contractor shall guarantee that such latent defects, when discovered, shall be remedied at no extra Cost to the Agency, regardless of whether the defective Materials have been paid for, inspected, or previously accepted by the Agency.</p> <p>20) SERVICES PERFORMANCE. In the event of the Construction Contractor's failure to perform required Services or meet agreed upon Service levels or other Construction Contractor service standards as required by this Contract, the Construction Contractor shall perform an analysis of the cause of the service level problem and implement remediation steps as appropriate. The Design Professional and the Agency shall have the right to review the analysis and approve the remediation steps prior to or subsequent to their implementation. If Construction Contractor fails to complete any deliverable, then Construction Contractor shall:</p> <ul style="list-style-type: none"> a) Promptly perform a root-cause analysis to identify the cause of such failure; b) Use commercially reasonable efforts to correct such failure and to begin meeting the requirements as promptly as practicable; c) Provide the Agency with a report detailing the cause of, and procedure for correcting, such failure; and d) If appropriate under the circumstances, take action to avoid such failure in the future. |
| <p>7.3 Contractor Personnel</p> | <ul style="list-style-type: none"> 1) Construction Contractor warrants that its personnel will perform their duties under the Contract in a professional manner, applying the requisite skills and knowledge, consistent with industry standards, and in accordance with the requirements of the Contract. Construction Contractor further warrants that its key personnel will maintain any certifications relevant to their Work, and Construction Contractor shall provide individual evidence of certification to Agency's authorized representatives upon request. 2) The Construction Contractor shall enforce strict discipline and good order among the Construction Contractor's employees and other persons carrying out the Contract Work. The Construction Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. |
| <p>7.4 Intellectual Property</p> | <ul style="list-style-type: none"> 1) Construction Contractor warrants that the Materials and Services do not and will not infringe or violate any patent, trademark, copyright, trade secret, or other intellectual property rights or laws, except only to the extent the Specifications do not permit use of any other product and Construction Contractor is not and cannot reasonably be expected to be aware of the infringement or violation. 2) SYSTEMS AND CONTROLS. In consideration for Agency having agreed to permit Pass-Through Indemnities in lieu of direct indemnity, Construction Contractor agrees to establish and keep in place systems and controls appropriate to ensure that Agency funds under this Contract are not knowingly used for the acquisition, operation, or maintenance of Materials or Services in violation of intellectual property laws or a third party's intellectual property rights |
| <p>7.5 Compliance with Laws</p> | <ul style="list-style-type: none"> 1) If applicable, Construction Contractor warrants that the Materials and Services, and any disposal thereof bearing on performance of the Work, do and will continue to comply with all applicable federal, state, and local laws. 2) Some of the local codes with which the Work performed by the Construction Contractor must be in compliance include, but are not limited to, the Arizonans with Disabilities Act (A.A.C. R10-3-401 through 412) and American National Standards Institute's Specifications for Making Buildings and Facilities Accessible to and Usable by the Physically Handicapped; State of Arizona Fire Code; regulations related to solar energy and life cycle cost analysis (see A.R.S. § 34-452); and Water Conservation for State Facilities (see Executive Order 91-3). |
| <p>7.6 100% Construction Documents</p> | <ul style="list-style-type: none"> 1) Construction Documents shall be consistent with the Project program, construction budget, and Project Schedule. 2) Prior to the first Construction Documents phase submittal, Construction Contractor and its Subconsultants and/or Subcontractors shall review Agency's Bidding Documents for Project requirements and recommend any changes needed to make them applicable to the Project. |



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| | <ul style="list-style-type: none"> 3) Construction Contractor shall update the documents and provide additional drawings, details and specifications in sufficient detail as to be deemed complete and buildable. 4) Prior to submitting the 100% Construction Documents, Construction Contractor and its Subconsultants and/or Subcontractors shall have thoroughly checked, coordinated, and revised all documents to bring them to 100% completed level. 5) The Construction Contractor shall provide or assist with the preparation of the following: <ul style="list-style-type: none"> a) Certification Page b) Project Description c) Index to the Specifications d) Specifications and List of Drawings |
| <p>7.7 Contracted Work, Errors and Omissions</p> | <ul style="list-style-type: none"> 1) Errors, inconsistencies, ambiguities or omissions discovered by the Construction Contractor shall be reported as a written Request for Information to the Agency immediately prior to the execution of Work. 2) If the Construction Contractor performs any Work activity knowing or should have known it involves an error, inconsistency or omission in the Contract without such written notice to the Agency, the Construction Contractor shall assume full responsibility for such performance and shall bear the full Costs for correction. 3) REMEDIATION OF ERRORS. Construction Contractor bears full responsibility for errors and omissions in its Work and any and all Work of the Construction Contractor's Subconsultant's and/or Subcontractor's Work. Construction Contractor shall include in its Work, without limit or additional Cost to the Agency, all Work necessitated, in whole or in part, by any and all errors and omissions of, or breach of, the Contract by, the Construction Contractor, its Subconsultants and/or Subcontractors, or any entity working under the Construction Contractor. At a minimum, the Construction Contractor shall, at no Cost to the Agency, promptly remediate any errors, omissions, deficiencies, or contradictions in its Work to the satisfaction of the Agency. 4) ACCEPTANCE OR APPROVAL DOES NOT ALLEVIATE CONSTRUCTION CONTRACTOR'S RESPONSIBILITY FOR ERRORS. The approval, review, or acceptance of the Construction Contractor's Work by any Agency or other party does not, in any way, alleviate the Construction Contractor from its responsibility to fully remediate the Work from any errors discovered subsequently or necessary clarification of any ambiguities. The obligations of the Construction Contractor to correct defective or nonconforming Work shall not, in any way, limit the Construction Contractor's other obligations under the Contract. 5) CONSTRUCTION CONTRACTOR PERFORMING AS A CONSTRUCTION MANAGER AT RISK. When performing as a Construction Manager-at-Risk, Construction Contractor has a shared responsibility with Design Professional for discovery and resolution of discrepancies, errors, and omissions in the Contract Documents when hired by the Agency to perform pre-construction services. In such case, Construction Contractor's responsibility pertains to review, coordination, and recommendation of resolution strategies within budget constraints. 6) CONSTRUCTION CONTRACTOR PERFORMING AS DESIGN-BUILD FIRM. When performing as a Design-Build firm, Construction Contractor has sole responsibility for discrepancies, errors, and omissions in the Drawings and Specifications. |
| <p>7.8 Licenses and Permits</p> | <p>Construction Contractor warrants that it will maintain all licenses required under paragraph 3.8 [Contractor Licenses] and all required permits are valid and in force. The Construction Contractor shall secure and pay for any building permit, Arizona Department of Environmental Quality emissions permit, and other permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Work which are customarily secured after execution of the Contract and which are legally required when bids or proposals are received or negotiations concluded, unless otherwise stated in the Contract. Any required building or right of way permit applications shall be completed by Construction Contractor and filed with authorities having jurisdiction within five (5) days of the Notice to Proceed.</p> |
| <p>7.9 Operational Continuity</p> | <p>Construction Contractor warrants that it will perform without relief notwithstanding being sold or acquired; no such event will operate to mitigate or alter any of</p> |



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| | Construction Contractor's duties hereunder absent a consented delegation under paragraph 5.1 Assignments and Delegation that expressly recognizes the event. |
| 7.10 Pandemic Contractual Performance | <ol style="list-style-type: none"> 1) The Construction Contractor shall have a plan that illustrates how the Construction Contractor shall perform contractual requirements in the event of a pandemic. At a minimum, the plan shall include: <ol style="list-style-type: none"> a) Key succession and performance planning in the event of sudden significant decrease in Construction Contractor's workforce; b) Alternative methods to ensure there are products in the supply chain c) A current organizational chart and contact list. 2) In the event of a pandemic, as declared by the Governor of Arizona, U.S. Government or the World Health Organization, which makes performance of any term under this Contract impossible or impracticable, the following shall apply: <ol style="list-style-type: none"> a) The Agency may temporarily void the Contract(s) in whole or specific sections if the Construction Contractor cannot perform contractual requirements; b) The Agency shall not incur any liability if a pandemic is declared and emergency procurements are authorized by the director as per § 41-2537 of the Arizona Procurement Code; and c) The Agency may, at its sole discretion, reinstate the voided contracts or sections of contracts when the pandemic is officially declared over and/or the Construction Contractor can demonstrate the ability to perform. 3) The Agency, at any time, may request to see a copy of the written plan from the Construction Contractor. The Construction Contractor shall produce the written plan within seventy-two (72) hours of the request. |
| 7.11 Lobbying | <ol style="list-style-type: none"> 1) PROHIBITION. Construction Contractor warrants that: <ol style="list-style-type: none"> a) it will not engage in lobbying activities, as defined in 40 CFR part 34 and A.R.S. § 41-1231, et seq., using monies awarded under the Contract, provided that, the foregoing does not intend to constrain Construction Contractor's use of its own monies or property, including without limitation any net proceeds duly realized under the Contract or any value thereafter derived from those proceeds; and, upon award of the Contract, it will disclose all lobbying activities to Agency to the extent they are an actual or potential conflict of interest or where such activities could create an appearance of impropriety. b) Construction Contractor shall implement and maintain adequate controls to assure compliance with this paragraph. c) Construction Contractor shall obtain an equivalent warranty from all Subcontractors and shall include an equivalent no-lobbying provision in all Subcontracts. 2) EXCEPTION. This paragraph does not apply to the extent that the Services are defined in the Contract as being lobbying for Agency's benefit or on Agency's behalf. |
| 7.12 Survival of Warranties | All representations and warranties made by Construction Contractor under the Contract will survive the expiration or earlier termination of the Contract. |
| 7.13 Waiver of the Statute of Repose | To the fullest extent permitted by law, Construction Contractor waives Arizona's statute of repose as defined in A.R.S. § 12-552 (the "Statute of Repose"). The Construction Contractor's express written warranties stated elsewhere in the Contract, and any and all claims, actions, liabilities, damages, losses, or expenses including attorney fees and court costs, for bodily injury or personal injury (including death), will not be time-barred by the Statute of Repose. Court costs shall include, but are not limited to, costs associated with claim processing, primary loss investigation, judgment, expert witnesses, and any and all fees and costs related to appellate proceedings. |
| 8.0 State's Contractual Remedies | |
| 8.1 Agency's Right to Carry Out the Work | <ol style="list-style-type: none"> 1) If the Construction Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven-day period after receipt of written notice from the Agency to commence and continue correction of such default or neglect with diligence and promptness, the Agency may after such ten-day period, without prejudice to other remedies the Agency may have, correct such deficiencies or cause such deficiencies to be corrected. Construction Contractor shall pay any and all costs incurred by the Agency for such corrections to the Work. |



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| | <ol style="list-style-type: none"> 2) In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Construction Contractor the Cost of correcting such deficiencies, including compensation for the Designer's additional services and expenses made necessary by such default, neglect or failure. 3) Such action by the Agency and amounts charged to the Construction Contractor are both subject to prior review and confirmation by the Designer. If payments then or thereafter due the Construction Contractor are not sufficient to cover such amounts, the Construction Contractor shall pay the difference to the Agency. 4) An Agency may require that Construction Contractor provide a workplan to address the deficiencies within 48 hours of receiving the above-referenced notice from Agency. |
| <p>8.2 Consequential Damages</p> | <ol style="list-style-type: none"> 1) Construction Contractor and Agency waive claims against each other for consequential indirect, and incidental damages arising out of or relating to the Contract. This mutual waiver includes, but is not limited to: <ol style="list-style-type: none"> a) Damages incurred by the Agency for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and b) Damages incurred by the Construction Contractor for principal office expenses including, but not limited to, the compensation of personnel stationed there, for losses of financing, interest losses, bond capacity losses, business and reputation, and for loss of profit arising directly from the Work, and for indirect expenses, general office overhead, and future profits. 2) This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination. Nothing contained in this section shall be deemed to preclude an award of liquidated direct damages, when applicable, in accordance with the requirements of the Construction Contractor documents. 3) In the event the liquidated damages clause is deemed unenforceable by any tribunal or court of competent jurisdiction, the Agency's waiver of consequential damages shall be null and void. |
| <p>8.3 Nonconforming Tender</p> | <ol style="list-style-type: none"> 1) The Materials provided and Services performed must comply fully with the Contract, and providing Materials or performing Services or any portion thereof that do not comply fully constitutes a breach of Contract, in which event Agency will be entitled to exercise any remedy available to it under the Contract or laws. 2) Any Material deviation from the final bid may be deemed a breach of contract unless specifically authorized by the Procurement Officer through a contract Change Order. 3) The Agency will not accept a Material reduction and/or modification in the quality and/or quantity of the Work. |
| <p>8.4 Non-exclusive Remedies</p> | <p>Agency's rights and remedies under the Contract are not exclusive.</p> |
| <p>8.5 Right to Assurance</p> | <ol style="list-style-type: none"> 1) If Agency in good faith has reason to believe that Construction Contractor does not intend to, or is unable to, perform or continue performing under the Contract, Procurement Officer may demand that Construction Contractor promptly provide written assurance of intent to perform. Failure by Construction Contractor to provide the assurance within the time specified may be the basis for terminating the Contract or for Agency to exercise any other remedy available to it under the Contract or laws. 2) The Agency may demand any and all documents in its reasonable discretion to assure itself that the Construction Contractor has the resources and ability to perform the Contract. |
| <p>8.6 Right of Offset</p> | <ol style="list-style-type: none"> 1) Agency is entitled to offset against any sums due Construction Contractor any expenses or Costs Agency incurs or damages it has assessed against it concerning Construction Contractor's non-conforming performance or failure to carry out the Work, including any expenses, Costs, and damages to which it is entitled by the Contract or laws. 2) Further, the Agency is also entitled to the right of offset on this Contract for breach and defaults on other Contracts between the Agency and Construction Contractor. |
| <p>8.7 Stop Work Order</p> | <p>The Agency may at any time require Construction Contractor to stop all or any part of the Work by written order (a "Stop Work Order"). Upon receipt of a Stop Work Order, Construction Contractor shall immediately comply with its terms and</p> |



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| | take all reasonable steps to minimize incurring of further Costs during the period of stoppage that might be chargeable to Agency associated with the portions of the Work covered by the order. If Construction Contractor incurs losses, it may make a claim under Article 10 solely for Work performed to date of the Stop Work Order subject to the limitations set forth in this Contract. Further, upon issuance of a Stop Work Order, Construction Contractor shall take all steps necessary to ensure the safety of the Site. |
| 9.0 Contract Termination | |
| 9.1 Agency Failure to Perform | The Construction Contractor is not liable or responsible for Agency delays or suspension of Work caused solely by Agency. |
| 9.2 Gratuities | Agency may, by written notice, terminate the Contract, in whole or in part, if Agency determines that employment or a Gratuity was offered or made by Construction Contractor or a representative of Construction Contractor to any officer or employee of Agency for the purpose of influencing the outcome of the procurement or the administration of the Contract or any favorable treatment concerning the Contract or performance of the Contract. Agency, in addition to any other rights or remedies available to it, will be entitled to recover exemplary damages in the amount of three (3) times the value of the Gratuity offered by Construction Contractor. |
| 9.3 Notice to Cure | Upon receipt of any Notice to Cure, the Construction Contractor receiving the Notice must prepare a report describing its program and measures to affect the Cure of the event of default and/or anticipatory breach of Contract within the time required by the Notice to Cure. The report must be delivered to the Procurement Officer at least three (3) business days prior to the required Notice to Cure meeting with the Agency. |
| 9.4 Rights to Work Project | Should the Construction Contractor be terminated under this Contract, the Agency may continue the Project and receive copies of the Drawings, Specifications, or other documents within fourteen (14) calendar days of the termination notice. Copies will be in the format designated by the Agency. The Agency reserves the right to have these documents completed, corrected, revised or added to by another Construction Contractor |
| 9.5 Suspension or Debarment | Agency may, by written notice to Construction Contractor, terminate the Contract immediately if Agency discovers that Construction 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. Agency has taken Construction Contractor's submittal of the Offer and Acceptance Form and will take its performance under the Contract as Construction Contractor's attestation that it is not currently suspended or debarred. If Construction Contractor subsequently becomes suspended or debarred, it shall notify Procurement Officer immediately. |
| 9.6 Termination for Conflict of Interest | By A.R.S. § 38-511, Agency may terminate the Contract within three (3) years after the effective date without penalty or further obligation if any Person significantly involved in initiating, negotiating, securing, drafting, or creating the Contract on behalf of Agency is or becomes an employee or agent of any other party to the Contract in any capacity or a consultant to any other party to the Contract with respect to the subject matter of the Contract. Any such termination will be effective when Construction Contractor receives Agency's written notice of the termination unless the notice specifies a later date. |
| 9.7 Termination for Convenience | Agency may terminate the Contract for convenience and in its sole discretion, in whole or in part, at any time, and without penalty or recourse on Construction Contractor's part other than as expressly stated in the Contract. Upon receipt of Agency's written termination notice, Construction Contractor shall stop Work as directed in the notice, notify all Subcontractors of the termination and its effective date, place no further orders for Work or Materials, enter into any further Contracts for Materials or Work, terminate all Contracts regarding Work remaining to be done, take all reasonable and necessary actions to protect the Work and the Site, and minimize any further Costs that might be chargeable to Agency. Construction Contractor shall take all necessary actions to protect and preserve the Work. In the event of termination under this paragraph, all Design Requirements, plans, |



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| | <p>Specifications, Drawings, Construction Documents, data, and reports prepared by Construction Contractor under the Contract will become Agency's property and Construction Contractor shall deliver it all promptly on demand. Construction Contractor will be entitled to receive just and equitable compensation for necessary and attributable unfinished Materials on hand, Work in progress, Work completed, and Work accepted before the effective date of the termination. Should the Agency terminate the Contract under this paragraph, the Agency will not be liable for Construction Contractor lost profits or any consequential damages.</p> |
| <p>9.8 Termination for Default</p> | <ol style="list-style-type: none"> 1) In addition to the rights reserved to it under the Contract, Agency may terminate the Contract in whole or in part due to Construction Contractor's failure to: <ol style="list-style-type: none"> a) comply with any term or condition of the Contract; b) comply with any Warranty made by Construction Contractor under the Contract; c) obtain and maintain all required insurance policies, bonds, licenses, and permits; d) make satisfactory progress in carrying out the Work; and e) fail to furnish Agency with assurances satisfactory to Agency evidencing Contractor's ability to complete the Work in compliance with all the requirements of the Contract Documents. Procurement Officer shall give written notice of the termination and the reasons for it. 2) Upon termination under this paragraph, all documents, data and reports prepared by Construction Contractor under the Contract and all necessary and attributable unfinished Materials on hand, Work in progress, Work completed, and Work accepted will become Agency's property, and Construction Contractor shall deliver all of it immediately on demand. Agency may, following termination of the Contract under this paragraph, procure on terms and in the manner determined to be appropriate Materials or services to replace those that were to have been provided or performed by Construction Contractor, and Construction Contractor will be liable to Agency for any excess Cost Agency incurs in procuring such substitutes. 3) In the event the Agency terminates for default, the Agency shall be entitled to recover from the Construction Contractor any and all damages, all reasonable attorney fees and court costs (including, but not limited to, primary loss investigation, judgment costs, expert witness and/or consultant fees and any and all expenses, fees, and costs from appellate proceedings) incurred by the Agency as a result of the default. 4) If a termination for default is later determined to have been improper, such termination shall be automatically converted to a termination for convenience, and Construction Contractor's remedies and compensation shall be limited to those for a termination for convenience under the Contract. |
| <p>9.9 Work Performance Continuation Required</p> | <p>Construction Contractor shall carry on the Work and adhere to the Work Progress Schedule during all disputes, disagreements, or alternative resolution processes with the Agency. Construction Contractor shall not delay or postpone any Work except as Agency and Construction Contractor may agree in writing. Construction Contractor shall continue to perform in accordance with the requirements of the Contract up to the effective date of any Stop Work Notice issued or Termination, as directed by Agency in the notice.</p> |
| <p>10.0 Contract Claims</p> | |
| <p>10.1 Claim Resolution</p> | <p>Notwithstanding any law to the contrary, all Contract claims or controversies under the Contract are to be resolved according to Arizona Revised Statutes Title 41, Chapter 23, Article 9, and the rules adopted thereunder.</p> |
| <p>10.2 Mandatory Arbitration</p> | <p>In compliance with A.R.S. § 12-1518, the parties agree to comply in a judicial review proceeding with any applicable, mandatory arbitration requirements for the resolution of claims valued at less than \$100,000 by the State. The parties agree that any and all mandatory arbitration shall be through the American Arbitration Association ("AAA"), with the arbitrator to be selected pursuant to AAA rules and the arbitration to be conducted according to the applicable AAA rules, and with the costs of arbitration (including but not limited to the arbitrator's fees and costs) to be allocated between the parties by the arbitrator. Costs do not include attorney fees.</p> |



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| 11.0 Construction Contractor Responsibilities | |
| 11.1 Acceptance of Work | <ol style="list-style-type: none"> 1) Agency has the right to make acceptance of the Work subject to a complete inspection on delivery and installation, if installation is Construction Contractor's responsibility. Agency may apply as acceptance criteria conformity to the Contract, workmanship and quality, correctness of constituent Materials, and any other matter for which the Contract or applicable laws state a requirement, whether stated directly or by reference to another document, standard, reference specification, etc. 2) Construction Contractor shall remove and replace any rejected Work; and remove any rejected Materials from the delivery location, or from any immediate environs to which it might have been reasonably necessary to move it, carry it off the delivery premises, and subsequently deliver an equal number or quantity of conforming items. Agency will not owe Construction Contractor any payment for rejected Work, and Agency may, at its discretion, withhold or make partial payment for any rejected Materials that have been returned to Construction Contractor in those instances where Agency has agreed to permit repair instead of demanding replacement. |
| 11.2 Additional Work | <ol style="list-style-type: none"> 1) AUTHORIZATION FOR ADDITIONAL WORK REQUIRED. Construction Contractor shall only provide Additional Work when authorized in a written Order signed by the responsible Procurement Officer. The Agency will not provide compensation for unauthorized Work. 2) PROMPT NOTIFICATION. Construction Contractor shall notify the Agency with reasonable promptness when the need for additional services is identified and explain the facts and circumstances giving rise to the need. If the Agency determines that all or parts of those services are not required, the Agency shall give prompt written notice to the Construction Contractor, and the Agency shall have no further obligation to compensate the Construction Contractor for those services. 3) PROMPT AND ACCURATE SUBMITTALS. To avoid delay in the Design Schedule, Construction Contractor shall submit any Requests for Information ("RFI's) or any other necessary documentation completely, accurately, and in a timely fashion, in accordance with the Contract. |
| 11.3 Allowances | <ol style="list-style-type: none"> 1) The Construction Contractor shall include in the Contract Cost at time of offer submission any and all Allowances stated in the Contract as separate line items. Items covered by Allowances shall be supplied for such amounts and by such persons or entities as the Construction Documents may direct, but the Construction Contractor shall not be required to employ persons or entities against which the Construction Contractor makes reasonable objection. Agency shall approve all use of Allowances through the use of Authority to Use Allowance Form, Exhibit S. 2) Allowances shall: <ol style="list-style-type: none"> a) Cover the Cost to the Construction Contractor of Materials and equipment delivered to the Site and all required taxes, less applicable trade discounts; b) Construction Contractor's Costs for unloading and handling at the Site, labor, installation Costs, overhead, profit and other expenses contemplated for stated Allowance amounts shall be included in the Contract Cost and not in the Allowances; c) Construction Contractor shall take all reasonable steps to ensure the scope and budget of Allowances are correct. When Costs are more than or less than Allowances, the Contract Cost shall be adjusted accordingly by a Change Order. Construction Contractor shall notify the Agency immediately if the scope selected for the Allowance causes Costs to be more or less than Allowance. d) Amount of Allowance must reflect reasonable Cost of providing the items, whether or not the item is actually provided. |
| 11.4 As-Built Drawings | <p>Construction Contractor will review and update the As-Built Drawings on a weekly basis reflecting the changes in Specifications and working Drawings during the Construction of the Work and such updated As-built Drawings shall be made available to the construction site for review by Agency and Design Professional. Construction Contractor will submit the fully revised set of Drawings to the Design Professional upon Final Completion of the Work for the Project. Design Professional will incorporate Construction Contractor's red-line drawings and will submit the fully revised set of As-Built Drawings to the Agency upon Final Completion of the Work for the Project.</p> |



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| 11.5 Automatic Temperature Control Design | Where applicable, the Construction Contractor shall specify open protocol automatic Energy Management System (EMS)/HVAC controls systems that communicate with and are interoperable with the Agency system. The Agency's Designated Representative shall arrange an initial meeting to discuss the integration and specification of the EMS/HVAC Control System. The Construction Contractor shall thereafter incorporate these requirements into Project design and Construction Documents. |
| 11.6 Background Check | <ol style="list-style-type: none">1) Each of Construction Contractor personnel who is performing Work with information technology, correctional facilities, proprietary and sensitive data or confidential or access-restricted or in an Agency defined secured area, or as otherwise requested by Agency, must undergo the security clearance and background check procedure, which may include fingerprinting.2) Construction Contractor shall obtain and pay for the security clearance and background check and shall incorporate Cost in the Construction Contractor offer submitted to perform the Work.3) Construction Contractor personnel who will have administrator privileges on a Agency network must additionally provide identify and address verification and undergo State-specified training for unescorted access, confidentiality, privacy, and data security. |
| 11.7 Bonds, Payment and Performance | <ol style="list-style-type: none">1) Construction Contractor shall furnish as required under Title 34, Chapter 2, Article 2 or Chapter 6, as applicable, payment and performance bonds executed solely by a surety company holding a certificate of authority to transact surety business in this state issued by the Department of Insurance under A.R.S. Title 20, Chapter 2, Article 1 and in a format prescribed by A.R.S. §41-2574, binding on the parties to the contract if the value of the construction award for the Contract exceeds the amount established by section A.R.S. §41-2535, or as otherwise requested by Agency. See Exhibit N and O.2) If a surety upon a bond loses its authority to do business in Arizona, is insolvent, or otherwise cannot meet its obligations under the bond, Construction Contractor shall, within thirty (30) days of such event, furnish a replacement bond in accordance with law at no added Cost to Agency. |
| 11.8 Clean Up of Site | <ol style="list-style-type: none">1) The Construction Contractor shall at all times keep the premises, Site of Construction, surrounding area, and any storage areas neat and clean, and free from accumulation of waste Materials or rubbish caused by operation of Work under the Contract.2) At completion of the Work the Construction Contractor shall remove from Project waste Materials, rubbish, the Construction Contractor's tools, construction equipment, machinery, surplus Material, and any excess rocks and dirt from the Work, to restore affected areas of Site to a neat and clean condition satisfactory to the Agency Designated Representative.3) If the Construction Contractor fails to clean up, the Agency may do so and the Cost thereof shall be charged to the Construction Contractor.4) Any landscaped seeded or sodded area requiring repair as a result of construction damage shall be leveled, raked, and re-seeded or re-sodded with like Material at Construction Contractor's expense. |
| 11.9 Compliance with Codes | Construction Contractor shall bear full responsibility for ensuring that the Work performed under the Contract complies with all applicable laws, codes and regulations. In the case of conflicts between codes, the more stringent conditions shall apply. The Arizona Department of Administration Statutory Review is the authority having jurisdiction and is the enforcement agency for code requirements. |
| 11.10 Contractor Control of Site | <ol style="list-style-type: none">1) Construction Contractor shall have access to the Site after the Agency issues the Notice to Proceed. During any time at which the Construction Contractor has the primary use of, or control over, the location at which the Work is, or will be, performed, the Construction Contractor shall also bear all the responsibilities for that location as if it owned the Site.2) The Construction Contractor shall confine operations at the Site to areas permitted by law, ordinances, permits, and the Contract and shall not unreasonably encumber the Site with Materials or equipment. Construction Contractor storage of any Materials at the Site shall be approved in advance by the Agency. |



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| | <ol style="list-style-type: none"> 3) The Construction Contractor shall preserve and protect all structures, equipment, and vegetation (such as trees, shrubs, and grass) on or adjacent to the Work Site, which are not to be removed and which do not unreasonably interfere with the Work required under this contract. The Construction Contractor shall only remove trees when specifically authorized to do so, and shall avoid damaging vegetation that will remain in place. If any limbs or branches of trees are broken during Contract performance, or by the careless operation of equipment, or by workmen, the Construction Contractor shall trim those limbs or branches with a clean cut and paint the cut with a tree-pruning compound as directed by the Agency Designated Representative. 4) The Construction Contractor shall protect from damage all existing improvements and utilities at or near the Work Site, and on adjacent property of a third party. The Construction Contractor is responsible for locating any and all utilities including any and all underground power, electrical, plumbing, gas, or water lines and shall bear the risk in the event of any damage to the same as a result of construction activity on the Project. 5) The Construction Contractor shall repair any damage to those facilities, including those that are the property of a third party, resulting from failure to comply with the requirements of this Contract or failure to exercise reasonable care in performing the Work. If the Construction Contractor fails or refuses to repair the damage promptly, the Procurement Officer may have the Work performed and charge the Cost to the Construction Contractor. Temporary buildings (e.g., storage sheds, shops, offices) and utilities may be erected by the Construction Contractor only with the approval of the Agency Designated Representative. The temporary buildings and utilities shall remain the property of the Construction Contractor and shall be removed by the Construction Contractor at its expense upon completion of the Work. 6) The Construction Contractor shall use only established roadways, or use temporary roadways constructed by the Construction Contractor when and as authorized by the Procurement Officer. When Materials are transported in prosecuting the Work, vehicles shall not be loaded beyond the loading capacity recommended by the manufacturer of the vehicle or prescribed by any Federal, State, or local law or regulation. When it is necessary to cross curbs or sidewalks, the Construction Contractor shall protect them from damage. The Construction Contractor shall repair or pay for the repair of any damaged curbs, sidewalks, or roads. 7) DUST CONTROL. Construction Contractor shall provide dust control in accordance with rules set forth by the authorities having jurisdiction and maintain suitable equipment on hand or at the Site for dust control on the Project. 8) Construction Contractor is to ensure that the construction Site is safe and has taken all appropriate measures to ensure the safety of all workmen and persons who are physically present at the Site. 9) Construction Contractor shall be responsible at its sole Cost for all measures necessary to protect any property and improvements adjacent to the project 10) Construction Contractor shall promptly notify in writing Agency of all accidents arising out of or in connection with the Work which causes death, personal injury, and/or property damage providing full details and statements and a list of witnesses. |
| <p>11.11 Cooperation and Coordination</p> | <ol style="list-style-type: none"> 1) Agency and Construction Contractor will cooperate and participate fully in coordinating at all levels and among all the parties involved in this Project, and at their own expense. Cooperation shall mean both formal and informal interaction between and among all the parties involved in the Project, including but not limited to, Agency's Representatives, Construction Contractor's Subconsultants and/or Subcontractors, Construction Contractors, Subcontractors and outside entities as designated by Agency to promote the desired goal of a successful, non-adversarial completion of the Project on time and within budget. The requirement for Cooperation shall not be construed as a change in the terms or conditions of the Contract for the Project. 2) The Agency and Construction Contractor shall endeavor to communicate through the Design Professional. Communications by and with the Construction Contractor's Subconsultants and/or Subcontractors shall be through the |



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| | <p>Construction Contractor. Communications by and with Subcontractors and Material suppliers shall be through the Construction Contractor. Communications by and with separate Construction Contractors shall be through the Design Professional.</p> |
| <p>11.12 Schedule</p> | <ol style="list-style-type: none"> 1) SCHEDULE. The Schedule for Construction and any and all updates thereto shall include time for any and all necessary review and approvals by Agency or outside entities, as well as sufficient time for other Consultants to complete their portion of the Work. The Schedule shall be in a format and provide sufficient detailed information that is acceptable to the Agency. Construction Contractor shall provide the Agency and Design Professional with an approved baseline Schedule, within a time frame determined by the Agency, to include at a minimum initiation of construction, mobilization, procurement, installation, testing, inspection, delivery of Close-out Documents and Substantial Completion of the Work of the Contract and any other information required in the <u>Special Terms and Conditions</u>. 2) ADDITIONAL TIME. Construction Contractor shall bear the primary responsibility for determining whether additional time is required for the review of any orders or amendments to the Contract for Construction; allowing time for Agency review and approval of any such orders or amendments; and is responsible for ensuring that such time is reflected in a modified Schedule in a Change Order. 3) CONSTRUCTION CONTRACTOR REVIEW. Construction Contractor shall bear the primary responsibility for ensuring that it was allotted sufficient time in the Schedule for construction for any and all necessary reviews and approvals. The Agency and/or Design Professional shall timely review all requests for information, changes, and submittals in a timely fashion as to not delay the project. |
| <p>11.13 Construction Cost Control</p> | <p>Throughout the Project, the Construction Contractor shall keep the Project's estimated construction Cost within the Construction Budget. Construction Contractor is responsible to periodically submit to Agency, at review times mutually agreeable to Agency and Construction Contractor, a current Estimated Project Construction Cost to verify that this is accomplished. If necessary, the Construction Contractor shall schedule times with Agency to review the Construction Budget.</p> |
| <p>11.14 Construction Safety</p> | <ol style="list-style-type: none"> 1) SAFETY. Construction Contractor, Subcontractors, employees and all Site visitors, at all times on the job Site, shall furnish and wear sufficient protective gear, including but not limited to, hardhats, safety shoes and safety goggles. Construction Contractor shall also provide temporary protection measures, drinking water and temporary sanitation facilities for use by construction personnel. Construction Contractor shall provide up-to-date Material safety data sheets (MSDS) as required for Materials at the Site. Construction Contractor shall have a detailed site-specific safety plan to address State and Federal safety laws. 2) INJURIES. In the event of an incident or accident involving outside medical care for an individual on or near the Work, Construction Contractor shall notify Agency Designated Representative and other parties as may be directed promptly, but no later than twenty-four (24) hours after Construction Contractor learns that an event required medical care, supply Agency Designated Representative and Construction Contractor with an incident report no later than thirty-six (36) hours after the occurrence of the event. In the event of a catastrophic incident (one (1) fatality or three (3) or more workers hospitalized), barricade and leave intact the scene of the incident until all investigations are complete. A full set of incident investigation documents, including facts, witness names and statements, finding of cause, and remedial plans shall be provided to Agency Designated Representative within one (1) week after occurrence, unless otherwise directed by Agency. 3) ENVIRONMENTAL SAFETY Construction Contractor shall immediately stop Work activities impacted by encountering any previously unknown potentially hazardous Material, or other Materials potentially contaminated by hazardous Material, and secure the affected area, and notify Agency Designated Representative immediately. Agency Designated Representative will promptly engage qualified experts to investigate and issue a written report to Construction Contractor identifying the Material(s) found. The Agency shall remediate and render harmless the hazard caused by Agency or if an unknown and could not have been reasonably foreseen by Construction Contractor. |



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| | <p>4) TRENCHING AND EXCAVATING PLAN. Construction Contractor is required to submit a trenching and excavation plan to Agency Designated Representative prior to commencing operations unless an engineered plan is part of the Contract Documents.</p> <p>5) ASBESTOS CONTAINING MATERIAL. The Construction Contractor shall not knowingly use, specify, request or approve for use any asbestos containing Materials or lead-based paint in the Work. When a specific product is specified, the Construction Contractor shall endeavor to verify that the product does not include asbestos containing Material.</p> |
| <p>11.15 Construction Meetings</p> | <p>Construction Contractor shall attend regular construction meetings with the Agency at the Project Site with duration and frequency determined by the Agency for the Project.</p> |
| <p>11.16 Correction of Defects and Non-Compliant Work</p> | <p>1) Construction Contractor shall use due care in inspections and observations to determine non-conformance.</p> <p>2) Design Professional shall keep agency informed of progress and quality of Work and use due care to guard against defects and deficiencies in Construction Contractor's Work. Should the Design Professional and/or the Agency Designated Representative identify Work as noncompliant with the Contract Documents, upon notice Construction Contractor shall immediately correct such Work at no additional Cost to the Agency. The approval of Work by either Design Professional or Agency Designated Representative does not relieve Construction Contractor from the obligation to comply with all requirements of the Contract Documents.</p> <p>3) Construction Contractor shall take any and all steps to meet the requirements of the Project Specifications. If Construction Contractor fails to do so, the Agency will require correction and full compliance. After corrective action is taken, the Agency will retest to determine compliance with the Specifications. Construction Contractor shall be responsible for the Cost of the additional testing and inspections, and such Cost shall be deducted from progress payment to Construction Contractor.</p> <p>4) Construction Contractor shall, at no additional Contract Cost and without entitlement to extension of any delivery deadline or specified time for performance, remove or exchange and replace any defective or non-conforming delivered or installed Materials or Work.</p> <p>5) Construction Contractor shall bear the expense of making good all Work of Agency other contractors destroyed or damaged by removal or replacement of defective Construction Contractor Work. Agency shall equally enforce this clause against any Agency other contractors.</p> <p>6) If Construction Contractor fails to take prompt action to comply with the Contract Documents in a timely manner, as determined by the Agency, Agency will be entitled to exercise its remedies under paragraph 8.6 [Right of Offset] of the Uniform Terms and Conditions, or any other remedies set forth in the Contract.</p> <p>7) Whether Agency will permit Construction Contractor to repair in place or demands that Construction Contractor remove and replace is at Agency's discretion in each instance, provided that, Agency shall not apply that discretion punitively if repair in place is practicable and doing so would not create safety hazards, put property at risk, unreasonably interfere with operations, create public nuisance, or give rise to any other reasonable concern on Agency's part.</p> <p>8) AGENCY ACCEPTANCE OF DEFECTIVE WORK. At the absolute discretion of the Agency, the Agency may decide to accept defective Work, instead of requiring correction or removal and replacement of defective Work. Construction Contractor shall pay all claims, Costs, losses and damages attributable to Agency's evaluation of and determination to accept such defective Work. If any such acceptance occurs prior to recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents and compensating the Agency for the diminished value of the project resulting from the defective Work. If the acceptance occurs after such recommendation, an appropriate amount will be paid by Construction Contractor to Agency after a calculation by Agency of the diminution in value of the project resulting from defective Work.</p> <p>9) The Construction Contractor's obligations to perform Warranty Work will survive the acceptance of any Work and any termination of the Contract.</p> |



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- 10) CONSTRUCTION CONTRACTOR NON-COMPLIANT WORK. Should the Design Professional and/or the Agency Designated Representative identify Work as noncompliant with the Contract Documents, Design Professional and/or Agency Designated Representative shall communicate the finding to Construction Contractor, and Construction Contractor shall correct such Work at no additional Cost to the Agency. The approval of Work by either Design Professional or Agency Designated Representative does not relieve Construction Contractor from the obligation to comply with all requirements of the Contract Documents.
- 11) AGENCY MAY CORRECT NON-COMPLIANT WORK. Agency shall issue a written notice to Construction Contractor to correct and remedy any deficiency including but not limited to
 - a) Remove and replace rejected Work, or
 - b) Construction Contractor failure to perform Work in accordance with the Contract Documents; or
 - c) Construction Contractor fails to comply with other provisions of the Contract Documents.
- 12) If, in the opinion of the Agency, significant progress to correct the deficiency by the Construction Contractor has not been made, within seven (7) days, the Agency may exercise any actions necessary to remedy the deficiency including but not limited to:
 - a) Exclude Construction Contractor from all or part of the Site;
 - b) Take possession of all or part of the Work, and
 - c) Suspend Construction Contractor 's services related thereto, and
 - d) Incorporate in the Work all Materials and equipment stored for the Project at the Site or for which Agency has paid Construction Contractor but which are stored elsewhere.
 - e) Hire a replacement contractor or take other measures that are reasonably necessary to correct the noncompliant Work. Any and all Costs incurred shall be paid by the Construction Contractor or deducted from any amounts due or that may be due Construction Contractor under this or any other contract with the State of Arizona. Costs, shall include, but not be limited to, repair and replacement Costs, labor and material Costs, removal Costs, design Costs, administrative expenses, and any other Costs and expenses caused by Construction Contractor's non-compliance.
- 13) Construction Contractor shall allow the Agency, its agents and employees, Agency's other Construction Contractors, Construction Contractors and Subconsultants and/or Subcontractors access to the Site to enable Agency to exercise the rights and remedies under this paragraph. All claims, Costs, losses and damages incurred or sustained by the Agency in exercising such rights and remedies will be charged against Construction Contractor and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work. Such claims, Costs, losses and damages will include but not be limited to all Costs of repair or replacement of Work of others destroyed or damaged by correction, removal or replacement of Construction Contractor's defective Work. Construction Contractor shall not be allowed an extension of the Contract times (or Milestones), or claims of damage because of any delay in the performance of the Work attributable to the exercise by Agency of Agency's rights and remedies hereunder.
- 14) CONSTRUCTION CONTRACTOR NON-COMPLIANT WORK. If the Construction Contractor Materially fails to furnish services in compliance with the approved Project Schedule or any subsequently approved amendments to the Schedule or the Construction Contractor's services, or deliverables are unusable for their intended purpose and these failures are a Material breach of this Contract, then Agency, in its reasonable discretion, and after failure of Construction Contractor to respond to the Notice to Cure, may Contract with another Construction Contractor to complete the services or Work product, and Construction Contractor shall pay the Agency for the difference between the balance under Construction Contractor's Contract with Agency and the amount charged by the replacing Construction Contractor to complete Construction Contractor's Scope of Work.
 - a) Agency will provide Construction Contractor with the itemized Costs as they are being incurred.



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| | <ul style="list-style-type: none"> b) Prior to contracting with another Construction Contractor, the Agency shall provide Consultant with a Notice to Cure, as described in these Uniform Terms and General Conditions. c) Should the Construction Contractor failure to Cure the Material breaches of this Contract, as identified in the Notice to Cure, the Agency may pursue any of the available remedies for breach of Contract available in Section 8 above. d) It is understood that if the Construction Contractor materially breaches this Contract and the Agency Terminates for Default under this Contract, Construction Contractor shall not be entitled to any sums due or that may become due under this Contract. |
| 11.17 Corrective Action Required | <ul style="list-style-type: none"> 1) Notwithstanding any other guarantees, general warranties, or particular warranties Construction Contractor has given under the Contract, if Construction Contractor fails to perform any Material portion of the Work, including failing to complete any contractual deliverable, or if its performance fails to meet agreed-upon service levels or service standards set out in or referred to in the Contract, then Construction Contractor shall perform a root-cause analysis to identify the source of the failure and use all commercially reasonable efforts to correct the failure and meet the Contract requirements as promptly as is practicable. 2) Construction Contractor shall provide to Agency a report detailing the identified cause and setting out its detailed corrective action plan promptly after the date the failure occurred (or the date when the failure first became apparent, if it was not apparent immediately after occurrence). 3) Agency may demand to review and approve Construction Contractor's analysis and plans, and Construction Contractor shall make any corrections Agency instructs and adopt Agency's recommendations so far as is commercially practicable, provided that, Agency may insist on any measures it determines within reason to be necessary for safety or protecting property and the environment. 4) Construction Contractor shall take the necessary action to avoid any like failure in the future, if doing so is appropriate and practicable under the circumstances |
| 11.18 Cutting and Patching | <ul style="list-style-type: none"> 1) The Construction Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. 2) The Construction Contractor shall not damage or endanger a portion of the Work or fully or partially completed Construction of the Agency or separate Construction Contractors by cutting, patching, or otherwise altering such Construction, or by excavation. The Construction Contractor shall not cut or otherwise alter such Construction by the Agency or a separate Construction Contractor except with written consent of the Agency and of such separate Construction Contractor; such consent shall not be unreasonably withheld. The Construction Contractor shall not unreasonably withhold from the Agency or a separate Construction Contractor the Construction Contractor's consent to cutting or otherwise altering the Work. |
| 11.19 Contractor Agreements, Communication | The Agency will ensure that Construction Contractors receive the necessary communication to perform the required Work, and shall promptly notify Construction Contractors of any and all communications that the Agency determines may materially affect the Construction Contractor's Work. |
| 11.20 Energy Efficiency | Upon request by the Agency, Construction Contractor will analyze the Work or related components for energy efficiency gains including, but not limited to Life Cycle Costing, pursuant to A.R.S. 34-452. |
| 11.21 Examination of Site | <ul style="list-style-type: none"> 1) The Construction Contractor acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of the Work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the Work or its Cost. Construction Contractor and its key personnel shall visit the Project Site to become familiar with existing Site conditions for the Agency Project and visually survey for coordination of the Work, which may include but not limited to, the Site location and size, Site and adjacent perimeter, utility capacities, conditions bearing upon transportation, disposal, handling, and storage of Materials, the conformation and conditions of the ground, the character of equipment and facilities needed preliminary to and during Work performance, and connection areas of external utilities, all relevant areas of any existing buildings to be altered, ceiling, interior, exterior, and concealed spaces, prior to submitting an Offer for the Work. |



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| | <p>2) The Construction Contractor shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the Construction Contractor with the solicitation prior to bid submittal and Contract before commencing Work.</p> <p>3) The Construction Contractor acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface Materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the Site, including all exploratory Work done by the Agency, as well as from the drawings and specifications made a part of this Contract. Any failure of the Construction Contractor to take the actions described and acknowledged in this paragraph will not relieve the Construction Contractor from responsibility for estimating properly the difficulty and Cost of successfully performing the Work, or for proceeding to successfully perform the Work without additional expense to the Agency.</p> <p>4) The Agency assumes no responsibility for any conclusions or interpretations made by the Construction Contractor based on the information made available by the Agency. Nor does the Agency assume responsibility for any understanding reached or representation made concerning conditions which can affect the Work by any of its officers or agents before the execution of this contract, unless that understanding or representation is expressly stated in this Contract.</p> |
| <p>11.22 Forced Substitutions</p> | <p>Forced substitutions will not be permitted; Construction Contractor shall obtain Agency's prior written consent before making any substitution for any Material or Service covered by the Contract.</p> |
| <p>11.23 Hazardous Materials, Substances, or Waste</p> | <p>1) The rights and liabilities of the parties when a hazardous substance is encountered are specified by A.R.S. § 32.-1129.03.</p> <p>2) Construction Contractor shall timely provide Agency with any "Safety Data Sheets" (SDS) and any other hazard communication documentation required under the US Department of Labor's Occupational Safety and Health Administration (OSHA) "Hazard Communication Standard" (often referred to as the "HazCom 2012 Final Rule") that is reasonably necessary for Agency to comply with regulations when it or its other Construction Contractors install, handle, operate, repair, maintain or remove any Materials. Note that, in the past, those documents might have been referred to as "Material Safety Data Sheets" or "Product Safety Data Sheets", but Agency (and this Contract) use only the more up-to-date "SDS" reference.</p> <p>a) Construction Contractor shall ensure that all its relevant personnel, to the extent they are Construction Contractor's responsibility under the Contract, understand the nature of and hazards associated with, the design, shipping, handling, delivery, installation, repair and maintenance of any portion of the Work that is, contains or will become upon use a hazardous Material, with "hazardous Material" being any Material or substance that is:</p> <p>b) Identified now or in the future as being hazardous, toxic or dangerous under applicable laws; or</p> <p>c) Subject to statutory or regulatory requirement governing special handling, disposal or cleanup.</p> <p>d) Construction Contractor shall provide and maintain SDS on-Site as required for the Work.</p> <p>3) CONSTRUCTION CONTRACTOR HAZARDOUS WASTE RELEASE. Construction Contractor shall refrain from release of a Hazardous Substance on Agency property during the Work. This includes a Release of a Hazardous Substance pre-existing on Agency property under the following circumstances:</p> <p>a) If Agency has made Construction Contractor aware of the existence of the Hazardous Substance pre-existing on Agency's property and if Agency has provided an area free from the Hazardous Substance sufficient for Construction Contractor to perform the Work; or</p> <p>b) If Agency has not made Construction Contractor aware of the pre-existing Hazardous Substance on Agency's property, but Construction Contractor or any Subcontractor failed to act reasonably when it encountered the Hazardous Substance.</p> <p>4) Construction Contractor shall report immediately to Agency Designated Representative any spills of oil, gas, chemicals or any hazardous Materials. Construction Contractor shall expedite all approved mitigation measures.</p> |



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| <p>11.24 Inclement Weather Day</p> | <ol style="list-style-type: none"> 1) RAIN DELAY. Construction Contractor bears the risk of rainfall activity unless delayed on a critical path for more than 7 days. 2) Construction Contractor shall immediately notify the Agency Designated Representative on the day, and any subsequent days throughout the Project, the Construction Contractor is unable to perform Work at the Site on the critical path for more than seven (7) continuous normal Work hours due to inclement weather or rain. The Agency Designated Representative shall confirm the weather conditions and provide a written confirmation to the Construction Contractor. 3) Construction Contractor shall submit to the Design Professional and Agency Designated Representative for review a Change Order Request with the number of days the Construction Contractor is requesting a no Cost time extension for Substantial Completion for inclement weather or rain in excess of normal rain fall, along with documentation of the weather days that occurred, and the impact on the critical path Work no later than the end of the month in which the inclement weather day or days occurred. Failure of Construction Contractor to submit a Change Order Request in accordance with this paragraph requirement shall constitute a waiver of additional time for Substantial Completion. Agency Representative shall be the final decision maker on the number of inclement weather days in any Construction Contractor properly submitted Change Order Request for extension of time for Substantial Completion in the event of disagreement between the Construction Contractor and Agency Designated Representative. Average days of rain per month will be determined by meteorological data obtained from the closest National Weather Service Station to the Project Site. |
| <p>11.25 Inspection and Material Testing</p> | <ol style="list-style-type: none"> 1) All Materials and equipment used in the construction of the Project shall be subject to inspection and testing in accordance with generally accepted standards, as required and defined in the Contract Documents. 2) CONSTRUCTION CONTRACTOR RESPONSIBILITIES. Construction Contractor shall provide, at Construction Contractor's expense, the testing and inspection services required by the Contract Documents. Construction Contractor shall provide such equipment and facilities as are required for conducting field tests and for collecting and forwarding samples of sufficient size for test purposes. No Materials or equipment represented by samples are to be used until tests, if required, have been made and the Materials or equipment are found to be acceptable. 3) UNFIT FOR USE AFTER APPROVAL. Any Material which becomes unfit for use after approval thereof shall not be incorporated into the Work. Approvals or failures to properly inspect or test shall not relieve Construction Contractor from its obligation to perform the WORK in accordance with the requirements of the Contract Documents and to also inspect Construction Contractor's own Work. Failure to discover, inspect, or timely report shall not excuse Construction Contractor from full performance of the Work. 4) TIMELY NOTICE. Construction Contractor shall notify Agency Designated Representative and/or Design Professional in writing if any Work will need to be inspected, tested, or approved by someone other than Construction Contractor. Construction Contractor shall coordinate with the Agency and Design Professional well in advance of such testing, inspection, or approval process. Should an inspection, test, or approval be required under this paragraph, Construction Contractor shall bear the sole responsibility for updating the Work Progress Schedule. 5) NON-CANCELLATION OF SCHEDULED INSPECTIONS. Construction Contractor shall bear all Costs, for any and all instances, in which Construction Contractor fails to cancel no less than twenty-four (24) hours in advance any Construction Contractor scheduled inspection or testing date and time in which the Work will not be or is not ready for the scheduled inspection or testing. 6) RETESTING FOR WORK. Construction Contractor shall be responsible for and shall pay all Costs in connection with non-cancellation of scheduled inspections, retesting for Work or Materials found defective or unsatisfactory, including tests covered in this section below entitled "Agency Responsibilities". All Costs for the purpose of paragraph 11.32.4-5 include the standby and travel time for the Agency testing representative, the Design Professional and Agency Designated |



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| | <p>Representative when due to Construction Contractor's inability to be prepared for the untimely or non-cancelled testing time and date scheduled and retesting due to Construction Contractor defective or unsatisfactory Work. Agency may withhold these Cost expenses from any payment due to Construction Contractor.</p> <p>7) COVERED WORK. Any Work covered by Construction Contractor contrary to the Contract Documents or written instructions of Design Professional or Agency Designated Representative, shall be uncovered at the request of the Design Professional or the Agency Designated Representative for observation and replaced at Construction Contractor's expense. Construction Contractor shall furnish all necessary labor, Materials, tools, and equipment to uncover, expose, or otherwise make available for observation, testing, or inspection any covered Work portion the Agency Designated Representative or Design Professional may require for inspection or testing by others. If Work is found defective, Construction Contractor shall bear all expenses of such uncovering, exposure, observation, inspection and testing, and of satisfactory reconstruction. If Work is not found defective, Construction Contractor shall be allowed an increase in the Contract Cost, or an extension of time, or both, through an issued Change Order directly attributable to such uncovering, exposure, observation, inspection, testing, and reconstruction.</p> <p>8) OBSERVABLE DEFECTS. Observable defects are those that are discoverable by routine testing and inspection procedures or by implementing special tests as required or implied by the Specifications. Defects discovered shall be repaired or removed by Construction Contractor as these are identified.</p> <p>9) SUBMITTALS. Written reports of tests and engineering data furnished by Construction Contractor for Design Professional's review of Materials and equipment proposed to be used in the WORK shall be submitted as specified for Shop Drawings.</p> <p>10) AGENCY RESPONSIBILITIES. Agency will provide any inspection and testing services not provided by the Construction Contractor as required by the Contract Documents. Tests will be made by an accredited testing laboratory selected by the Agency. Except as otherwise provided in the <u>Special Terms and Conditions</u>, or the Specifications, sampling and testing of all Materials and the laboratory methods and testing equipment will be in accordance with the latest standards and methods of the applicable national standards.</p> |
| <p>11.26 Key Personnel</p> | <p>1) AUTHORITY. The Construction Contractor shall designate which of its employees have the authority to enter into agreements with the Agency on behalf of the Construction Contractor, and which of its employees, its Subcontractors, Subconsultants and/or Subcontractors, will bear the primary responsibility for the completion of the Work.</p> <p>2) REMOVAL OF PERSONNEL. Notwithstanding that Construction Contractor is in every circumstance responsible for hiring, assigning, directing, managing, training, disciplining, and rewarding its personnel, Agency may at its discretion and, without the obligation to demonstrate cause, instruct Construction Contractor to remove any of its personnel from Agency's facilities or from further assignment under the Contract. In such cases, Construction Contractor shall promptly replace them with other personnel having equivalent qualifications, experience, and capabilities. The Agency Designated Representative may require, in writing, that the Construction Contractor remove from the Work any employee the Agency Designated Representative deems incompetent, careless, or otherwise objectionable.</p> <p>3) PERSONNEL SUBSTITUTIONS. Construction Contractor shall not be permitted to substitute Construction Contractor Key Personnel, Subcontractors, or Subconsultants and/or Subcontractors after offer submittal, without the prior written approval of the Agency Designated Representative. Requests shall be made in writing detailing the reasons for the requested change and shall not commence without written approval from Agency. The Agency has the right to the same kind and quality of the employee initially offered.</p> <p>4) ROLE APPROVALS. Construction Contractor Key Personnel designated in <u>Offer Documents</u> shall be deemed approved for the roles and responsibilities stated unless expressly stated otherwise by the Agency prior to execution of the Contract.</p> |



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| <p>11.27 Labor and Materials</p> | <ol style="list-style-type: none">1) Construction Contractor shall perform Work during regular business hours unless such non-normal Work hours are required by the Contract Documents and not permit overtime Work. Agency Designated Representative may approve alternate Work hours that neither add additional Cost nor time to the Contract Cost or Project Substantial Completion.2) All equipment, Materials, and articles incorporated into the Work covered by this Contract shall be new and of the most suitable grade for the purpose intended, shall be stored, applied, installed, connected, erected, used, cleaned and conditioned by Construction Contractor in accordance with the instructions of the applicable manufacturer, fabricator, supplier or distributor, unless otherwise specifically provided in the Contract Documents.3) References in the Specifications to equipment, Materials, articles, or patented processes by trade name, make, or catalog number, shall be regarded as establishing a standard of quality, function, and type, and shall not be construed as limiting competition.4) All Work under this Contract shall be performed in a skillful and workmanlike manner. Construction Contractor shall provide competent, suitably qualified personnel to survey, lay-out, and construct the Work as required by the Contract Documents and maintain good discipline and order at the Site at all times.5) Construction Contractor is solely responsible for construction means, methods, techniques, sequences or procedures, for safety precautions and programs, protection of installed Work, for coordinating all portions of the Work under the Contract and quality controls in connection with the Work. and will utilize the above so as not to destroy Materials for reuse or to remain the property of the Agency6) The Construction Contractor shall be responsible for all Materials delivered and Work performed until completion and acceptance of the entire Work, except for any completed unit of Work which may have been partially accepted under the Contract. Construction Contractor shall remain responsible for the care and protection of Materials and Work in the areas where Punch List items are completed until Final Completion.7) The Construction Contractor shall provide and pay for labor, Materials, equipment, tools, construction equipment and machinery, drinking water, water, heat, ventilation, utilities, barricades, lighting, construction and warning signs, temporary fire protection, transportation, temporary facilities, fencing, appliances, fuel, power, light, heat, telephone, sanitary facilities, and services necessary for the construction, performance, testing, start-up, inspection and completion of the Work. Any temporary sanitation facilities shall be serviced a minimum of one (1) time weekly.8) Construction Contractor shall install and maintain temporary fencing with lockable gates as indicated or directed by the Agency Designated Representative.9) Materials, equipment or items required for Work which are shown on the Drawings but not mentioned in the Specifications or Materials, equipment or items required by the Specifications but not shown on the Drawings, shall be furnished and installed the same as though both shown on the Drawings and required by the Specifications.10) Materials as-shipped must comply with applicable safety regulations and standards. Unless expressly stated otherwise in the <u>Scope of Work</u>, Agency is not responsible for making any Materials safe or compliant following acceptance and is relying exclusively on Construction Contractor to deliver and install only products that are already safe and compliant.11) Construction Contractor shall pursue with diligence the procurement of any long-lead-material or equipment required for the Work and provide the Agency Designated Representative with an anticipated and consistently updated schedule for the delivery.12) Materials and equipment procured and installed by the Construction Contractor shall be in accordance with Specifications and derived from the energy life cycle Cost analysis pursuant to the latest revision of A.R.S. §34-452.13) For any Agency furnished equipment or Material that will be in the care, custody, and control of Construction Contractor, Construction Contractor is responsible for damage or loss. Agency shall deliver to Construction Contractor a complete list and respective values of such Materials or equipment and make an equitable |
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| | <p>adjustment to the contract amount for any increase in Cost of Builder's Risk insurance.</p> <p>14) Construction Contractor shall provide and install weather-tight or temporary enclosures for protection of in progress and completed construction Work from exposure and weather. Construction Contractor shall remove protection when no longer needed.</p> <p>15) Construction Contractor shall store Materials in their original packaging with any and all seals and labels intact and visible.</p> <p>16) Construction Contractor shall remove Agency-salvaged items with care and in a workmanship-like manner and deliver items not being reinstalled, ready for use, to a nearby area as instructed by the Agency Designated Representative.</p> |
| 11.28 Liquidated Damages | <p>1) The Construction Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract time.</p> <p>2) Time limits stated in the Contract are of the essence of the Contract. By executing the Contract, the Construction Contractor confirms that the Contract time is a reasonable period for performing the Work. Any Construction Contractor delay beyond Substantial and Final Completion dates shall be subject to liquidated damages. Liquidated damages shall be assessed as detailed in the <u>Special Terms and Conditions</u>.</p> |
| 11.29 Meeting Minutes | Construction Contractor or Agency authorized Construction Contractor substitute, shall attend and draft complete minutes of each Project design and construction meeting between Construction Contractor, Agency and Design Professional, and submit them to Agency for approval within five (5) calendar days after each Project conference. |
| 11.30 Observations | Design Professional, Agency Designated Representative, and/or Construction Contractor observations shall be for the purpose of ascertaining the progress of the Work, to include but is not limited to, the character, scope, quality and detail of construction (including workmanship and Materials) compliance with the design expressed in the Contract Documents, directives of the Agency Designated Representative, approved product data and samples and clarification drawings. Observations shall be separate from any inspections which may be provided by the Agency. Any Agency provision of inspection services, if any, shall not relieve Construction Contractor of its responsibilities under this Contract. |
| 11.31 Pre-Bid Conference Site Visit | Agency's Procurement Officer may conduct, and Construction Contractor and its Subconsultants and/or Subcontractors may attend and participate in pre-bid conferences and pre-bid Site visits with potential bidders to help identify questions that bidders may raise during the Bidding phase. Questions from prospective Bidders shall be collected by the Agency's Procurement Officer during these conferences and Site visits. No questions shall be answered at these events which require interpretation, clarification or modifications of the Contract Documents |
| 11.32 Preconstruction Conference | Agency may conduct a Preconstruction conference after Contract award and before Construction Contractor starts Work at the Project Site. Conference discussion will establish the lines of communication among the parties as to the Work, coordination of Work, and procedures and handling of the Schedule of Values, Shop Drawing and other submittals, Construction Schedule, and Payment Application processing. The Construction Contractor, Construction Contractor's Superintendent, and Construction Contractor's designated safety officer shall attend the Pre-Construction Conference. The Design Professional shall attend if requested by Agency. |
| 11.33 Project Close Out | Construction Contractor shall submit Project Close Out documents as listed in Exhibit M in appropriate quantities as indicated in the Contract Documents to the Construction Contractor. Construction Contractor shall ensure documents are complete and accurate and provide written acceptance to the Agency. Construction Contractor shall not submit final Application for Payment until documents are accepted by the Agency. |
| 11.34 Proprietary Specifications | <p>1) Under A.R.S. § 34-104, if a Contractor or the Agency includes bidding, contracting, or purchasing specifications that are proprietary to one supplier, distributor, or manufacturer, then the details of the essential characteristic of that product will be included in the <u>Special Terms and Conditions</u> with a statement indicating that the</p> |



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| | <p>Contractor shall consider alternative products which have the aforementioned desired essential characteristics.</p> <p>2) Design Professional shall consider, and provide recommendations to the Agency to either approve or reject, any and all alternative product proposals that are submitted at least eight (8) days prior to the deadline for receiving bids for this Solicitation. If any alternative product proposal is approved, the Design Professional shall modify the bidding documents to include the alternative product proposal by the end of the fifth day prior to the deadline for receiving bids and publish the documents that same day. If the Design Professional considers rejection of any alternative product proposal, the Design Professional shall provide the Agency with notice of that rejection, including the details of the alternative product proposal, prior to the deadline for receiving bids.</p> <p>3) No modification shall be made without the approval of Agency.</p> |
| <p>11.35 Recalls</p> | <p>The Construction Contractor shall provide the Agency within one business day notice of any recall, technical service bulletin, or other important notification affecting the Work. (collectively, recalls" hereinafter). Notwithstanding whatever protection Construction Contractor might have under A.R.S. § 12-684 with respect to a manufacturer, Construction Contractor shall handle recalls entirely and without obligation on Agency's part, other than to permit removal of installed products, retrieval of stored products, etc., as necessary to implement the recall.</p> |
| <p>11.36 Recovery of Work Effort</p> | <p>At any time, the Construction Contractor presents a Work Progress Schedule and the forecast indicates the Construction Contractor will not finish critical path or milestone Work within fourteen (14) days of the time originally scheduled for completion of the Work (potentially causing a delay of the Substantial Completion date), the Construction Contractor shall provide a new Recovery plan for Work to the Agency Designated Representative. The Construction Contractor new Recovery plan for Work shall address at a minimum additional efforts for concurrent operations, logic and sequence changes, additional manpower, additional shifts, or overtime Work at no Cost or extension of time for Substantial Completion to the Agency. Upon approval of the Agency Designated Representative the recovery plan for Work will become the updated Work Progress Schedule.</p> |
| <p>11.37 Record Documents</p> | <p>1) UPDATING RECORD DOCUMENTS. Design Professional or other party specified by Agency shall be responsible for updating the Record Documents for all Construction Contractor initiated documents and changes to the Contract Documents due to coordination and actual field conditions, including RFIs. Design Professional shall be responsible for updating the Record Documents for any addenda, Change Orders, Construction Contractor supplemental instructions and any other alterations to the Contract Documents generated by Construction Contractor or Agency.</p> <p>2) MAINTAIN AT SITE. Construction Contractor shall maintain at the Site one copy of all Drawings, Specifications, addenda, approved submittals, Contract modifications, schedules, and all Project correspondence and provide Agency and Construction Contractor access to these documents for reference and examination. Construction Contractor Keep current and maintain Drawings and Specifications in good order with postings and markings to record actual conditions of Work and show and reference all changes made during construction, and reflect the actual field conditions and representations of the Work performed, whether it be directed by addendum, Change Order or otherwise.</p> <p>3) MONTHLY UPDATE. Record Documents shall be updated a minimum of monthly prior to submission of a Payment Application or as otherwise directed by Agency. Construction Contractor failure to maintain current Record Documents shall constitute cause for Agency denial of a Progress Payment otherwise due.</p> <p>4) TRANSFER OF RECORD DOCUMENTS TO AGENCY. Construction Contractor shall furnish a copy of its marked-up Record Documents and a preliminary copy of each instructional manual, maintenance and operating manual, parts catalog, wiring diagrams, spare parts, specified written warranties and like publications, or parts for all installed equipment, systems, and like items and as described in the Contract Documents prior to requesting Substantial Completion inspection with the Construction Contractor. After review by the Construction Contractor and acceptance by the Agency Designated Representative, one (1) electronic media</p> |



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| | <p>copy and one (1) reproducible copy of the Record Documents shall be provided in the format designated by the Agency Designated Representative.</p> <p>5) PREPARATION OF RECORD DOCUMENTS. Record Documents shall be carefully and neatly prepared by a competent drafter familiar with the Work.</p> |
| <p>11.38 Requirements at Location</p> | <p>1) Construction Contractor acknowledges that the location of its Work for the Project might be inside an industrial building, institutional building, or one of various office types and classes and Construction Contractor personnel shall conduct themselves cordially and professionally with Agency personnel and the public.</p> <p>2) When performing the Work requires Construction Contractor personnel to Work inside a secured perimeter at certain institutional facilities such as prisons where prior clearances are required, Construction Contractor shall contact the facility directly to confirm its most-current security clearance procedures, allowable hours for Work, visitor dress code, and other applicable rules. Agency will neither allow extra charges for wait time, comebacks, or the like nor excuse late performance if Construction Contractor has failed to make the confirmation or comply with the applicable conditions.</p> <p>3) Construction Contractor shall ensure Construction Contractor personnel and Subconsultants and/or Subcontractors performing Work at the Project Site:</p> <ul style="list-style-type: none"> a) Park in any assigned location at the Site; b) Have proper State or federal issued identification within their possession at all times; c) No eating, drinking, or smoking except in designated areas. <p>4) Construction Contractor shall adequately monitor and control noise levels.</p> |
| <p>11.39 Returns</p> | <p>1) Agency may, at its discretion, return for full credit and with no restocking charges any delivered Materials unused in the original packaging, including any instruction manuals or other incidental item that accompanied the original shipment, within 30 (thirty) days after receipt.</p> <p>2) If Agency elects to return delivered Materials, then Agency shall pay all freight, delivery, and transit insurance Costs to return the products to the place from which Construction Contractor shipped them, provided that, if Agency returns delivered Materials because they are defective or non-conforming or for any other reason having to do with Construction Contractor fault or error, then Agency will not be responsible for paying freight, delivery, or transit insurance Costs to return the products and may, at its discretion, either have those billed directly to Construction Contractor or offset them under paragraph 8.6 [Right of Offset].</p> |
| <p>11.40 Schedule of Values</p> | <p>Prior to the execution of Work, the Construction Contractor shall submit to the Agency for approval a Schedule of Values (See Exhibit R) allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy. This Schedule of Values, unless objected to by the Design Professional and/or Agency Designated Representative, shall be used as a basis for reviewing the Construction Contractor's Payment Applications. The Schedule of Values shall include quantities and unit prices aggregating the Contract Cost, and for lump sum items shall subdivide the Work into component parts in sufficient detail to serve as the basis for Progress Payments during construction.</p> |
| <p>11.41 Shop Drawings, Product Data and Samples</p> | <p>1) The Construction Contractor shall maintain at the Site for the Agency one record copy of the Drawings, Specifications, addenda, Change Orders and other Modifications, in good order and marked currently to record changes and selections made during construction, and in addition approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Design Professional and/or Agency and shall be delivered to the Design Professional for submittal to the Agency upon completion of the Work.</p> <p>2) Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required the way the Construction Contractor proposes to conform to the information given and the design concept expressed in the Contract.</p> <p>3) The Construction Contractor shall perform no portion of the Work requiring submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been reviewed and approved or other</p> |



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| | <p>appropriate action taken by the Design Professional and/or Agency. Such Work shall be in accordance with approved submittals.</p> <ol style="list-style-type: none"> 4) The Construction Contractor shall not be relieved of responsibility for deviations from requirements of the Contract by the Design Professional's and/or Agency's review and approval of Shop Drawings, Product Data, Samples or similar submittals unless the Construction Contractor has specifically informed the Design Professional and/or Agency's in writing of such deviation at the time of submittal and the Design Professional and/or Agency has given written approval to the specific deviation. The Construction Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Design Professional's and/or Agency's approval thereof. 5) The Construction Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, product Data, Samples or similar submittals, to revisions other than those requested by the Design Professional on previous submittals. 6) When professional certification of performance criteria of Materials, systems or equipment is required by the Contract, the Construction Contractor shall be entitled to rely upon the accuracy and completeness of such calculations and certifications but shall use due care and identify and notify the Agency of any palpable errors. 7) Construction Contractor shall submit Shop Drawings to the Design Professional and State Fire Marshall or appropriate authority having jurisdiction for any required modifications to sprinkler or alarm system Work. 8) Construction Contractor will update to show actual conditions for Work specified and shall submit final Shop Drawings to Agency. |
| <p>11.42 Special Inspections and Testing</p> | <p>The Agency shall recommend special inspection or testing and any retesting of the Work in accordance with the provisions of the Contract Documents if, in Agency's reasonable opinion, such inspection or testing or retesting is necessary or advisable for the implementation of the Contract Documents, regardless of the state of completion of the Work subject to such inspection or testing or retesting.</p> |
| <p>11.43 Statutory Review</p> | <ol style="list-style-type: none"> 1) The Design Professional shall design and prepare the Construction Documents in compliance with all applicable laws, codes, regulations, and generally accepted engineering and design standards, and shall incorporate any and all Agency Standards where applicable to their Work. 2) The Design Professional shall submit final Construction Documents for review to the Agency Designated Representative for submittal to the Statutory Review. Design Professional shall verify presentation requirements for the review with the Agency's Designated Representative. The Arizona Department of Administration Statutory Review is the authority having jurisdiction and is the enforcement agency for code requirements. 3) The initial submission fee and one (1) re-review fee for submission to the Statutory Review may be paid by the Agency or paid by Design Professional firm a part of a Reimbursable Expense as requested by the Agency. Any subsequent submission fees shall be paid by the Design Professional firm in accordance with the Solicitation Performance Guarantee requirements. 4) Design Professional shall give Agency sufficient rights and privileges to use to any and all Design Professional Work in furtherance of the Scope of Work including, but not limited to, distribution and submission of Design Professional Work 5) A State Inspector will conduct regular inspections and the Work must be in compliance before permanent occupancy will be allowed. Regular inspections must be performed at each stage of construction prior to concealment or cover. |
| <p>11.44 Structural, Mechanical, Electrical, Calculations</p> | <p>Construction Contractor shall provide Agency the Project structural, mechanical, and electrical calculations upon request. Calculations shall be checked and stamped by an engineer registered in the applicable discipline.</p> |
| <p>11.45 Submittal Register</p> | <p>The Construction Contractor shall prepare and keep current, for the Design Professional's approval, a schedule of submittals which is coordinated with the Construction Contractor's Construction Schedule and allows the Construction Contractor reasonable time to review Submittals.</p> |
| <p>11.46 Substantial and Final Completion</p> | <ol style="list-style-type: none"> 1) When the Construction Contractor considers that the Work, or a portion thereof, is substantially complete, the Construction Contractor shall prepare and submit to the Agency and/or Design Professional a comprehensive list of items (Punch List) to be |



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| | <p>completed or corrected prior to final payment. Failure to include an item on the Punch List does not alter the responsibility of the Construction Contractor to complete all Work in accordance with the Contract Documents.</p> <p>2) The Agency and/or Design Professional will perform an inspection of the Work within five (5) days to accept or reject the Punch List to determine whether the Work or designated portion thereof is substantially complete. If the Agency and/or Design Professional's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents, the Contractor shall complete and or correct those items and then submit a request to the Owner and Design Professional for another inspection to determine Substantial Completion of the Work.</p> <p>3) EXHIBIT K – SUBSTANTIAL COMPLETION CERTIFICATE. When the Work, or designated portion thereof, is Substantially Complete, the Design Professional and/or Owner will prepare a Certificate of Substantial Completion (Certificate) that shall establish the Substantial Completion date, establish responsibilities of the Owner and Contractor to include, but not limited to: security, maintenance, heat, air conditioning, utilities, damage to the Work and insurance. The Certificate will establish the date and time within which the Contractor shall finish all Punch List items attached thereto. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work, unless otherwise provided in the Certificate of Substantial Completion.</p> <p>4) Construction Contractor shall submit an Exhibit H-Application for Payment for payment of all Work, less retention if retention was held. If retention was not held, final payment will not be issued until all items listed on Exhibit M-Contractor Project Closeout have been received by the Agency.</p> <p>5) PARTIAL OCCUPANCY. The Agency may occupy or use a portion of the Project prior to Contract completion if the authority having jurisdiction over the Project authorizes the Agency to occupy the portion of the Project. The Construction Contractor shall proceed with submission to the Agency for a Substantial Completion inspection for the portion of the Work Project prior to the Agency occupying or using a portion of the Project.</p> <p>6) EXHIBIT L – FINAL COMPLETION CERTIFICATE. The date of Final Completion of the Contractor's Work is the date signed by the Design Professional, Contractor, Compliance Officer and Project Manager that all Work is 100% complete in accordance with the Contract Documents including all those items listed on Exhibit M-Contractor Project Closeout. The Construction Contractor will submit an Application for Final Payment for certification by the Agency.</p> |
| <p>11.47 Substitution of Material or Equipment</p> | <p>1) Construction Contractor shall not order or install any substitute Material or equipment without the Agency Designated Representative prior written approval of the substitute.</p> <p>2) If Contract is a firm fixed price, all substitution requests shall be submitted by the Construction Contractor in accordance with the <u>Solicitation Instructions to Offerors</u> and approved by the Agency Designated Representative prior to the Bid Opening Date listed in the State e-procurement system. Prior to the Bid Opening Date, the Procurement Officer issued Addenda authorizing use of the substitute shall serve as the written approval.</p> <p>3) Agency Designated Representative shall review all Construction Contractor furnished data for review to include maintenance, repair, and replacement for the proposed substitute.</p> <p>4) The Agency may not approve any extension of Contract time for Construction Contractor Project completion due to a substitute unless Agency determines the time extension is in the best interest of the Agency.</p> |
| <p>11.48 Supervision and Project Administration</p> | <p>1) The Construction Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract either by activities or duties of the Agency in the Agency's administration of the Contract, or by tests, inspections or approvals required or performed by persons other than the Construction Contractor.</p> <p>2) The Construction Contractor shall supervise and direct the Work using the Construction Contractor's best skill and attention.</p> <p>3) Construction Contractor shall provide project administration for all Construction Contractor's Subcontractors, vendors, suppliers, and others involved in implementing the Work and shall coordinate administration efforts with those of the Construction Contractor and Agency Designated Representative.</p> |



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| | <p>4) Construction Contractor's project administration includes periodic daily reporting on weather, Work progress, labor, Materials, equipment, any and all obstructions to prosecution of the Work, accidents and injuries, and transmitted no less frequently to the Agency Designated Representative than on a weekly basis.</p> <p>5) The Construction Contractor shall be responsible to the Agency for acts and omissions of the Construction Contractor's employees, Subcontractors and their agents and employees, and other persons performing portions of the Work for the Construction Contractor.</p> |
| 11.49 Surplus of Materials Purchased | <p>1) After completion of installation the Construction Contractor shall return any unused Materials purchased under an Allowance to the supplier or manufacturer (when allowed by manufacturer) for credit to the Agency for the Cost of Work if determined economically practical by the Agency.</p> <p>2) If Agency determines unused Materials are not economically practical to return, the Construction Contractor shall dispose of Material or place in Agency storage as directed by the Agency Designated Representative.</p> |
| 11.50 Survey Reference Points | <p>Construction Contractor shall be responsible for laying out the Work, shall protect and preserve the established survey reference points and shall make no changes or relocations without the prior written approval of the Agency. Construction Contractor shall report to Agency Designated Representative whenever any monument or reference point is lost or destroyed or requires relocation because of necessary changes in grades or locations. Construction Contractor shall be responsible for replacement or relocation of such reference points by a licensed surveyor.</p> |
| 11.51 Training | <p>Construction Contractor shall provide training to Agency designated personnel including operation and maintenance for all newly installed equipment or controls for the Project.</p> |
| 11.52 Transition | <p>If needed, during commencement, Construction Contractor shall attend transition meetings with any outgoing Construction Contractors to coordinate and ease the transition so that the effect on Agency's operations is kept to a minimum. Agency may elect to have outgoing Construction Contractors complete some or all of their Work or orders in progress to ease the transition as is safest and most efficient in each instance, even if that scope is covered under the Contract. Upon the expiration or termination of the Contract, Construction Contractor shall Work closely with any new (incoming) Construction Contractor and Agency to ensure as smooth and complete a transfer as is practicable. Agency's representative shall coordinate all transition activities and facilitate joint development of a comprehensive transition plan by both Construction Contractor and the incoming vendor.</p> |
| 11.53 Unknown, Unforeseen, or Concealed Conditions | <p>1) If conditions are encountered at the Site which are (a) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents or (b) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then written notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event later than twenty four hours after first observance of the conditions.</p> <p>2) It is understood that Construction Contractor, prior to award, has inspected the Site, was free to do its own tests and inspections, and in undertaking this contract, warrants that the Site is suitable for construction and accepts the risk of all Site conditions.</p> <p>3) Any reports and Materials provided to Construction Contractor prior to construction are for informational purposes only. However, if Construction Contractor believes that the Agency materially misrepresented the condition of the Site then the Agency will promptly investigate such conditions. Should the Agency determine that the Site differs from the Contract Documents such that there will be a material change to Construction Contractor's Contract Cost and/or Schedule for the performance of any part of the Work, then the Agency will recommend an equitable adjustment in the Contract Cost and/or Contract time. If the Agency determines that the conditions at the Site are not materially different from those indicated in the Contract Documents, and no change in the Construction</p> |



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| | Contractor's Cost or Schedule is justified, then the Agency shall so notify the Construction Contractor in writing stating the reasons. |
| 11.54 Utilities | <ol style="list-style-type: none"> 1) The Construction Contractor is responsible for locating all existing utilities prior to Work. 2) Unless otherwise provided in the Contract, the amount of each utility service consumed shall be charged to or paid for by the Construction Contractor at prevailing rates charged to the Agency or, where the utility is produced by the Agency, at reasonable rates determined by the Contracting Officer. The Construction Contractor shall carefully conserve any utilities furnished without charge. 3) Contract shall provide temporary heat and ventilation as required to maintain environmental conditions for installation or installed Material to meet, protect, dry, or cure conditions. Use of heating or ventilation equipment types shall be authorized by Agency Designated Representative or Design Professional. 4) Temporary lighting shall be adequate for construction and traffic conditions. 5) The Construction Contractor, at its expense and in a workmanlike manner satisfactory to the Agency Designated Representative, shall install and maintain all necessary temporary connections and distribution lines, and all meters required to measure the amount of each utility used for the purpose of determining charges. Before final acceptance of the Work by the Agency, the Construction Contractor shall remove all the temporary connections, distribution lines, meters, and associated paraphernalia. 6) Construction Contractor temporary utilities shall fulfill any and all security, protection, and safety requirements. |
| 11.55 Utility Shut Down and Start-Up | Construction Contractor shall coordinate all utility shutdown and start-up required for performance of Work through the Agency Designated Representative. |

12.0 Agency Responsibilities

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| 12.1 Access to Work Site | The Agency will provide Construction Contractor with access to the Work Site, as necessary, for the preparation for, and review of, the Work. |
| 12.2 Accuracy of Information | Agency may provide in the Solicitation, or by other means, any reports of investigations and tests of subsurface and latent physical conditions at the Site, and any reports of conditions that otherwise may affect Cost. These reports are not intended to constitute any explicit or implicit representation as to the nature of the subsurface and latent physical conditions which may be encountered at the Site or to constitute explicit or implicit representations as to any other matter contained in any report. Such reports are not guaranteed as to accuracy or completeness and are not part of the Contract Documents. |
| 12.3 Errors or Omissions | The Agency will promptly notify the Construction Contractor in writing if it becomes aware of a material error, potential error, or omission in the Work, Design Requirements, and/or Construction Documents. |
| 12.4 Site Information | The Agency will provide the Construction Contractor with basic information regarding the Site locations at which the Work will be performed. This basic information may include surveys, Site evaluations, legal descriptions, existing conditions, subsurface and environmental studies, reports and investigations. |
| 12.5 Communications | The Agency will facilitate communication between Construction Contractor and other Agency contractors, as needed. |
| 12.6 Contractor Agreements, Related Construction | The Agency will meet with the Construction Contractor to coordinate its Work prior to finalizing a related Construction Contract. Any related Construction Contracts will be made available through the State's eProcurement system. |
| 12.7 Promotional Materials | Agency will endeavor to timely review and respond to any written Construction Contractor request for permission for use of photographic or other artistic representation of the Work for promotional or other professional materials. Agency shall have full discretion to determine whether to allow Construction Contractor use of the representations. |
| 12.8 Substitutions of Material | Design Professional and/or Agency shall approve any and all substitutions that would cause a change in the Work of the Construction Contractor. |
| 12.9 Timely Review | The Agency and/or Design Professional will endeavor to timely review and respond to any requests from the Construction Contractor deemed necessary to avoid delay or modification to the Schedule. |



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13.0 Data and Information Handling

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| <p>13.1 Applicability</p> | <p>Article 13 applies to the extent the Work includes handling of any (a) Agency's proprietary and sensitive data or (b) confidential or access-restricted information obtained from Agency or from others at Agency's behest.</p> |
| <p>13.2 Data Protection and Confidentiality of Information</p> | <p>1) Construction Contractor warrants that it will establish and maintain procedures and controls acceptable to Agency for ensuring that Agency's proprietary and sensitive data is protected from unauthorized access and information obtained from Agency or others in performance of its contractual duties is not mishandled, misused, or inappropriately released or disclosed. For purposes of this paragraph, all data created by Construction Contractor in any way related to the Contract, provided to Construction Contractor by the Agency, or prepared by others for the Agency are proprietary to Agency, and all information by those same avenues is Agency's confidential information. To comply with the foregoing warrant.</p> <p>a) Construction Contractor shall:</p> <ul style="list-style-type: none"> i) Notify Agency immediately of any unauthorized access or inappropriate disclosures, whether stemming from an external security breach, internal breach, system failure, or procedural lapse; ii) Cooperate with Agency to identify the source or cause of and respond to each unauthorized access or inappropriate disclosure; and iii) Notify Agency promptly of any security threat that could result in unauthorized access or inappropriate disclosures; and <p>b) Construction Contractor shall not:</p> <ul style="list-style-type: none"> i) Release any such data or allow it to be released or divulge any such information to anyone other than its employees or officers as needed for each person's individual performance of his or her duties under the Contract, unless Agency has agreed otherwise in advance and in writing; or ii) respond to any requests it receives from a third party for such data or information, and instead route all such requests to Agency's designated representative. |
| <p>13.3 Personally Identifiable Information</p> | <p>1) Construction Contractor warrants that it will protect any personally identifiable information ("PII") belonging to Agency's employees' or other Construction Contractors or members of the general public that it receives from Agency or otherwise acquires in its performance under the Contract.</p> <p>2) For purposes of this paragraph:</p> <ul style="list-style-type: none"> a) PII has the meaning given in the [federal] Office of Management and Budget (OMB) Memorandum M-07-16 Safeguarding Against and Responding to the Breach of Personally Identifiable Information; and b) "Protect" means taking measures to safeguard personally identifiable information and prevent its breach that are functionally equivalent to those called for in that OMB memorandum and elaborated on in the [federal] General Services Administration (GSA) <i>Directive CIO P 2180.1 GSA Rules of Behavior for Handling Personally Identifiable Information</i>. <p>3) NOTE (1): For convenience of reference only, the OMB memorandum is available at: https://www.whitehouse.gov/sites/default/files/omb/memoranda/fy2007/m07-16.pdf</p> <p>4) NOTE (2): For convenience of reference only, the GSA directive is available at: http://www.gsa.gov/portal/directive/d0/content/658222</p> |
| <p>13.4 Protected Health Information</p> | <p>1) Construction Contractor warrants that, to the extent performance under the Contract involves individually identifiable health information (referred to hereinafter as protected health information ("PHI") and electronic PHI ("ePHI") as defined in the Privacy Rule referred to below), it:</p> <ul style="list-style-type: none"> a) Is familiar with and will comply with the applicable aspects of the following collective regulatory requirements regarding patient information privacy protection: (1) the "Privacy Rule" in CFR 45 Part 160 and Part 164 pursuant |



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| | <p>to the Health Insurance Portability and Accountability Act (“HIPAA”) of 1996; (2) Arizona laws, rules, and regulations applicable to PHI/ePHI that are not preempted by CFR 45-160(B) or the Employee Retirement Income Security Act of 1974 (“ERISA”) as amended; and (3) Agency’s current and published PHI/ePHI privacy and security policies and procedures;</p> <p>b) Will cooperate with Agency in the course of performing under the Contract so that both Agency and Construction Contractor stay in compliance with the requirements in (a) above;</p> <p>c) and will sign any documents that are reasonably necessary to keep both Agency and Construction Contractor in compliance with the requirements in (a) above, in particular “Business Associate Agreements” in accordance with the Privacy Rule.</p> <p>NOTE: For convenience of reference only, the Privacy Rule is available at: http://www.hhs.gov/hipaa/for-professionals/privacy/index.html</p> |
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14.0 Information Technology Work

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| <p>14.1 Applicability</p> | <p>Article 14 applies to any Invitation for Bids, Request for Qualifications, or Request for Quotations for “Information Technology,” as defined in A.R.S. § 41-3501(6): “computerized and auxiliary automated information processing, telecommunications and related technology, including hardware, software, vendor support and related services, equipment and projects” if and to the extent that the Work is or includes Information Technology.</p> |
| <p>14.2 Information Access</p> | <p>a) SYSTEM MEASURES. Construction Contractor shall employ appropriate system management and maintenance, fraud prevention and detection, and encryption application and tools to any systems or networks containing or transmitting State’s proprietary data or confidential information.</p> <p>b) INDIVIDUAL MEASURES. Construction Contractor personnel shall comply with applicable State policies and procedures regarding data access, privacy, and security, including prohibitions on remote access and obtaining and maintaining access IDs and passwords. Construction Contractor is responsible to Agency for ensuring that any State Access IDs and passwords are used only by the person to whom they were issued. Construction Contractor shall ensure that personnel are only provided the minimum only such level of access necessary to perform his or duties. Construction Contractor shall on request provide a current register of the access IDs and passwords and corresponding access levels currently assigned to its personnel.</p> <p>c) ACCESS CONTROL. Construction Contractor is responsible to Agency for ensuring that hardware, software, data, information, and that has been provided by Agency or belongs to or is in the custody of Agency and is accessed or accessible by Construction Contractor personnel is only used in connection with carrying out the Work, and is never commercially exploited in any manner whatsoever not expressly permitted under the Contract. Agency may restrict access by Construction Contractor personnel, or instruct Construction Contractor to restrict access their access, if in its determination the requirements of this subparagraph are not being met.</p> |
| <p>14.3 Pass-Through Indemnity</p> | <p>1) INDEMNITY FROM THIRD PARTY. For computer hardware or software included in the Work as discrete units that were manufactured or developed solely by a third party, Construction Contractor may satisfy its indemnification obligations under the Contract by, to the extent permissible by law, passing through to Agency such indemnity as it receives from the third-party source (each a “Pass-Through Indemnity”) and cooperating with Agency in enforcing that indemnity. If the third party fails to honor its Pass-Through Indemnity, or if a Pass-Through Indemnity is insufficient to indemnify State Indemnitees to the extent and degree Construction Contractor is required to do by the Uniform Terms and Conditions,</p> |



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| | <p>then Construction Contractor shall indemnify, defend and hold harmless State Indemnitees to the extent the Pass-Through Indemnity does not.</p> <p>2) NOTIFY OF CLAIMS. Agency shall notify Construction Contractor promptly of any claim to which a Pass-Through Indemnity might apply. Construction Contractor, with reasonable consultation from Agency, shall control of the defense of any action on any claim to which a Pass-Through Indemnity applies, including negotiations for settlement or compromise, provided that:</p> <ul style="list-style-type: none"> a) Agency reserves the right to elect to participate in the action at its own expense; b) Agency reserves the right to approve or reject any settlement or compromise on c) reasonable grounds and if done so timely; and d) Agency shall in any case cooperate in the defense and any related settlement e) negotiations. |
| <p>14.4 Redress of Infringement.</p> | <p>1) REPLACE, LICENSE, OR MODIFY. If Construction Contractor becomes aware that any Materials or Services infringe, or are likely to be infringing on, any third party's intellectual property rights, then Construction Contractor shall at its sole Cost and expense and in consultation with Agency either:</p> <ul style="list-style-type: none"> d) Replace any infringing items with non-infringing ones; e) Obtain for Agency the right to continue using the infringing items; or f) Modify the infringing item so that they become non-infringing, so long as they continue to function as specified following the modification. <p>2) CANCELLATION OPTION. In every case under 14.5, if none of those options can reasonably be accomplished, or if the continued use of the infringing items is impracticable, Agency may cancel the relevant Order or terminate the Contract and Construction Contractor shall take back the infringing items. If Agency does cancel the Order or terminate the Contract, Construction Contractor shall refund to Agency:</p> <ul style="list-style-type: none"> g) For any software created for Agency under the Contract, the amount Agency paid to Construction Contractor for creating it; h) For all other Materials, the net book value of the product or actual monies paid by the Agency provided according to generally accepted accounting principles; and i) For Services, the amount paid by Agency or an amount equal to twelve (12) months of charges, whichever is less. <p>3) EXCEPTIONS. Construction Contractor will not be liable for any claim of infringement based solely on any of the following by a State Indemnitee:</p> <ul style="list-style-type: none"> j) Modification or use of Materials other than as contemplated by the Contract or expressly authorized or proposed by a Construction Contractor Indemnitor; k) Operation of Materials with any operating software other than that supplied by Construction Contractor or authorized or proposed by a Construction Contractor Indemnitor; or l) Combination or use with other products in a manner not contemplated by the Contract or expressly authorized or proposed by a Construction Contractor Indemnitor. |
| <p>14.5 First Party Liability Limitation</p> | <p>1) LIMIT. Subject to the provisions that follow below and unless stated otherwise in the <u>Special Terms and General Conditions</u>, Agency's first party liability arising from or related to the Contract is limited to the lesser of \$1,000,000 (one million dollars) or 3 (three) times the purchase price of the specific Materials or Services giving rise to the claim.</p> <p>2) PROVISIONS. This paragraph limits liability of any and all damages to which Construction Contractor is entitled under this Contract or that comes out of performance or concerns this contract, regardless of the legal theory under which</p> |



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| | <p>the liability is asserted. This paragraph 14.5 does not limit the effect of Paragraph 6.2 of this Contract.</p> <p>3) PURCHASE PRICE DETERMINATION. If the Contract is for a single-agency and a single Order (or if no Order applies), then "purchase price" in Subparagraph 14.5.1 above means the aggregate Contract price current at the time of Contract expiration or earlier termination, including all change orders or other forms of Contract Amendment having an effect on the aggregate price through that date. In all other cases, "purchase price" above means the total price of the Order for the specific equipment, software, or services giving rise to the claim, and therefore a separate limit will apply to each Order.</p> <p>4) NO EFFECT ON INSURANCE. This paragraph does not modify the required coverage limits, terms, and conditions of, or any insured's ability to claim against, any insurance that Construction Contractor is required by the Contract to provide, and Construction Contractor shall obtain express endorsements that it does not.</p> |
| <p>14.6 Information Technology Warranty</p> | <p>1) SYSTEM MEASURES. Construction Contractor shall employ appropriate system management and maintenance, fraud prevention and detection, and encryption application and tools to any systems or networks containing or transmitting Agency's proprietary data or confidential information.</p> <p>2) INDIVIDUAL MEASURES. Construction Contractor personnel shall comply with applicable State policies and procedures regarding data access, privacy, and security, including prohibitions on remote access and obtaining and maintaining access IDs and passwords. Construction Contractor is responsible to Agency for ensuring that any State Access IDs and passwords are used only by the person to whom they were issued.</p> <p>3) Construction Contractor shall ensure that personnel are only provided the minimum only such level of access necessary to perform his or duties. Construction Contractor shall on request provide a current register of the access IDs and passwords and corresponding access levels currently assigned to its personnel.</p> <p>4) ACCESS CONTROL. Construction Contractor is responsible to Agency for ensuring that hardware, software, data, information, and that has been provided by Agency or belongs to or is in the custody of Agency and is accessed or accessible by Construction Contractor personnel is only used in connection with carrying out the Work, and is never commercially exploited in any manner whatsoever not expressly permitted under the Contract. Agency may restrict access by Construction Contractor personnel, or instruct Construction Contractor to restrict access their access, if in its determination the requirements of this subparagraph are not being met.</p> |
| <p>14.7 Specific Remedies</p> | <p>Unless expressly stated otherwise elsewhere in the Contract, Agency's remedy for breach of warranty under paragraph includes, at Agency's discretion, re-performance, repair, replacement, or refund of any amounts paid by Agency for the nonconforming Work, plus (in every case) Construction Contractor's payment of Agency's additional, documented, and reasonable Costs to procure Materials or services equivalent in function, capability, and performance at that first called for. For clarification of intent, the foregoing obligations are limited by the limitation of First Party Liability Limitation. If none of the forgoing options can reasonably be effected, or if the use of the Materials by Agency is made impractical by the nonconformance, then Agency may seek any remedy available to it under law.</p> |

End of Uniform Terms and Conditions