



**PUBLIC SAFETY PERSONNEL RETIREMENT SYSTEM
CORRECTIONS OFFICER RETIREMENT PLAN
ELECTED OFFICIALS' RETIREMENT PLAN
ARIZONA PSPRS TRUST**

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**REQUEST FOR PROPOSALS
PSPRS DEFINED CONTRIBUTION PLANS
INVESTMENT ADVISOR / CONSULTANT**

This Request for Proposal ("RFP") is being issued by the Public Safety Personnel Retirement System ("System") for the purpose of hiring an investment advisor and Plan consultant ("Advisor") for the four defined contribution plans administered by the System. There are three 401(a) plans called the Public Safety Personnel Defined Contribution Retirement Plan ("PSPDCRP"), the Elected Officials Defined Contribution Retirement System and a Supplemental 401a plan and one 457(b) plan. As a governmental plan, the Plan is exempt from the requirements of the Employee Retirement Income Security Act of 1974, as amended ("ERISA").

BACKGROUND INFORMATION

The Public Safety Personnel Retirement System serves as statutory trustee of the following qualified defined benefit plans: (1) Public Safety Personnel Retirement System ("PSPRS"), (2) Elected Officials' Retirement Plan ("EORP"), and (3) Corrections Officer Retirement Plan ("CORP"). The plans are agencies of the State of Arizona statutorily authorized to provide retirement, disability, survivor, and/or insurance benefits to Arizona's public safety officers, elected officials, judges, and correctional officers. They are all 401(a) qualified plans.

In 2016, legislation was passed that created the PSPDCRP for members of the Public Safety Personnel Retirement System first hired after June 30, 2017, called Tier 3 members. Tier 2 members that do not participate in social security are members of this plan, as well as tier 1 members that participate in the Deferred Retirement Option Plan (DROP). Once these Tier 1 members retire and exit DROP their DROP account balance automatically rolls into this plan. Recently, legislation was passed that established and extended DROP program. Under this program, after sixty months, the account balance of a member is transferred to the PSPDCRP. Each month after that, the monthly amount earned in the member's DROP account is transferred to the PSPDCRP. The extended DROP program has a maximum twenty-four-month time frame.

A Defined Contribution ("DC") Committee, consisting of seven (7) voting members, makes recommendations to the PSPRS Board of Trustees related to rules, regulations and contracts for the administration of the four plans. The DC Committee is charged with selecting third-party service providers, including consultants, and is issuing this RFP to find a vendor that will provide general plan consulting and monitoring of the DC plans. Services will include investment advisory services and committee education for the DC Committee and PSPRS Board of Trustees. The Advisor will also assist with the RFP for the plan record keeper when it comes due. Currently, PSPRS is in the second year of the five-year record keeper contract.

In performing the Services, Advisor does not have discretion over any of the System's investments, and Advisor does not serve as a custodian for any of the System's assets. The System acknowledges Advisor is not expected to provide legal or tax advice to the System. The system will seek legal advice from its legal counsel as to matters that might arise relating to the operations and administration of the System's assets.

The System acknowledges that the Advisor is entitled to rely upon all information that is provided by the System, System representatives or other service providers necessary for it to carry out the Services. The System represents

that all such information provided to the Advisor is and shall be true, correct and complete in all material respects. The system shall promptly notify the Advisor in writing of any material change in the information provided to the Advisor and to promptly provide any such additional information as may be reasonably requested.

SCOPE OF SERVICES

The System seeks to obtain the following Investment Advisory Services and Plan Consulting Services through this RFP:

1. General Consulting Services

- Monitoring and recommending updates for the plan documents for all four DC plans;
- Monitoring and updating procedures, policies, manuals, forms and other important documentation as requested;
- Conduct strategic planning session to review current performance (periodic reports) and establish future objectives and strategies for the designated assets;
- Monitoring and recommending updates for any plan design issues;
- Monitoring and recommending updates for the investment policy;
- Provide advice on the selection of appropriate asset classes and the core investment lineup;
- Review Committee governance documents and make recommendations, in accordance with best practices for both governance and functions of the Committee;
- Recommend educational opportunities and conferences that would assist Committee members in furthering their education on DC Plans and carrying out their fiduciary duties;
- Assist in the selection, recommendation and oversight of third-party service providers (including, record keepers, education providers independent auditors, etc.) as needed in order to administer the plan; the vendor may be asked to assist in the development of any RFPs that are issued in order to contract for these services; and
- Review education and participant training materials developed by staff or by the 3rd party administrative services provider for completeness and accuracy as requested.

2. Performance Measurement Services

The advisor will provide the following services:

- Provide a written and verbal quarterly report on the performance of current investment options relative to their appropriate benchmarks and peer groups, including;
 - Market overview addressing the major markets, indices, sectors and the economic statistics that are affecting them.
 - Analysis and reporting of the investment managers employed by the System.
 - Analysis and reporting of the investment managers' investment process and strategies employed.
 - An in-depth portfolio summary, including fund and benchmark returns, style analysis and over portfolio return.
 - Analysis of the System's asset allocation, as well as recommendations on asset allocation decisions including recommendations to optimize risk adjusted returns along the efficient frontier.
 - A detailed examination of investment options, including performance numbers versus the category and index, manager style drift, risk/return, standard deviation, Sharpe ratio, upside and downside capture, expense ratio and fund allocation.
- Assist in the identification of under-performing investment options and/or managers and provide a list of appropriate alternatives for the Board to Review and approve, if appropriate;
- Assist with fee and contract negotiations as requested and review plan expenses and fees annually;
- Conduct a periodic review of plan fees and costs charged to the Plan by all service providers to assist the System in discharging its duty to monitoring the reasonableness of fees and costs paid.
- Provide an annual review of the investment policy statement, expense ratios, revenue sharing rates, general market trends, investment options and investment returns. Make recommendations for changes to the investment policy statement as appropriate;

- Keep the DC Committee and PSPRS Board informed relative to current and proposed changes in laws, regulations, ordinances, etc., and recommend actions that should be taken in order to be in compliance with existing and new laws and regulations; and
- Attend all DC Committee meetings and attend PSPRS Board of Trustee meetings as requested.

MINIMUM REQUIREMENTS

The firm and/or key consultants must meet the following requirements:

1. Experience providing the proposed investment consulting services to clients for at least 5 years;
2. Experience evaluating the investments of defined contribution plans with assets of at least \$800 million.
3. The firm must agree to serve as fiduciary for the consulting services provided.

TIME SCHEDULE

The anticipated schedule for this project is as follows:

- RFP issued – January 31, 2025
- Clarification Questions and Exceptions to Terms and Conditions Due – February 14, 2025
- Responses Due – March 5, 2025
- Estimated Contract Award – April 15, 2025

REQUIRED INFORMATION

The respondent must demonstrate the following:

1. Accessibility and responsiveness to client requests for investment services.
2. Demonstrated experience and skill working with a public agency or retirement system or other institutional quality clients.
3. Demonstrated communication and social skills as are necessary to work as part of a team with the DC Committee, the System's Board of Trustees, and staff.
4. Demonstrated high level of professional skills and demeanor and thoroughness of work product preparation.
5. Demonstrated experience providing investment advisory and consultant services for defined contribution or deferred compensation plans.

FORMAT AND CONTENT OF THE PROPOSAL

Proposals should include the following information, presented in a clear, comprehensive, and concise manner to illustrate the Advisor's capabilities:

Letter of Transmittal

The Letter of Transmittal should reflect the RFP subject matter, name and address of the office providing services under the contract, contact person, phone number, email address and date of submission. The Letter of Transmittal must be signed by a person authorized to represent the company and is legally responsible for the decision as to the price and supporting documentation provided as a result of this RFP.

Proposal

The proposal should follow the format shown below and provide all the information requested. The proposal will be evaluated upon, and must consist of, the following sections:

1. Company Background and General Descriptions
2. Understanding of the services to be provided and the methodology to be employed
3. Experience and Qualifications
4. Client References
5. Cost Proposal

Content for each of the sections is described as follows:

1. Company Background and General Description

- a. Provide a brief history of the firm including the year organized and ownership structure. Please indicate any anticipated changes in firm ownership or structure.
- b. Provide an overview of the firm's organization, including the number of people in key positions and services offered, and the number of years the firm has provided investment Defined Contribution plan services.
- c. Describe your firm's philosophy regarding investment performance monitoring.
- d. Describe the methodology used to assess investment performance, including how information is gathered, analyzed and reported; how you assure the accuracy/integrity of data in your reports; the timing of reports; and criteria used to determine whether or not a particular investment is performing well.
- e. Describe any litigation, proceeding or investigation in the past 10 years related to the investment services provided by the firm, or an officer or principal of the firm, stating the cause of action and final result.
- f. Provide a brief description of any unique qualifications of the firm, including the firm's consulting specialties, strengths and limitations. Provide examples of "value-added" advice and problem-solving capability for clients.
- g. Provide audited financial statements for the prior three years, or a statement indicating why financial statements are not available.
- h. Provide an affirmation that no conflicts of interest exist between the firm and the System, its Board of Trustees, members or management. If a conflict of interest does exist, describe the conflict.
- i. Acknowledge that if the firm is either merged with or acquired by another firm the System has the option to replace the firm with another one or approve the assignment of the service to another provider.

2. Understanding of the Project and Project Methodology

- a. Provide a comprehensive narrative statement that illustrates an understanding of the requirements of the engagement as Investment Advisor.
- b. Describe the proposed work plan and management plan the firm intends to follow.
- c. Describe work experience conducted by the firm similar to the requirements of this project.
- d. Describe any enhancements that your firm would recommend to our existing plans.

3. Experience and Qualifications

- a. Describe the firm's capabilities and recent experience in performing investment advisory and consulting services for defined contribution or deferred compensation plans, under both income replacement and supplemental income models.
- b. Describe the firm's experience with leading a selection process for a service provider.
- c. List all key professional personnel to be assigned to the performance of the contract, including those who will be primarily responsible for performing the consulting services and attending the required meetings. Résumés describing the qualifications of personnel assigned to the contract should include each person's name, highest degree held, position in the firm, total years with the firm, number of years in the investment industry, size of portfolios advised, number of accounts assigned and asset size of each account, role on the consulting team, type of related work experience, and whether or not they are a registered investment advisor.
- d. Acknowledge that, in the case of key personnel leaving the firm, the System shall approve the replacement of that individual.
- e. Describe specific procedures the firm would follow in the event key professional staff assigned to this account should leave the firm or be reassigned. Acknowledge that the System has the authority for final approval of replacement staff.

- f. State the work schedule (days and hours) that the assigned personnel will be available and the anticipated turnaround time for returning phone calls and work products.
- g. Describe or provide at least one sample performance measurement report from a 457 deferred compensation or 401(a) defined contribution plan.
- h. Please list the location of any Arizona or Phoenix metro area offices or personnel that your firm may have.

4. Client References

- a. Provide a list of at least three organizations that may be used as references for the firm's work related to the requirements in this RFP. The following should be included for the references listed:
 - i. Dates investment advisory and consulting services were provided;
 - ii. Name, address, and phone number of an individual in the client organization who is familiar with the work performed; and
 - iii. Description of the work performed.
- b. Provide the name, address, phone number, contact name and title of any Defined Contribution plan clients that have terminated the firm's services over the past three years. Provide an explanation of the circumstances involving the termination of services.

5. Cost Proposal

- a. Describe how fees are determined for the firm's services.
- b. Provide a proposed fee structure with hourly rates for all individuals proposed to perform services under the Scope of Services section. In addition, please detail all additional expenses.
- c. Provide an estimate of total costs in the first year of operation, and an estimate of costs in future years.

LENGTH OF CONTRACT

It is expected that the contract will be offered for 3 initial years, with two possible one-year extensions.

PROPOSAL SUBMISSION

The deadline for proposal submission is March 5, 2025. An electronic copy of the proposal should be sent to Mr. Michael Smarik, Deputy Administrator, at the following email address msmarik@psprs.com.

A proposal may be withdrawn any time prior to the deadline by email notification, received no later than the deadline and signed by an authorized agent of the firm. The proposal may be resubmitted with modifications up until, but not after, the deadline.

Inquiries seeking clarification as to intent or content of the RFP should be e-mailed to Michael Smarik, who is the sole point of contact for communications during the RFP process. PSPRS reserves the right to negotiate with one or more of the finalists, including the possibility of a best and final offer.

TERMS AND CONDITIONS

Please see Attachment 1 for the Terms and Conditions governing this RFP and the resultant contract.

If a respondent takes exception to any of these terms and conditions, they must be identified and included with any RFP clarification questions, which are due on February 14, 2025.

This RFP may also be found on the internet at www.psprs.com.

DISCLAIMER

The System is not under any obligation to accept the lowest bid or lowest fee or, indeed, choose any of the respondents to this RFP for an engagement; and the System may employ any criteria it deems appropriate, whether or not referenced in this RFP, in evaluating the proposals submitted.

ATTACHMENT 1 – TERMS AND CONDITIONS
REQUEST FOR PROPOSALS – INVESTMENT ADVISOR/CONSULTANT
PUBLIC SAFETY PERSONNEL RETIREMENT SYSTEM
JANUARY 2025

1. The contract will be awarded to the firm that has submitted a proposal that is deemed to provide the best value to the System. Consideration will be given to demonstrated competence, knowledge, reputation, experience and qualifications of the firm as a whole and of the staff assigned to this contract; the adequacy of the proposal; quality and responsiveness of proposed methodology and approach; and the cost proposal. The System reserves the right to waive any defect or omission in any proposal which does not materially affect the terms of the response to this RFP. This RFP may also be found on the internet at www.psprs.com.
2. Discussions may be held with the firm(s) submitting proposals. The purpose of any such discussions would be to:
 - a. Promote the understanding of the System's requirements and the firm(s) proposals; and,
 - b. Facilitate arriving at a contract most advantageous to the System taking into consideration the System's needs, the cost of services to be provided and other evaluation factors set forth in the RFP.
3. The System reserves the right to conduct interviews with some or all of the firms that submit responses to this RFP.
4. Any contract resulting from the acceptance of a proposal shall contain, at a minimum, all applicable provisions of this RFP. The System may accept a proposal by issuing a written "Notice of Award" to the selected firm, which incorporates the proposal documents by reference and accepts all or selected portions of the firm's proposal. This "Notice of Award" will represent a contractual obligation and will be executed by the System and the authorized representative of the selected firm.

DISCLAIMER

The System is not under any obligation to accept the lowest bid or lowest fee or, indeed, choose any of the offerors to this SCOPE OF WORK AND RELATED TERMS AND CONDITIONS for an engagement; and the System may employ any criteria it deems appropriate, whether or not referenced in this SCOPE OF WORK AND RELATED TERMS AND CONDITIONS, in evaluating the proposals submitted.

5. **Representations.** Contractor makes the following representations, which are agreed to be material to and form a part of the inducement for this Contract:
 - a. Contractor has the expertise, support staff and facilities necessary to provide the Services described in this Contract;
 - b. Contractor does not have any actual or potential interests adverse to the Board of Trustees or the System nor does Contractor represent a person or offeror with an interest adverse to the Board of Trustees or System with reference to the subject of this Contract;
 - c. Contractor shall diligently provide all required Services in a timely, ethical and professional manner and in accordance with the terms and conditions stated in this Contract; and
 - d. Contractor shall maintain its independence from the System's staff, any outside manager, and the System's actual and potential vendors, and shall take no action that frustrates or impairs Contractor's duty of loyalty to the Board of Trustees under this Contract.
 - e. By signing the final Offer and Acceptance Form that will be provided by the System during the last Phase forming the Contract, offerors attest that:

1. The bid has been developed independently and that no consultation, communication, contract, arrangement or understanding has been made between the supplier/offeror and any competitor or potential offerors.
2. Offeror did not engage in collusion or other anti-competitive practices in connection with the preparation or submission of your offer.
3. Offerors are required to disclose if the supplier/offeror, or any organization or person associated with your bid submission, including directors and senior managers, have been subject to proceedings related to anti-competitive conduct domestically or overseas in the past ten (10) years.
4. The System reserves the right to report all suspected instances of anti-competitive practices, including bid rigging and collusion, and share bid information claimed by the offeror as confidential with the relevant competition authority.

6. **Contract Order of Precedence**

- a. COMPLEMENTARY DOCUMENTS. All of the documents forming the Contract are complementary. If certain work, requirements, obligations, or duties are set out only in one but not in another, Contractor shall carry out the work as though the relevant work, requirements, obligations, or duties had been fully described in all, consistent with the other documents forming the Contract and as is reasonably inferable from them as being necessary to produce complete results.
- b. CONFLICTS. In case of any inconsistency, conflict, or ambiguity among the documents forming the Contract and their provisions, they are to prevail in the following order, descending from most dominant to most subordinate, provided that, among categories of documents or provisions having the same rank, 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.
 1. Contract Amendments;
 2. The final SCOPE OF WORK AND RELATED TERMS AND CONDITIONS Solicitation Documents, in the order:
 - a. Special Provisions;
 - b. Addendums to the Scope of Services;
 - c. Pricing Document;
 - d. Any other documents referenced or included in the Solicitation;
 3. Orders, in reverse chronological order; and
 4. Accepted Offer
- c. ATTACHMENTS AND EXHIBITS. For clarity of intent, if an item was an Attachment in the SCOPE OF WORK AND RELATED TERMS AND CONDITIONS Solicitation Documents or an Offer (either Initial, Revised, Best and Final, or Accepted) and was subsequently made into an Exhibit, or its content was incorporated into one of the other Contract documents, then that Attachment no longer exists contractually as an "Attachment" since it has at that point been made into some other Contract document. In every other case, an Attachment and the Contractor data therein remain part of the Accepted Offer for purposes of precedence and contractual effect.

7. **Amendments.** All offerors in the respective Evaluation Phase will be given notice of any amendments resulting from clarification discussions. Offerors will be required to acknowledge any amendments with signature via the form provided in form **Amendment Acknowledgement** and return to the System.
8. **Public Records.** Under the Arizona Public Records Law, materials received by the System may be considered public records. These records include but are not limited to bid or proposal submittals, Contract documents, contract work product, or other material associated with a bid. Bids will be confidential during the SCOPE OF WORK AND RELATED TERMS AND CONDITIONS process. The procurement file, including proposals, becomes public after the award.

Trade secrets and other proprietary data contained in proposals may be held confidential if the offeror requests, in writing, that the System does so. The offeror's request must be included with the proposal, must clearly identify the information they wish to be held confidential, and include a statement that sets out the reasons for confidentiality. Unless the System agrees in writing to hold the requested information confidential, that information will also become public after the Notice of Intent to Award is issued. If the System agrees in writing to hold requested information confidential it is the offeror's responsibility to submit a redacted copy. If challenged, the offerors are responsible for defending any claims of confidentiality. The system will provide notice of the challenge to the public records for the offeror to respond.

9. **Bid Duration.** Responses to this SCOPE OF WORK AND RELATED TERMS AND CONDITIONS and its associated pricing and bid details shall remain in effect for at least one hundred fifty (150) days from the SCOPE OF WORK AND RELATED TERMS AND CONDITIONS due date, unless offeror withdraws the SCOPE OF WORK AND RELATED TERMS AND CONDITIONS response and any associated materials in writing.
10. **Protest of Award.** An offeror who wishes to protest an error apparent in the SCOPE OF WORK AND RELATED TERMS AND CONDITIONS or apparent in the solicitation process before the SCOPE OF WORK AND RELATED TERMS AND CONDITIONS response due date must submit the protest in writing to the SCOPE OF WORK AND RELATED TERMS AND CONDITIONS's contact listed in this document before the SCOPE OF WORK AND RELATED TERMS AND CONDITIONS response due date. No protests related to the SCOPE OF WORK AND RELATED TERMS AND CONDITIONS shall be accepted after the SCOPE OF WORK AND RELATED TERMS AND CONDITIONS response due date.

An offeror who wishes to protest the award of a contract must submit the protest to the SCOPE OF WORK AND RELATED TERMS AND CONDITIONS's contact listed in this document within ten days after the date the Notice of Intent to Award the contract is issued. Only those offerors who submitted a proposal have standing to protest the proposed award of a contract.

All offerors will be notified of any protest. The protests will be conducted in accordance with the System's governance manual and approved procurement policies.

11. **Subcontract.** The Contractor is prohibited from subcontracting, assigning, transferring, conveying, subletting or otherwise disposing of this Contract or its rights, title or interest therein or its power to execute such agreement to any other person, company or corporation without the prior written consent of the System. All approved assignments, subletting or other transfers referred to herein must abide by the provisions of the contract.
12. **Contractor Licenses.** Contractor shall maintain current all federal, state and local licenses and permits required for the operation of its business in general, for its operations under the Contract, and for the work itself.
13. **Assignment.** Contractor shall not assign or transfer its interests, duties or responsibilities in or to this Contract, or any part hereof, without the Board of Trustees' prior express written consent. Contractor shall not assign any

monies due or which become due to Contractor under this Contract without the Board of Trustees' prior express written consent.

14. **Negation of Partnership/Employment.** In the performance of all Services under this Contract, Contractor shall be, and acknowledges that Contractor is, in fact and law, an independent contractor and not an agent or employee of the Board of Trustees or System. Contractor has and retains the right to exercise full supervision and control of the manner and methods of providing Services to the Board of Trustees and System under this Contract. Contractor retains full supervision and control over the employment, direction, compensation and discharge of all persons assisting Contractor in the provision of Services under this Contract. With respect to Contractor's employees, if any, Contractor shall be solely responsible for payment of wages, benefits and other compensation, compliance with all occupational safety, welfare and civil rights laws, tax withholding and payment of employee taxes, of whatever nature, and compliance with any and all other laws regulating employment.

15. **Indemnifications.**

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

Contractor acknowledges and agrees that its obligation to indemnify and defend in this Section: (i) is an immediate obligation, independent of its other obligations hereunder; (ii) applies to any Loss which actually or potentially falls within the scope of this Section, regardless of whether the applicable allegations are or may be groundless, false or fraudulent; and (iii) arises at and continues after the time the Loss is tendered to Contractor.

This indemnification shall survive the termination of the Contract with the Contractor.

b. **Patent and Copyright Indemnification.** With respect to Materials or Services provided or proposed by a Contractor Indemnitor for performance under the Contract, Contractor shall indemnify, defend and hold harmless PSPRS Indemnitees against any third-party claims for liability, costs, and expenses, including, but not limited to reasonable attorneys' fees, for infringement 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:

1. PSPRS shall provide reasonable and timely notification to Contractor of any claim for which Contractor may be liable under this paragraph;

2. Contractor, with reasonable consultation from PSPRS, shall have control of the defense of any action on an indemnified claim including all negotiations for its settlement or compromise;
3. PSPRS may elect to participate in such action at its own expense; and
4. PSPRS may approve or disapprove any settlement or compromise, provided that, (i) PSPRS shall not unreasonably withhold or delay such approval or disapproval and (ii) PSPRS shall cooperate in the defense and in any related settlement negotiations.

16. **Insurance.** Contractor, in order to protect the Board of Trustees and System, including all individual Board of Trustees Members, Administrators, Assistant Administrators, members, beneficiaries, officials, agents, officers, local boards, employees and lawyers, against all claims and liability for death, injury, loss and damage as a result of Contractor's actions in connection with the performance of Contractor's obligations, as required in this Contract, shall secure maintain and provide evidence of insurance with certificates of insurance (valid ACORD form or equivalent approved by the System) as described below, prior to commencement of work. The Contractor's insurance shall be primary insurance with respect to all other available sources.
- a. Contractor and subcontractors shall procure and maintain, until all of their obligations have been discharged, including any warranty periods under this Contract, insurance against claims for injury to persons or damage to property arising from, or in connection with, the performance of the work hereunder by the Contractor, its agents, representatives, employees or subcontractors.
 - b. The Insurance Requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The State of Arizona and System in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that arise out of the performance of the work under this Contract by the Contractor, its agents, representatives, employees or subcontractors, and the Contractor is free to purchase additional insurance.
 - c. Contractor shall not perform any Services under this Contract until Contractor has obtained all insurance required under this Section. Contractor shall pay any premiums, deductibles and self-insured retentions under all required insurance policies. Applicable to all insurance policies and coverages listed in the insurance provisions of this contract, Contractor's insurance shall not be permitted to expire, be suspended, be canceled, or be materially changes for any reason without thirty (30) days prior written notice to the System,
 - d. Contractor shall maintain in full force and effect, at all times during the term of this Contract, the following insurance:
 1. **Commercial General Liability** insurance, including, but not limited to, Contractual Liability insurance (specifically concerning the indemnity provisions of this Contract), Personal Injury (including bodily injury and death), and Property Damage for liability arising out of Contractor's performance of work under this Contract. Said insurance coverage shall have minimum limits for Bodily Injury and Property Damage liability of one million U.S. dollars (\$1,000,000.00) each occurrence and two million U.S. dollars (\$2,000,000) aggregate.

The policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor.

Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.
 2. **Automobile Liability** insurance against claims of Personal Injury (including bodily injury and death) and Property Damage covering all owned, leased, hired and non-owned vehicles used in the performance of

services pursuant to this Contract with minimum limits for Bodily Injury and Property Damage liability of five hundred thousand U.S. dollars (\$500,000) each occurrence and one million U.S. dollars (\$1,000,000) aggregate. Such insurance shall be provided by a business or commercial vehicle policy.

- i. Policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by, or on behalf of, the Contractor involving automobiles owned, hired and/or non-owned by the Contractor.
- ii. Policy shall contain a waiver of subrogation endorsement as required by this written agreement in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

3. **Professional Liability and/or Errors & Omissions** insurance covering claims of professional negligence with minimum limits of two million U.S. dollars (\$2,000,000) each occurrence and two million U.S. dollars (\$2,000,000) aggregate. In the event that the Professional Liability insurance required by this Contract is written on a claims-made basis, the Contractor warrants that any retroactive date under the Policy shall precede the effective date of this Contract; and, either continuous coverage will be maintained or an extended discovery period will be exercised, for a period of two (2) years beginning at the time work under this Contract is completed.

- i. In the event that the Professional Liability insurance required by this Contract is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of this Contract and, either continuous coverage will be maintained, or an extended discovery period will be exercised, for a period of two (2) years beginning at the time work under this Contract is completed.
- ii. The Policy shall cover professional misconduct or lack of ordinary skill for those positions defined in the Scope of Services of this Contract.

4. Workers' Compensation and Employers' Liability

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

- a. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.
- b. This requirement shall not apply to each Contractor or subcontractor that is exempt under A.R.S. § 23-901, and when such Contractor or subcontractor executes the appropriate waiver form (Sole Proprietor or Independent Contractor).

5. **Network Security, Cyber Security and Privacy Liability.** Such insurance shall include, but not be limited to, coverage for third party claims and losses with respect to network risks related to delivery of services within scope of this SCOPE OF WORK AND RELATED TERMS AND CONDITIONS (such as data breaches, unauthorized access or use, ID theft, theft of data) and invasion of privacy regardless of the type of media involved in the loss of private information, crisis management and identity theft response costs. This should also include breach notification costs, credit remediation and credit monitoring, defense and claims expenses, regulatory defense costs plus fines and penalties, cyber extortion, computer program and electronic data restoration

expenses coverage (data asset protection), network business interruption, computer fraud coverage, and funds transfer loss.

i. Each Claim: Two million U.S. dollars (\$2,000,000)

ii. Annual Aggregate: Two million U.S. dollars (\$2,000,000)

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

e. **Additional Insurance Requirements:** The policies shall include, or be endorsed to include, as required by this written agreement, the following provisions:

i. The Contractor's policies, as applicable, shall stipulate that the insurance afforded the Contractor shall be primary and that any insurance carried by the System, its agents, officials, employees or the State of Arizona shall be excess and not contributory insurance, as provided by A.R.S. § 41-621 (E).

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

f. **Notice of Cancellation** Applicable to all insurance policies required within the Insurance Requirements of this Contract, Contractor's insurance shall not be permitted to expire, be suspended, be canceled, or be materially changed for any reason without thirty (30) days prior written notice to the System. Within two (2) business days of receipt, Contractor must provide notice to the System if they receive notice of a policy that has been or will be suspended, canceled, materially changed for any reason, has expired, or will be expiring. Such notice shall be sent directly to the System and shall be mailed, emailed, hand delivered or sent by facsimile transmission to the System contact listed in this SCOPE OF WORK AND RELATED TERMS AND CONDITIONS. Contractor shall immediately obtain replacement coverage for any insurance policy that is terminated, canceled, non-renewed, or whose policy limits have been exhausted or upon insolvency of the insurer that issued the policy.

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

h. **Verification of Coverage** Contractor shall furnish the System with certificates of insurance (valid ACORD form or equivalent approved by the State of Arizona) evidencing that Contractor has the insurance as required by this Contract. An authorized representative of the insurer shall sign the certificates.

i. All such certificates of insurance and policy endorsements must be received by the System before work commences. The System's receipt of any certificates of insurance or policy endorsements that do not comply with this written agreement shall not waive or otherwise affect the requirements of this Contract.

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

iii. All certificates required by this Contract shall be sent directly to the System. The applicable System and/or State of Arizona project/contract number and project description shall be noted on the certificate of insurance. The System and/or State of Arizona reserves the right to require complete copies of all insurance policies required by this Contract at any time.

i. **Subcontractors Contractor's certificate(s)** shall include all subcontractors as insureds under its policies or Contractor shall be responsible for ensuring and/or verifying that all subcontractors have valid and collectable

insurance as evidenced by the certificates of insurance and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum Insurance Requirements identified above. The System reserves the right to require, at any time throughout the life of this contract, proof from the Contractor that its subcontractors have the required coverage.

17. **Termination.** The System may, at its election, terminate this Contract by written notice (a “30-Day Notice of Termination”). A 30-Day Notice of Termination will be deemed effective thirty (30) days after personal delivery or delivery by courier. Upon termination of this Contract pursuant to a 30-Day Notice of Termination, Contractor shall be paid only that portion of the Annual Fee owed for the month in which the termination is effective; the balance, if any, of the Annual Fee for any remaining months of the year, shall be waived, and the Board of Trustees and System shall have no liability therefore. The Board of Trustees may terminate this Contract immediately, without notice and without further obligation to the Board of Trustees or System, if the Board of Trustees reasonably believes Contractor is in default of any provision of this Contract.

a. Survival of Rights and Obligations after Contract Expiration or Termination. Survival of Warranty. All representations and warranties made by Contractor under the Contract will survive the expiration or earlier termination of the Contract.

b. Contractor’s Representations and Warranties. All representations and warranties made by the Contractor under this Contract shall survive the expiration or termination hereof. In addition, the parties hereto acknowledge that pursuant to A.R.S. § 12-510, except as provided in A.R.S. § 12-529, the State is not subject to or barred by any limitations of actions prescribed in A.R.S., Title 12, Chapter 5.

c. Purchase Orders. The Contractor shall, in accordance with all terms and conditions of the Contract, fully perform and shall be obligated to comply with all purchase orders received by the Contractor prior to the expiration or termination hereof, unless otherwise directed in writing by the PSPRS, including, without limitation, all purchase orders received prior to but not fully performed and satisfied at the expiration or termination of this Contract.

18. **Ownership of Documents.** All documents, pamphlets, brochures, books, data compilations, reports, materials and films, web presentations, recordings, broadcasts, and materials of every form and description, whether in written, analog, digital, film or electronic form, prepared by Contractor (or its agents) pursuant to this Contract or in connection with the performance of the Services and delivered to the Board of Trustees and System, as well as all documents or information provided Contractor by the Board of Trustees and System (collectively, the “Materials”) are and shall remain the property of the Board of Trustees and System, unless the parties agree otherwise, in writing. The Board of Trustees and System shall have no obligation to return the originals or copies of the Materials to Contractor upon termination of this Contract.

Pursuant to A.R.S. §§ 35-214 and 35-215, the Contractor shall retain all business records relating to this Contract for a period of five years after completion of the Contract. All records shall be subject to inspection and audit by the System at reasonable times. Upon request, the Contractor shall produce the original of any or all such records at the offices of the System free of charge.

19. **Notices.** All notices required or provided for in this Contract shall be provided to the parties hereto at the following addresses. A 30 Day Notice of Termination shall be delivered by personal delivery or delivery by courier. All other notices may be delivered by personal delivery, delivery by courier, U.S. mail, or private express mail service such as Federal Express. Notices delivered personally or by courier shall be deemed received upon receipt; notices which are mailed by U.S. mail or private mail service shall be deemed received five (5) days after mailing. A party may change the address to which notice is to be given by giving notice to the other party, as provided above.

To The System:

Mike Smarik, Deputy Administrator
Public Safety Personnel Retirement System
3010 E. Camelback Road, Suite 200
Phoenix, Arizona 85016

To The Contractor:

20. **Sole Agreement.** This document contains the entire agreement of the parties hereto relating to the Services, rights, obligations and covenants contained herein and assumed by the parties respectively. No inducements, representations or promises have been made, other than those recited in this Contract. No oral promise, modification, change or inducement shall be effective or given any force or effect.
21. **Authority to Bind System.** Except as otherwise authorized herein, it is understood that in Contractor's performance of any and all duties under this Contract, Contractor has no authority to bind the Board of Trustees or System to any agreements or undertakings.
22. **Modifications of Agreement.** This agreement may be modified only by a writing signed by both of the parties hereto.
23. **Nonwaiver.** No covenant or condition of this Contract can be waived except by the written consent of the party adversely affected by such waiver. Forbearance or indulgence by either party hereto in any regard whatsoever shall not constitute a waiver of the covenant or condition to be performed. Either party hereto shall be entitled to invoke any remedy available to them under this Contract or by law or in equity despite any forbearance or indulgence.
24. **Choice of Law/Venue.** The parties hereto agree that the provisions of this Contract will be construed and enforced pursuant to the laws of the State of Arizona, without regard to choice of law principles. The venue for all litigation or other disputes relative to this Contract shall be Phoenix, Arizona.
25. **Confidentiality.** Contractor shall not, without the written consent of the Board of Trustees, communicate confidential information, designated in writing or identified in this Contract as such, to any third party and shall protect such information from inadvertent disclosure to any third party in the same manner that Contractor protects its own confidential information, unless such disclosure is required in response to a validly issued subpoena or other process of law. Upon completion of this Contract, the provisions of this paragraph shall continue to survive. Contractor's obligation of confidentiality will not apply to information that (a) is or becomes available from public sources through no breach of Contractor's obligations hereunder; (b) is already in Contractor's possession without an obligation of confidentiality; (c) is rightfully disclosed to Contractor from a third party without an obligation of confidentiality; or (d) is required to be disclosed by court or regulatory order, provided Contractor gives the Board of Trustees prompt notice of any such order.
26. **Enforcement of Remedies.** No right or remedy herein conferred on or reserved to the Board of Trustees or to Contractor is exclusive of any other right or remedy herein or by law or equity provided or permitted, but each shall be cumulative of every other right or remedy given hereunder or now or hereafter existing by law or in equity or by statute or otherwise, and may be enforced concurrently or from time to time.
27. **Severability.** Should any part, term, portion or provision of this Contract be decided finally to be in conflict with any law of the United States or the State of Arizona, or otherwise be unenforceable or ineffectual, the

validity of the remaining parts, terms, portions, or provisions shall be deemed severable and shall not be affected thereby, provided such remaining portions or provisions can be construed in substance to constitute the agreement which the parties intended to enter into in the first instance.

28. **Captions and Interpretation.** Section headings in this Contract are used solely for convenience, and shall be wholly disregarded in the construction of this Contract. No provision of this Contract shall be interpreted for or against a party hereto because that party or its legal representative drafted such provision, and this Contract shall be construed as if jointly prepared by the parties. The Recitals set forth in this Contract are hereby incorporated into and made part of this Contract.
29. **Counterparts.** This Contract may be executed simultaneously in any number of counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.
30. **Nondiscrimination.** In accordance with A.R.S. § 41-1461, *et seq*, Contractor shall provide equal employment opportunities for all persons, regardless of race, color, creed, religion, sex, age, national origin, disability or political affiliation. Contractor shall comply with the Americans with Disabilities Act.
- a. Neither Contractor, nor any officer, agent, employee, servant or sub-agent of Contractor, shall discriminate in the treatment or employment of any individual or groups of individuals on the grounds of race, color, religion, national origin, age, or sex, either directly, indirectly or through contractual or other arrangements.
 - b. The Contractor shall comply with Executive Order 2009-9, which mandates that all persons, regardless of race, color, religion, sex, age, or national origin not mentioned in Order shall have equal access to employment opportunities, and all other applicable state and Federal employment laws, rules, and regulations, including the Americans with Disabilities Act. The Company shall take affirmative action to ensure that applicants for employment and employees are not discriminated against due to race, creed, color, religion, sex, national origin or disability.
 - c. Compliance requirements with applicable immigration laws.
 - i. The Contractor warrants compliance with all applicable Federal and state immigration laws and regulations relating to employees and further warrants, to the extent that it has business operations located within the State of Arizona, that it complies and shall comply through the term of the Contract with Section A.R.S. § 23-214, Subsection A. (That subsection reads: "After December 31, 2007, every employer, after hiring an employee, shall verify the employment eligibility of the employee through the e-verify program.")
 - ii. A breach of a warranty regarding compliance with immigration laws and regulations shall be deemed a material breach of the contract and the Contractor may be subject to penalties up to and including termination of the Contract.
 - iii. Contractor attests that to the best of its knowledge, the company is not currently engaged in, and agrees for the duration of this agreement, to not engage in a boycott of the state of Israel.
 - iv. The System retains the legal right to inspect the papers of any employee who works on the Contract to ensure that the Contractor or any subcontractor is complying with the warranty above.
31. **Non-Collusion Covenant.** Contractor represents and agrees that it has not entered into any contingent fee arrangement with any offeror or person concerning this Contract, nor has Contractor received any incentive or special payment from the Board of Trustees or System or any other person apart from the consideration specified in this Contract.

32. **Signature Authority.** Contractor warrants contractor's signatory has full power and authority to enter into and perform this Contract. If any court or administrative agency determines that the Board of Trustees does not have authority to enter into this Contract, the Board of Trustees and System shall not be liable to Contractor or any third party by reason of such determination or by reason of this Contract.
33. **Attorneys' Fees.** The prevailing party in any litigation arising out of or concerning this Contract shall be awarded its reasonable attorneys' fees and all costs and expenses of litigation, whether those fees and costs are incurred at trial or on appeal or in connection with any mediation or court-ordered arbitration. Such an award shall be made for the prevailing party and against the non-prevailing party by the court or arbitrator adjudicating the litigation and not a jury.
34. **Arbitration.** As required by A.R.S. § 12-1518(B), the parties agree that, before filing any lawsuit, they will use non-binding arbitration in all disputes arising out of this Contract which are subject to mandatory arbitration pursuant to rules adopted under A.R.S. § 12-133. The parties shall mutually agree on one neutral arbitrator, with each party paying half of any arbitrator's fee. In the event the parties are unable to agree on one neutral arbitrator, each party shall nominate one neutral arbitrator, and the two arbitrators nominated by the parties shall confer and appoint one neutral arbitrator to hear the dispute. Any neutral arbitrator selected pursuant to this section will be domiciled in Maricopa County, Arizona.
35. **Nonexclusivity.** Contractor understands and acknowledges that this Contract is nonexclusive and is for the sole convenience of the Board of Trustees and System, who reserve the right to obtain like services from other sources for any reason.
36. **Cancellation.** The requirements of A.R.S. § 38-511 apply to this Contract. The System may cancel this Contract, without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating this Contract on behalf of the System is, at any time while this Agreement or any extension is in effect, an employee, agent or consultant of Contractor with respect to the subject matter of this Agreement.
37. **Offshore Performance of Certain Work Prohibited.** Contractor shall only perform those portions of the Services that directly serve the System 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 Scope of Services, 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 Subcontractors at all tiers.
38. **Force Majeure.**
- a. **DEFINITION.** For this paragraph, "force majeure" means an occurrence that is (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. 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 39. [*Performance in Public Health Emergency*], declared public health emergencies. 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, or inability of either Contractor or any Subcontractor to acquire or maintain any required insurance, bonds, licenses, or permits.
 - b. **RELIEF FROM PERFORMANCE.** Except for payment of sums due, 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 notify 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.

- c. EXCUSABLE DELAY 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 if and to the extent that such failure was or is being caused by an occurrence of force majeure.
- d. 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.

39. **Performance in Public Health Emergency.** Contractor warrants that it will:

- 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: (a) identification of response personnel by name; (b) key succession and performance responses in the event of sudden and significant decrease in workforce; and (c) alternative avenues to keep sufficient product on hand or in the supply chain; and
- b. provide a copy of its current plan to The System within 3 (three) business days after The System's written request. If Contractor claims relief under paragraph 32. [*Force Majeure*] for an occurrence of force majeure that is a declared public health emergency, then that relief will be conditioned on 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.

For clarification of intent, being obliged to implement the plan is not of itself an occurrence of force majeure, and 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.

40. **Transition.** During commencement, Contractor shall attend transition meetings with any outgoing vendors to coordinate and ease the transition so that the effect on System's operations is kept to a minimum. The System may elect to have outgoing vendors 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. Conversely, the System anticipates having a continued need for the same materials and services upon expiration or earlier termination of the Contract. Accordingly, Contractor shall work closely with any new (incoming) vendor and the System to ensure as smooth and complete a transfer as is practicable. The System's representative shall coordinate all transition activities and facilitate joint development of a comprehensive transition plan by both Contractor and the incoming vendor. As with the incoming transition, the System may permit Contractor (outgoing) to complete work or orders in progress to ease the transition as is safest and most efficient in each instance.

41. **Data Protection and Confidentiality of Information.** Contractor warrants that it will establish and maintain procedures and controls acceptable to the System for ensuring that the System's proprietary and sensitive data is protected from unauthorized access and information obtained from the System or others in performance of its contractual duties is not mishandled, misused, or inappropriately released or disclosed. For purposes of this paragraph, all data created by Contractor in any way related to the Contract, provided to Contractor by the System, or prepared by others for the System are proprietary to the System, and all information by those same avenues is the System's confidential information. To comply with the foregoing warrant:
- a. Contractor shall: (a) notify the System immediately of any unauthorized access or inappropriate disclosures, whether stemming from an external security breach, internal breach, system failure, or procedural lapse; (b) cooperate with the System to identify the source or cause of and respond to each unauthorized access or inappropriate disclosure; and (c) notify the System promptly of any security threat that could result in unauthorized access or inappropriate disclosures; and
 - b. Contractor shall not: (a) release any such data or allow it to be released or divulge any such information to anyone other than its employees or officers as needed for each person's individual performance of his or her duties under the Contract, unless the System has agreed otherwise in advance and in writing; or (b) respond to any requests it receives from a third party for such data or information, and instead route all such requests to the System's designated representative.
42. **Right to Offset.** The System shall be entitled to offset against any sums due the Contractor, any expenses or costs incurred by the System, or damages assessed by the State concerning the Contractor's non-conforming performance or failure to perform the Contract, including expenses, costs and damages described in the Uniform Terms and Conditions.
43. **Nonconformance with Agreement.** Services provided under this Contract shall fully comply with the Contract. The delivery of materials or services or a portion of the materials or services that do not fully comply constitutes a breach of contract. On delivery of nonconforming materials or services, the System may terminate the Contract for default under applicable termination clauses in the Contract, exercise any of its rights and remedies under the Uniform Commercial Code, or pursue any other right or remedy available to it.
44. **Suspension or Debarment.** The System may, by written notice to the Contractor, immediately terminate this Contract if the System determines that the Contractor has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body. Submittal of an offer or execution of a contract shall attest that the contractor is not currently suspended or debarred. If the Contractor becomes suspended or debarred, the contractor shall immediately notify the System.
45. **Contract Claims.** All contract claims or controversies under this Contract shall be resolved according to Arizona law and System procurement policies and rules.
46. **Accuracy of Work.** Contractor is responsible for the accuracy of the Services and shall promptly make all necessary revisions or corrections resulting from errors and omissions on its part without additional compensation. Acceptance by the System will not relieve Contractor of responsibility for correction of any errors discovered subsequently or necessary clarification of any ambiguities.
47. **Non-Availability of Funds** – Every payment obligation of the System under the Contract is conditioned upon the availability of funds appropriated or allocated for payment of such obligation. If funds are not allocated and available for the continuance of this Contract, this Contract may be terminated by the System at the end of the period for which funds are available. No liability shall accrue to the System or State of Arizona in the event this

provision is exercised, and the System or State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

48. Advertising, Publishing and Promotion of Contract/Services –

Advertising, Publishing and Promotion of Contract. The Contractor shall not use, advertise or promote information for commercial benefit concerning this Contract without the prior written approval of the System.

49. Costs and Payments –

a. Firm, Fixed Price. Unless stated otherwise in the Special Terms and Conditions of the Contract, all prices shall be firm-fixed-prices.

b. Applicable Taxes.

Payment of Taxes. The Contractor shall be responsible for paying all applicable taxes.

State and Local Transaction Privilege Taxes. The State of Arizona is subject to all applicable state and local transaction privilege taxes. Transaction privilege taxes apply to the sale and are the responsibility of the seller to remit. Failure to collect such taxes from the buyer does not relieve the seller from its obligation to remit taxes.

c. Tax Indemnification. Contractor and all subcontractors shall pay all Federal, state and local taxes applicable to its operation and any persons employed by the Contractor. Contractor shall, and require all subcontractors to hold the State harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under Federal, and/or state and local laws and regulations and any other costs including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.

d. IRS W9 Form. In order to receive payment the Contractor shall have a current IRS W9 Form on file with the State of Arizona, unless not required by law.

50. Warranties –

a. Compliance With Applicable Laws. The Materials and Services supplied under this Contract shall comply with all applicable federal, state, and local laws and policies (including, but not limited to, information technology policies, standards, and procedures available on the State's website and/or the website of any department, commission, council, board, bureau, committee, institution, agency, government corporation or other establishment or official of the executive branch or corporation commission of the State of Arizona). Federal requirements may be incorporated into this Contract, if required, pursuant to A.R.S. § 41-2637. Contractor shall maintain any and all applicable license and permit requirements. This requirement includes, but is not limited to, any and all Arizona state statutes that impact state contracts, regardless of whether those statutory references have been removed during the course of contract negotiations; this is notice to Contractors that the State does not have the authority to modify Arizona state law by contract.

b. Intellectual Property. 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 Contractor is not and cannot reasonably be expected to be aware of the infringement or violation.

c. Licenses and Permits. Contractor warrants that it will maintain all licenses required to fully perform its duties under the Contract and all required permits valid and in force.

d. Operational Continuity. Contractor warrants that it will perform without relief notwithstanding being sold or acquired; no such event will operate to mitigate or alter any of Contractor's duties hereunder absent a consented delegation under paragraph 13 [Assignment] that expressly recognizes the event.

51. **Lobbying** -

a. Prohibition. Contractor warrants that it will not engage in lobbying activities, as defined in 40 Code of Federal Regulations (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 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 State to the extent they are an actual or potential conflict of interest or where such activities could create an appearance of impropriety. Contractor shall implement and maintain adequate controls to assure compliance with above. Contractor shall obtain an equivalent warranty from all Subcontractors and shall include an equivalent no-lobbying provision in all Subcontracts.

b. Exception. This paragraph 51.a does not apply to the extent that the Services are defined in the Contract as being lobbying for the System's benefit or on System's behalf.

52. **Covered Telecommunications or Services** – Contractor warrants that the Materials and Services rendered under this Agreement will not require Contractor to use for the System, or provide to the System to use, "covered telecommunications equipment or Services" as a substantial or essential component of any system, or as critical technology as part of any system, within the meaning of Federal Acquisition Regulation ("FAR") Section 52.20425.