



Arizona State University
INDEPENDENT CONTRACTOR AGREEMENT FOR
CONSULTING, SERVICES, AND DELIVERABLES

THIS AGREEMENT is made between the **Arizona Board of Regents**, a body corporate, for and on behalf of **Arizona State University (ASU)** and _____, a _____¹ (Vendor), effective as of _____, 20__ (the Effective Date).

In consideration of the mutual obligations specified in this Agreement, the parties agree as follows:

1. Engagement; Services and Deliverables. ASU retains Vendor, as of the Effective Date, and Vendor accepts such engagement, to perform the services as and when described on Exhibit A (the Services). As part of the Services, Vendor will deliver to ASU all reports, code, documents, software, and other items and materials as and when described on Exhibit A (the Deliverables).

2. Compensation. ASU will pay Vendor for the Services (which by definition include the Deliverables) as and when set forth on Exhibit B. Unless described with specificity on Exhibit B, Vendor will be solely responsible for all expenses it incurs in connection with Vendor's obligations under this Agreement. ASU will make all payments to Vendor in Vendor's legal name as set forth in the opening paragraph.

3. Term and Termination. The obligations of the parties will commence on the Effective Date and, unless sooner terminated, expire on the earlier of the date that the Services are completed, or _____ months after the Effective Date (the Term). Total Term will not exceed 5 years. ASU may terminate this Agreement with or without cause upon 10 days' prior written notice to Vendor. Upon termination, ASU will have no further obligations to Vendor other than payment for Services rendered and Deliverables delivered, in each case as of the effective date of termination. All provisions of this Agreement that anticipate performance after termination, and all provisions necessary to interpret and enforce them, will survive termination of this Agreement.

4. Independent Contractor. Vendor is an independent contractor. Neither Vendor nor any of Vendor's owners, officers, directors, managers, members, employees, agents, contractors, or subcontractors (collectively, with Vendor, the Vendor Parties), will be employees, agents, partners, or joint venturers of ASU. None of the Vendor Parties will be eligible for any benefits from ASU, including worker's compensation coverage, nor will ASU make deductions from any amounts payable to Vendor for taxes. Taxes for any amounts paid to Vendor will be Vendor's sole responsibility. Vendor is responsible to ASU for the compliance with this Agreement by the Vendor Parties.

5. Hours; Business Operations. Vendor will determine Vendor's hours of work. ASU will not combine the business operations of ASU with Vendor; these operations will be maintained separately. Vendor will provide all tools, equipment, and supplies Vendor determines to be necessary to perform the Services, and Vendor will obtain and maintain in full force and effect all business registrations or licenses required to perform the Services.

6. Supervision. Vendor is using its own knowledge, skill, and technical know-how in the performance of the Services and is not being supervised by ASU. The conduct and control of Services under this Agreement lies solely with Vendor, and ASU is interested only in final results.

7. Records and Reports. Vendor will provide interim written reports concerning the performance of the Services as and when ASU may request. Upon termination of the Term, Vendor will, if requested by ASU, provide a final written report regarding the Services.

8. Nondisclosure and Trade Secrets. Vendor may receive (or has received) from ASU, and may otherwise be exposed to confidential and proprietary information relating to ASU's business practices, strategies, and technologies, as well as confidential information of ASU necessary to perform the Services (collectively, ASU Confidential Information). ASU Confidential Information may include, but is not be limited to, confidential and proprietary information supplied to Vendor with the legend "ASU Confidential and Proprietary," or other

¹ Insert full legal Vendor name. If Vendor is a corporation, partnership, or llc, state corporate suffix and state of formation. If Vendor is an individual, state full legal name and if Vendor is married whether Vendor is dealing with Vendor's community or separate property.

designations of confidentiality. As between Vendor and ASU, ASU Confidential Information is the sole, exclusive, and valuable property of ASU. Vendor will not reproduce or otherwise use any ASU Confidential Information except in the performance of the Services, and will not disclose any ASU Confidential Information to any third party, either during or after the Term, except with ASU's prior written consent. Upon termination of this Agreement, Vendor will cease using, and will return to ASU, all originals and all copies of ASU Confidential Information, in all forms and media, in Vendor's possession or under Vendor's control. In addition, Vendor will not disclose or otherwise make available to ASU any confidential information of Vendor or received by Vendor from any third party.

Vendor will have no obligation to maintain as confidential any ASU Confidential Information that Vendor can show: (i) was already lawfully in the possession of or known by Vendor before receipt from ASU; (ii) is or becomes generally known in the industry through no violation of this Agreement or any other agreement; (iii) is lawfully received by Vendor from a third party without restriction on disclosure or use; (iv) is required to be disclosed by court order following notice to ASU sufficient to allow ASU to contest such order; or (v) is approved in writing by ASU for release or other use by Vendor.

9. Data Use, Ownership, and Privacy. As between the parties, ASU will own, or retain all of its rights in, all data and information that ASU provides to Vendor, as well as all data and information managed by Vendor on behalf of ASU, including all output, reports, analyses, and other materials relating to, derived from, or generated pursuant to this Agreement, even if generated by Vendor, as well as all data obtained or extracted through ASU's or Vendor's use of such data or information (collectively, ASU Data). ASU Data also includes all data and information provided directly to Vendor by ASU students and employees, and includes personal data, metadata, and user content.

ASU Data will be ASU's Intellectual Property and Vendor will treat it as ASU's Confidential Information. Vendor will not use, access, disclose, license, or provide to third parties, any ASU Data, except: (i) to fulfill Vendor's obligations to ASU hereunder; or (ii) as authorized in writing by ASU. Without limitation, Vendor will not use any ASU Data, whether or not aggregated or deidentified, for product development, marketing, profiling, benchmarking, or product demonstrations, without, in each case, ASU's prior written consent. Vendor will not, directly or indirectly: (a) attempt to reidentify or deaggregate deidentified or aggregated information; or (b) transfer deidentified or aggregated information to any third party unless that third party agrees not to attempt reidentification or deaggregation. For ASU Data to be considered deidentified, all direct and indirect personal identifiers must be removed, including names, ID numbers, dates of birth, demographic information, location information, and school information. Upon request by ASU, Vendor will deliver, destroy, and/or make available to ASU, any or all ASU Data.

Notwithstanding the foregoing, if this Agreement allows Vendor to provide aggregated and deidentified data to third parties, then Vendor may provide such data solely to the extent allowed in this Agreement, and, unless otherwise stated herein, only if such data is aggregated with similar data of others (i.e. is not identified as ASU, ABOR, or Arizona-specific).

10. Ownership and Assignment of Work Product. All Intellectual Property that Vendor or any of the Vendor Parties make, conceive, discover, develop, or create, either solely or jointly with any other person or persons including ASU, specifically for or at the request of ASU in connection with the Services (the Contract IP), will be owned by ASU. To the extent any Contract IP is not considered work made for hire for ASU (or if ownership of all rights therein does not otherwise vest exclusively in ASU), Vendor hereby irrevocably assigns, and will cause the Vendor Parties to so assign, without further consideration, to ASU all right, title, and interest in and to all Contract IP, including all copyright rights of ownership. Intellectual Property means any and all inventions, designs, original works of authorship, formulas, processes, compositions, programs, databases, software, code, data, technologies, discoveries, ideas, writings, improvements, procedures, techniques, know-how, and all patent, trademark, service mark, trade secret, copyright, goodwill, and other intellectual property rights relating to the foregoing. Vendor will make full and prompt disclosure of all Contract IP to ASU. Vendor will, and will cause the Vendor Parties, upon request of ASU, do such acts, and sign such instruments to vest in ASU the entire right, title and interest to the Contract IP, and to enable ASU to prepare, file, and prosecute applications for, and to obtain patents and/or copyrights on, the Contract IP, and, at ASU's expense, to cooperate with ASU in the protection and/or defense of the Contract IP. Vendor's Intellectual Property Ownership Rights. Vendor will retain ownership of its pre-existing Intellectual Property, including any that may be incorporated into the Contract IP, provided that Vendor informs ASU in writing before incorporating any pre-existing Intellectual Property into any Contract IP. Vendor hereby grants to ASU a perpetual, irrevocable, royalty-free, worldwide right and license (with the right to sublicense), to

freely use, make, have made, reproduce, disseminate, display, perform, and create derivative works based on such pre-existing Intellectual Property as may be incorporated into the Contract IP or otherwise provided to ASU in the course of performing under this Agreement.

11. Warranties. Vendor warrants to ASU that: (i) all of the Services will be performed in a professional and workmanlike manner and in conformity with industry standards by persons reasonably suited by skill, training and experience for the type of services they are assigned to perform; (ii) Vendor will comply, and will be responsible for ensuring Vendor Parties comply, with all applicable laws, rules, and regulations in the performance of this Agreement; (iii) Vendor owns or has sufficient rights in all goods and services to be delivered by Vendor, and the goods and services delivered by Vendor will not infringe upon or violate any Intellectual Property of any third parties; (iv) any code or software developed or delivered by Vendor to ASU will not contain any viruses, worms, Trojan Horses, or other disabling devices or code; (v) in addition to any implied warranties, all goods and services delivered by Vendor will conform to the specifications and descriptions created therefor; and (vi) all sensitive data, personal data, and personally identifiable data, as those terms may be defined in applicable laws, rules and regulations (PII) provided by Vendor to ASU was obtained legally and Vendor has obtained all requisite consents for (a) Vendor to provide the PII to ASU, and (b) ASU to use the PII for the purposes and in the jurisdictions set forth in this Agreement.

12. Indemnification by Vendor. Vendor will indemnify, defend, save and hold harmless the State of Arizona, its departments, agencies, boards, commissions, universities, and its and their officials, agents and employees (collectively, Indemnitee) for, 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) for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property to the extent caused, or alleged to be caused, by: (i) the negligent or willful acts or omissions of Vendor, or any of its owners, officers, directors, members, managers, agents, employees, contractors or subcontractors (the Vendor Parties); (ii) a breach of this Agreement; or (iii) failure to comply with any applicable law, rule, or regulation. Vendor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable.

13. Responsibility. Each party is responsible for the negligent or willful acts or omissions of its employees and contractors when acting under such party's direction and supervision. ASU recognizes an obligation to pay attorneys' fees or costs only when assessed by a court of competent jurisdiction. Notwithstanding the terms of this Agreement or any other document: (i) other than for employees and contractors acting under ASU's direction and supervision, ASU is not responsible for any actions of any third parties, including its students; and (ii) no person may bind ASU unless they are an authorized signatory in [PUR202-01](#).

14. No Debarment. None of the Vendor Parties, either directly or indirectly or through subcontractors, have been suspended, excluded from participation in or penalized by any Federal or State procurement, non-procurement, or reimbursement program. Vendor affirms that it has confirmed the above statement by checking The System for Award Management (SAM) www.uscontractorregistration.com within 180 days prior to commencing Services. Vendor will provide immediate written notice to ASU upon the subsequent exclusion of any of the Vendor Parties, or upon learning of any investigation or proposed action that could result in such exclusion.

15. Notices. All notices and communications required or permitted under this Agreement will be in writing and will be given by personal delivery against receipt (including private courier such as FedEx), or certified U.S. Mail, return receipt requested. All notices and communications will be sent to the addresses below or such other addresses as the parties may specify in the same manner:

To ASU:
(Department name)
PO Box _____ Tempe, AZ 85287-_____
Attn: (use title – no individual names)

To Vendor:

With a copy to:
Purchasing and Business Services or appropriate dept.
PO Box 875212
Tempe, AZ 85287-5212
Attn: Chief Procurement Officer or dept. business officer
With a copy to:

Notices, if delivered, and if provided in the manner set forth above, will be deemed to have been given and received on the date of actual receipt or on the date receipt was refused. Any notice to be given by any party may be given by legal counsel for such party.

16. Nondiscrimination. The parties will comply with all applicable laws, rules, regulations, and executive orders governing equal employment opportunity, immigration, and nondiscrimination, including the Americans with Disabilities Act. **If applicable, the parties will abide by the requirements of 41 CFR §§ 60- 1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.**

17. Conflict of Interest. If within 3 years after the execution of this Agreement, Vendor hires as an employee or agent any ASU representative who was significantly involved in negotiating, securing, drafting, or creating this Agreement, then ASU may cancel this Agreement as provided in Arizona Revised Statutes (ARS) § 38-511.

18. Arbitration. The parties agree to arbitrate disputes filed in Arizona Superior Court that are subject to mandatory arbitration pursuant to ARS § 12-133. ARS § 12-1518 requires this provision in all ASU agreements.

19. Dispute Resolution. If a dispute arises under this Agreement, the parties will exhaust all applicable administrative remedies under Arizona Board of Regents Policy 3-809.

20. Records. To the extent required by ARS § 35-214, the non-ASU parties to this Agreement will retain all records relating to this Agreement, and will make those records available at all reasonable times for inspection and audit by ASU or the Auditor General of the State of Arizona during the term of this Agreement and for 5 years after the completion of this Agreement. The records will be provided at ASU in Tempe, Arizona, or another location designated by ASU on reasonable notice to Vendor.

21. Failure of Legislature to appropriate. In accordance with ARS § 35-154, if ASU's performance under this Agreement depends on the appropriation of funds by the Arizona Legislature, and if the Legislature fails to appropriate the funds necessary for performance, then ASU may provide written notice of this to Vendor and cancel this Agreement without further obligation of ASU. Appropriation is a legislative act and is beyond the control of ASU.

22. Weapons, Explosives, and Fireworks. [ASU's Weapons, Explosives, and Fireworks Policy](#) prohibits the use, possession, display or storage of any weapon, explosive device or fireworks on all land and buildings owned, leased, or under the control of ASU or its affiliated entities, in all ASU residential facilities (whether managed by ASU or another vendor), in all ASU vehicles, and at all ASU or ASU affiliate sponsored events and activities, except as provided in ARS § 12-781, or unless written permission is given by ASU's Police Chief or a designated representative. Vendor will notify all persons or entities who are employees, officers, subcontractors, consultants, agents, guests, invitees or licensees of Vendor of this policy, and Vendor will enforce this policy against all such persons and entities.

23. Advertising, Publicity, Names and Marks. Vendor will not do any of the following, without, in each case, ASU's prior written consent: (i) use any names, service marks, trademarks, trade names, logos, or other identifying names, domain names, or identifying marks of ASU (ASU Marks) for any reason, including online, advertising, or promotional purposes; (ii) issue a press release or public statement regarding this Agreement; or (iii) represent or imply any ASU endorsement or support of any product or service in any public or private communication. Any permitted use of ASU Marks must comply with ASU's requirements, including using the ® indication of a registered mark.

24. Information Security. All systems containing ASU Data must be designed, managed, and operated in accordance with information security best practices and in compliance with all applicable laws, rules, and regulations. To diminish information security threats, Vendor will (either directly or through its third party service providers) meet the requirements set forth on Exhibit C.

25. Background Checks. Vendor will, at Vendor's expense, conduct reference checks, and employment, education, SSN trace, National Sex Offender Registry, and criminal history record checks (collectively, Screenings) on those persons employed or contracted by Vendor for security or safety-sensitive positions, as defined in [ASU ACD 126](#), or who may have access to sensitive or highly sensitive ASU data, as defined [ASU's Data Handling Standard](#). Vendor will conduct all Screenings within 90 days prior to a person commencing work under this Agreement. Vendor will exclude from any direct participation in Vendor's performance under this Agreement any unqualified persons. Vendor will maintain, as part of the records Vendor is required to maintain hereunder, all Screening information and all documentation relating to work performance for each employee or contractor who performs work hereunder. Vendor will abide by all applicable laws, rules and regulations, including the Fair Credit Reporting Act, and equal opportunity laws, rules, and regulations.

26. Insurance Requirements. Without limiting any liabilities or any other obligation of Vendor, Vendor will purchase and maintain (and cause its subcontractors to purchase and maintain), until all of their obligations have been discharged or satisfied, including any warranty periods under this Agreement, insurance against claims that may arise from or in connection with the performance of the work hereunder by Vendor, its agents, representatives, employees or subcontractors, as described on Exhibit D.

27. Privacy; Educational Records. Student educational records are protected by the U.S. Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g (FERPA). Vendor will not require any ASU students or employees to waive any privacy rights (including under FERPA or the European Union's General Data Protection Regulation (GDPR)) as a condition for receipt of any educational services, and any attempt to do so will be void. Vendor will comply with FERPA and will not access or make any disclosures of student educational records to third parties without prior notice to and consent from ASU or as otherwise provided by law. If this Agreement contains a scope of work or other provision that requires or permits Vendor to access or release any student records, then, for purposes of this Agreement only, ASU designates Vendor as a "school official" for ASU under FERPA, as that term is used in FERPA and its implementing regulations. In addition, any access or disclosures of student educational records made by Vendor or any Vendor Parties must comply with ASU's definition of legitimate educational purpose in [SSM 107-01: Release of Student Information](#). If Vendor violates the terms of this section, Vendor will immediately provide notice of the violation to ASU.

28. Academic Freedom and Accreditation. ASU must comply with the policies, standards, and requirements of ABOR and ASU's accrediting bodies. ASU will maintain ultimate authority over all curriculum. ASU may veto or otherwise not follow or enforce any terms, requirements, or decisions contrary to the policies, standards, and requirements of ABOR and any accrediting entities. None of ASU's obligations in this Agreement will be construed to limit academic freedom.

29. Data Protection. Vendor will ensure that all services undertaken pursuant to this Agreement are performed in compliance with applicable privacy and data protection laws, rules, and regulations. If Vendor will serve as a Processor of ASU Data that includes Personal Data of Data Subjects who reside in the European Union, Vendor will cooperate with ASU to comply with the EU General Data Protection Regulation (GDPR) with respect to such Personal Data and Data Subjects. This includes ensuring that all Data Subjects have signed appropriate Consents, and signing and complying with all documents and agreements reasonably requested by ASU, including any data processing agreements. All capitalized terms in this paragraph not otherwise defined in this Agreement are defined in the GDPR.

30. Title IX Obligation. Title IX protects individuals from discrimination based on sex, including sexual harassment. ASU fosters a learning and working environment built on respect and free of sexual harassment. [ASU's Title IX Guidance](#) is available online. Vendor will: (i) comply with ASU's Title IX Guidance; (ii) provide ASU's Title IX Guidance to any Vendor Parties reasonably expected to interact with ASU students or employees, in person or online; and (iii) ensure that all Vendor Parties comply with ASU's Title IX Guidance.

31. Authorized Presence Requirements. As required by ARS § 41-4401, ASU is prohibited from awarding an agreement to any contractor or subcontractor that fails to comply with ARS § 23-214(A) (verification of employee eligibility through the e-verify program). Vendor warrants that it and its subcontractors comply fully with all applicable immigration laws, rules, and regulations that relate to their employees and their compliance with ARS § 23-214(A). A breach of this warranty will be a material breach of this Agreement that is subject to penalties up to and including termination of this Agreement. ASU retains the legal right to inspect the papers of any contractor or

subcontractor employee who works hereunder to ensure that the contractor or subcontractor is complying with the above warranty.

32. Leased Employees. Vendor will determine and inform ASU if any leased employees are retired members of the Arizona State Retirement System prior to the leased employee performing any work under this Agreement.

33. Tobacco-Free University. ASU is tobacco-free. For details visit asu.edu/tobaccofree.

34. Outside Services; Notification. Vendor is free to perform work for entities other than ASU as long as such services do not violate Vendor's obligations under this Agreement. Vendor authorizes ASU to notify any employers or clients of Vendor of Vendor's obligations hereunder.

35. Construction. Each party acknowledges that it has had the opportunity to participate in the drafting of, and to have its legal counsel review, this Agreement. Vendor is not relying on the advice or counsel of any individuals employed by ASU in entering into this Agreement. Any rule of construction to the effect that any ambiguities are to be resolved against the drafting party will not be applied in interpreting this Agreement.

36. Americans with Disabilities and Rehabilitation Acts. Vendor will comply with all applicable provisions of the Americans with Disabilities Act, the Rehabilitation Act of 1973, and all applicable federal regulations, as amended from time to time (ADA Laws). All electronic and information technology and products and services to be used by ASU faculty/staff, students, program participants, or other ASU constituencies must be compliant with the ADA Laws. Compliance means that a disabled person can acquire the same information, engage in the same interactions, and enjoy the same services as a nondisabled person, in an equally effective and integrated manner, with substantially equivalent ease of use.

37. No Boycott of Israel. If required by ARS § 35-393.01, Vendor certifies it is not currently engaged in a boycott of Israel and will not engage in a boycott of Israel during the term of this Agreement.

38. Governing Law and Venue. This Agreement will be governed by the laws of the State of Arizona without regard to any conflicts of laws principles. ASU's obligations are subject to the regulations/policies of the Arizona Board of Regents. Any proceeding arising out of or relating to this Agreement will be conducted in Maricopa County, Arizona. Each party consents to such jurisdiction, and waives any objection it may have to venue or convenience of forum.

39. Essence of Time. Time is of the essence in the performance of this Agreement.

The parties have signed this Agreement as of the Effective Date.

**Arizona Board of Regents for and
on behalf of Arizona State University**

Vendor:

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date Signed: _____

Date Signed: _____

Additional Provisions to Consider: PCI Language, Federally Funded, Language for Foreign Contractors

EXHIBIT A – SERVICES AND DELIVERABLES

EXHIBIT B – CONSIDERATION

If in this Exhibit B ASU agrees to reimburse Vendor for any travel expenses, all reimbursable travel expenses must be authorized in writing by ASU in advance of the planned travel and must be consistent with ASU Financial Services Policy [FIN 421-01](#).

If in this Exhibit B, ASU agrees to reimburse Vendor for any expenses, Vendor will submit all receipts and any required backup documentation to ASU within 60 days after the applicable expenses were incurred. ASU will not be required to reimburse Vendor for any expenses, invoices, or receipts for expenses received after that time.

EXHIBIT C – INFORMATION SECURITY

All systems containing ASU Data must be designed, managed, and operated in accordance with information security best practices and in compliance with all applicable laws, rules, and regulations. To diminish information security threats, Vendor will (either directly or through its third party service providers) meet the following requirements:

(a) Access Control. Control access to ASU's resources, including sensitive ASU Data, limiting access to legitimate business need based on an individual's job-related assignment. Vendor will, or will cause the system administrator to, approve and track access to ensure proper usage and accountability, and Vendor will make such information available to ASU for review, upon ASU's request.

(b) Incident Reporting. Report information security incidents immediately to ASU (including those that involve information disclosure incidents, unauthorized disclosure of ASU Data, network intrusions, successful virus attacks, unauthorized access or modifications, and threats and vulnerabilities).

(c) Off-Shore. Direct services under this Agreement will be performed within the borders of the United States. Any services that are described in this Agreement that directly serve ASU and may involve access to secure or sensitive ASU Data or personal client data or development or modification of software for ASU will be performed within the borders of the United States. Unless stated otherwise in this Agreement, this requirement does not apply to indirect or "overhead" services, redundant back-up services or services that are incidental to the performance of this Agreement. This provision applies to work performed by subcontractors at all tiers and to all ASU Data.

(d) Patch Management. Carry out updates and patch management for all systems and devices in a timely manner and to the satisfaction of ASU. Updates and patch management must be deployed using an auditable process that can be reviewed by ASU upon ASU's request.

(e) Encryption. All systems and devices that store, process or transmit sensitive ASU Data must use an industry standard encryption protocol for data in transit and at rest.

(f) Notifications. Notify ASU immediately if Vendor receives any kind of subpoena for or involving ASU Data, if any third-party requests ASU Data, or if Vendor has a change in the location or transmission of ASU Data. All notifications to ASU required in this Information Security paragraph will be sent to ASU Information Security at Infosec@asu.edu, in addition to any other notice addresses in this Agreement.

The above language goes in all agreements when this Agreement meets at least one of these criteria:

(1) ASU is purchasing or leasing software, or processing a software renewal,

(2) Vendor is creating any code for ASU,

(3) Vendor receives, stores, or analyzes ASU Data (including if the data is not online), or

(4) Vendor is hosting, or managing by infrastructure outside of ASU, including in the cloud, ASU Data. **ALSO the following language must be included when this Agreement is for Item(s) 1-4 above as indicated.**

(g) Security Reviews. Complete SOC2 Type II or substantially equivalent reviews in accordance with industry standards, which reviews are subject to review by ASU upon ASU's request. Currently, no more than two reviews per year are required. **Item 4**

(h) Scanning and Penetration Tests. Perform periodic scans, including penetration tests, for unauthorized applications, services, code and system vulnerabilities on the networks and systems included in this Contact in accordance with industry standards and ASU standards (as documented in [NIST 800-115](#)) or equivalent. All web based applications (e.g. HTTP/HTTPS accessible URLs, APIs, and web services) are required to have their own web application security scan and remediation plan. Vendor must correct weaknesses within a reasonable period of time, and Vendor must provide proof of testing to ASU upon ASU's request. **Item 3 and/or 4**

(i) ASU Rights. ASU reserves the right (either directly or through third party service providers) to scan and/or penetration test any purchased and/or leased software regardless of where it resides. **Items 1, 2, and/or 4**

(j) Secure Development. Use secure development and coding standards including secure change management procedures in accordance with industry standards. Perform penetration testing and/or scanning prior to releasing new software versions. Vendor will provide internal standards and procedures to ASU for review upon ASU request. **Items 1, 2 and/or 4**

Any changes to this Info. Security paragraph must be approved by an ASU Info. Security officer or director.

EXHIBIT D – INSURANCE REQUIREMENTS

Without limiting any liabilities or any other obligation of Vendor, Vendor will purchase and maintain (and cause its subcontractors to purchase and maintain), until all of their obligations have been discharged or satisfied, including any warranty periods under this Agreement, insurance against claims that may arise from or in connection with the performance of the work hereunder by Vendor, its agents, representatives, employees or subcontractors, as described in this Exhibit D.

These insurance requirements are minimum requirements for this Agreement and in no way limit any indemnity covenants in this Agreement. ASU does not warrant that these minimum limits are sufficient to protect Vendor from liabilities that might arise out of the performance of the work under this Agreement by Vendor, its agents, representatives, employees, or subcontractors. These insurance requirements may change if Vendor is a foreign vendor, or with foreign insurance coverage.

A. Minimum Scope and Limits: Vendor's insurance coverage will be primary insurance with respect to all other available sources. Vendor will provide coverage with limits of liability not less than those stated below:

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

• General Aggregate	\$2,000,000
• Products – Completed Operations Aggregate	\$1,000,000
• Personal and Advertising Injury	\$1,000,000
• Contractual Liability	\$1,000,000
• Fire Legal Liability (only if Agreement is for leasing space)	\$ 50,000
• Each Occurrence	\$1,000,000

a. Policy will include the following additional insured language: "The State of Arizona, its departments, agencies, boards, commissions, universities, and its officers, officials, agents, and employees, will be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of Vendor."

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

2. Automobile Liability. If Vendor will be driving on ASU campus or on ASU business use the following section. Policy will include Bodily Injury and Property Damage for any owned, hired, and/or non-owned vehicles used in the performance of this Agreement in the following amounts. If Supplier is not an individual, a combined single limit of \$1,000,000. If Supplier is an individual, then coverage will be \$100,000 per person, \$300,000 per accident, and \$50,000 property damage.

a. Policy will include the following additional insured language: "The State of Arizona, its departments, agencies, boards, commissions, universities, and its officers, officials, agents, and employees, will be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of Vendor, involving vehicles owned, leased, hired, or borrowed by Vendor."

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

c. Policy will contain a severability of interest provision.

3. Worker's Compensation and Employers' Liability. Applicable statutory limits, as amended from time to time.

a. Employer's Liability in the amount of \$1,000,000 injury and disease.

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

c. This requirement will not apply to any contractor or subcontractor exempt under ARS § 23-901, when such contractor or subcontractor signs the appropriate waiver (Sole Proprietor/Independent Contractor) form.

4. Technology/Network Errors and Omissions Insurance. If Exhibit C Info Security, is not used, and this Agreement does not otherwise address technology, then this may be replaced with para. 5 below, if applicable.

- Each Claim \$2,000,000
- Annual Aggregate \$4,000,000

- a. This insurance will cover Vendor's liability for acts, errors and omissions arising out of Vendor's operations or services, including loss arising from unauthorized access, or use that results in identity theft or fraud.
- b. If the liability insurance required by this Agreement is written on a claims-made basis, Vendor warrants that any retroactive date under the policy will precede the effective date of this Agreement, and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of 2 years beginning at the time work under this Agreement is completed.
- c. Policy will cover professional misconduct for those positions defined in the scope of work of this Agreement.

5. Professional Liability (Errors and Omissions Liability). Use if para. 4 above is not used, and this Agreement includes the provision of services.

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

- a. If the professional liability insurance required by this Agreement is written on a claims-made basis, Vendor warrants that any retroactive date under the policy will precede the effective date of this Contact; and that either continuous coverage will be maintained or an extended discovery period will be exercised for 2 years beginning at the time work under this Agreement is completed.
- b. Policy will cover professional misconduct for those positions defined in the scope of work of this Agreement.

B. Cancellation, Material Changes: Cancellation notices will be delivered to ASU in accordance with all policy provisions. Notices required in this Section must be sent directly to ASU Director of Risk Management, PO Box 876512, Tempe, AZ, 85287-6512 and will be sent by U.S. certified mail, return receipt requested.

C. Acceptability of Insurers: Insurance is to be placed with duly licensed or approved non-admitted insurers in the State of Arizona with an "A.M. Best" rating of not less than A- VII. ASU in no way warrants that the above required minimum insurer rating is sufficient to protect Vendor from potential insurer insolvency. Self-Insurance may be accepted in lieu of or in combination with insurance coverage requested.

D. Verification of Coverage: Vendor will furnish ASU with valid certificates of insurance as required by this Agreement. All valid certificates evidencing insurance required by this Agreement are to be received and approved by ASU before work commences. Each insurance policy required by this Agreement must be in effect at or prior to commencement of work under this Agreement and remain in effect for the term of this Agreement. Failure to maintain the insurance policies as required by this Agreement, or to provide evidence of renewal, is a material breach of agreement.

All certificates required by this Section must be sent to ASU Director of Risk Management, PO Box 876512, Tempe, AZ, 85287-6512. ASU's project or purchase order number and project description will be noted on each certificate of insurance. The State of Arizona and ASU may require complete, certified copies of policies at the time of notice of any loss or claim.

E. Subcontractors. Vendor's certificate(s) may include all subcontractors as insureds under its policies as required by this Agreement or Vendor will furnish to ASU copies of valid certificates and endorsements for each subcontractor. Coverages for subcontractors will be subject to the minimum requirements identified above.

F. Approval. These insurance requirements are the standard insurance requirements of ASU. Any modification or variation from the insurance requirements in this Agreement will require the approval of ASU's Department of Risk & Emergency Management.