

ADDENDUM No. 3

(please sign and return with the submittal)

CHANGES

1. Section 6, Standard Terms and Conditions, 6.18, Procurement Reports, has been removed in its entirety.

OFFEROR'S INQUIRIES AND CITY'S RESPONSES

No.	Solicitation Section	Original Language	Requested Exception or Inquiry	City Response
1.	Section 5, Standard Terms and Conditions, Item 5.2(A), Applicable Law.	5.2. Contract Interpretation A. Applicable Law: This Contract will be governed by the law of the State of Arizona, and suits pertaining to this Contract will be brought only in Federal or State courts in Maricopa County, State of Arizona.	OFFEROR requests that the forum selection provision here note that the federal court would be the venue for any litigation arising from the contract, assuming such court can exercise jurisdiction. We also propose the inclusion of a mandatory mediation clause (and arbitration clause, if the City can agree to it) to apply prior to litigation, to save time and money in resolving disputes arising under the contract.	The City of Phoenix rejects this exception.
2.	Section 5, Standard Terms and Conditions, Item 5.2(D), Applicable Law.	5.2. Contract Interpretation D. Severability: The provisions of this Contract are severable to the extent that any provision or application held to be invalid will not affect any other provision or application of the contract which may remain in effect without the invalid provision or application.	As City's attorneys are more familiar with Arizona law, OFFEROR would ask that any severed provision be replaced with a comparable provision effecting the parties' mutual intent that is permissible under Arizona law.	The City of Phoenix rejects this exception.
3.	Section 5, Standard Terms and Conditions, Item 5.3(D), Applicable Law.	5.3. Contract Administration and Operation (D) Health, Environmental, and Safety Requirements: Contractor's products, services, and facilities will be in full compliance with all applicable Federal, State and local health, environmental and safety laws, regulations, standards, codes and ordinances, regardless of whether they are referred to by the City. At the request of City	For the security of all customers, OFFEROR would not permit unannounced inspections of OFFEROR's operations. In general, OFFEROR would ask that City's review of annual OFFEROR SOC 2 Type 2 audits be used in lieu of any on-site inspections.	The City of Phoenix rejects this exception.

		<p>representatives, Contractor will provide the City:</p> <ol style="list-style-type: none"> 1. Environmental, safety, and health regulatory compliance documents (written safety programs, training records, permits, etc.) applicable to services provided by Contractor under this Contract. 2. A list of all federal, state, or local (EPA, OSHA, Maricopa County, etc.) citations or notice of violations issued against Contractor or their subcontractors including dates, reasons, dispositions, and resolutions. 3. The City will have the right, but not the obligation to inspect the facilities, transportation vehicles or vessels, containers, and disposal facilities provided by Contractor or subcontractor. The City will also have the right to inspect operations conducted by Contractor or subcontractor, as applicable, in the performance of this Agreement. The City further reserves the right to make unannounced inspections of Contractor's facilities (during normal business hours). 		
4.	Section 5, Standard Terms and Conditions, Item 5.3(G), Continuation During Disputes	<p>Continuation During Disputes: Contractor agrees that notwithstanding the existence of any dispute between the Parties, insofar as is possible, under the terms of this Contract, Contractor will continue to perform the obligations required of Contractor during the continuation of any such dispute unless enjoined or prohibited by an Arizona Court of competent jurisdiction.</p>	OFFEROR does not object to continuing performance during disputes, provided City continues paying any applicable fees due in consideration of such continued performance.	No response to this is needed. The City will make applicable payments in accordance with the contract.
5.	Section 5, Standard Terms and Conditions, 5.3 (H),	<p>Emergency Purchases: The City reserves the right to purchase from other sources those Services or items, as applicable, which the City requires on an emergency basis and</p>	This clause is not applicable; City would not be able to purchase OFFEROR's services or items from other sources, as our services and software are	The City of Phoenix rejects this exception.

	Emergency Purchases	that cannot be supplied immediately by Contractor.	proprietary and confidential information of OFFEROR.	
6.	Section 5, Standard Terms and Conditions, 5.4 (E) No Advance Payments	No Advance Payments: Advance payments are not authorized. Payment will be made only for actual services or commodities that have been received, unless addressed specifically in the Scope of Work for subscription services.	For clarification, payments of annual license, maintenance, and support (and hosting, if applicable) fees are due in advance, which is customary.	The City acknowledges this is common practice. The City will address this item in the scope at the appropriate time.
7.	Section 5, Standard Terms and Conditions, 5.4 (F), Fund Appropriation Contingency	Fund Appropriation Contingency: Contractor recognizes that any agreement entered into will commence upon the day first provided and continue in full force and effect until termination in accordance with its provisions. Contractor and the City recognize that the continuation of any contract after the close of any given fiscal year of the City, which ends on June 30th of each year, will be subject to the approval of the City budget providing for or covering such contract item as an expenditure therein. The City does not represent that said budget item will be actually adopted, said determination being the determination of the City Council at the time of the adoption of the budget.	OFFEROR does not object to the inclusion of a funding out clause, but would require clarification that in the event of termination on this basis, OFFEROR would be compensated for work performed (including work in progress) prior to the date of termination.	No response to this is needed. The City will make applicable payments in accordance with the contract.
8.	Section 5, Standard Terms and Conditions, 5.4 (G), Maximum Prices	Maximum Prices: The City will not be invoiced at prices higher than those stated in any contract resulting from this Offer. Contractor certifies, by signing this Offer that the prices offered are no higher than the lowest price Contractor charges other buyers for similar Services under similar conditions, as applicable, and shown by quotes for like services and goods. Contractor further agrees that any reductions in the price of the goods or Services covered by this Offer and occurring after award will apply to the undelivered balance. Contractor will promptly notify the City of such price reductions.	OFFEROR changes standardized rates across our customer base for eCourt. But because our professional services fees are variable depending on many different factors relating to an individual customer's system, OFFEROR cannot agree to the inclusion of a most-favored-nation-type clause as proposed here.	The City of Phoenix rejects this exception.

9.	Section 5, Standard Terms and Conditions, 5.5 (C), Maximum Prices	Non-Exclusive Contract: Any contract resulting from this solicitation will be awarded with the understanding and agreement that it is for the sole convenience of the City. The City reserves the right to obtain like goods or services from another source when necessary.	As the City will be licensing proprietary software of OFFEROR, we cannot agree to City contracting with another provider for the same goods, nor do we believe such a clause would be applicable here.	The City of Phoenix rejects this exception.
10.	Section 5, Standard Terms and Conditions, 5.6 (A), Maximum Prices	Title and Risk of Loss: The title and risk of loss of material or service will not pass to the City until the City actually receives the material or service at the point of delivery; and such loss, injury, or destruction will not release Contractor from any obligation hereunder.	As OFFEROR and City will be jointly building the software system together, OFFEROR does not agree that we would fully bear the risk of loss prior to completion of the system, as there could theoretically be issues with the system due to causes on the City's side. Additionally, to avoid any doubt, title to the software will never pass to City, as the software is licensed.	The City of Phoenix rejects this exception.
11.	Section 5, Standard Terms and Conditions, 5.6 (E), Contract Performance	Contract Performance: Contractor will furnish all necessary labor, tools, equipment, and supplies to perform the required contractual services at the City facilities designated, unless otherwise specifically addressed in the Scope of Work, or elsewhere in this Agreement. The City's authorized representative will decide all questions which may arise as to the quality and acceptability of any work performed under this Contract. If, in the opinion of the City's authorized representative, performance becomes unsatisfactory, the City will notify Contractor. Contractor will have thirty (30) days from that time to correct any specific instances of unsatisfactory performance unless a different amount of time is specified elsewhere in this Agreement. In the event the unsatisfactory performance is not corrected within the time specified, the City will have the immediate right to complete the work to its satisfaction and will deduct the cost to cover from any balances due or to become due to Contractor. Repeated incidences of	OFFEROR will not "furnish all necessary labor" relating to the system implementation. It will be a joint project entailing significant involvement from City's IT staff. Additionally, OFFEROR will not agree that City could "complete the work to its satisfaction and...deduct the cost to cover from any balances due or to become due to Contractor." Because: (1) the "work" – i.e. implementation of OFFEROR's proprietary software – could not be completed by another party, including City, and (2) OFFEROR will not agree to act as an insurer covering the costs of another vendor supplying replacement services.	The City of Phoenix rejects this exception.

		unsatisfactory performance may result in cancellation of this Agreement for default.		
12.	Section 5, Standard Terms and Conditions, 5.7 (C), Contract Performance	On Time Delivery: Because the City is providing services which involve health, safety and welfare of the general public, delivery time is of the essence. Delivery must be made in accordance with the delivery schedule promised by Contractor.	This will be a joint project, requiring involvement and effort on the part of the City, as to provision of specifications, testing, provision of feedback, user training, &c. Timely delivery of the system will depend in part on City's completion of its obligations.	The City of Phoenix rejects this exception.
13.	Section 5, Standard Terms and Conditions, 5.7 (D), Contract Performance	Default: In case of default by Contractor, the City may, by written notice, cancel this Contract and repurchase from another source and may recover the excess costs by (1) deduction from an unpaid balance due; (2) collection against the Solicitation and/or Performance Bond, or (3) a combination of the aforementioned remedies, or other remedies as provided by law.	Regarding the cost to cover clause in this section, see our response above to Section 5.6.E. OFFEROR would be amenable to securing a performance bond, presuming its cost is paid for by the City.	The City of Phoenix rejects this exception.
14.	Section 5, Standard Terms and Conditions, 5.8 (B)(1),(2), Contract Performance	Conditions and Causes for Termination: 1. This Contract may be terminated at any time by mutual written consent, or by the City, with or without cause, upon giving thirty (30) days' written notice to Contractor. The City, at its convenience and by written notice, may terminate this Contract, in whole or in part. If this Contract is terminated, the City will be liable only for payment under the payment provisions for services rendered and accepted material received by the City before the effective date of termination. Title to all materials, work-in-process, and any completed but undeliverable goods will pass to the City after costs are claimed and allowed. Contractor will submit detailed cost claims in an acceptable manner and will permit the City to examine such books and records as may be necessary in order to verify the reasonableness of any claims.	Conditions and Causes for Termination. In the event of termination of the contract, for any reason (including default), OFFEROR would require we be compensated for all satisfactory services rendered to the date of termination (i.e., in the event of default, OFFEROR would not expect to be paid for the services that were subject of the claimed default). As noted above, title for in-progress work would not pass to City. Due to the substantial investment of resources this project would entail, we would require not less than 30 days' prior to any termination for claimed default of OFFEROR.	The City of Phoenix rejects this exception. Items of concern are covered within the provision.

		<p>2. The City reserves the right to cancel the whole or any part of this Contract due to failure of Contractor to carry out any term, promise, or condition of this Contract. The City will issue a written notice of default to Contractor for acting or failing to act as in any of the following:</p> <ul style="list-style-type: none"> □ In the opinion of the City, Contractor provides personnel who do not meet the contract requirements; □ In the opinion of the City, Contractor fails to perform adequately the stipulations, conditions or services/specifications required in this Contract; □ In the opinion of the City, Contractor attempts to impose on the City personnel or materials, products, or workmanship of an unacceptable quality; □ Contractor fails to furnish the required Services and/or product within the time stipulated in this Contract; □ In the opinion of the City, Contractor fails to make progress in the performance of the requirements of this Contract and/or gives the City a positive indication that Contractor will not or cannot perform to the contract requirements. 		
15.	Section 5, Standard Terms and Conditions, 5.15, Strict Performance	<p>Strict Performance Failure of either Party (a) to insist upon the strict performance of any item or condition of this Contract; (b) to exercise, or delay the exercise of any right or remedy provided in this Contract, or by law; or (c) to accept materials, services, or obligations imposed by this Contract, or by law, will not be deemed a waiver of any right of either Party to insist upon the strict performance of this Contract.</p>	In general OFFEROR does not object to this term; however, as to the clause regarding acceptance not creating a waiver of any right, OFFEROR would like to clarify that City's acceptance of the software must occur prior to Go Live; and by going live City will have agreed that the software meets all specifications therefor, except as expressly noted in a signed writing at the time of Go Live.	The City of Phoenix rejects this exception.
16.	Section 5, Standard Terms and Conditions,	The City reserves the right at any time to make changes in any one or more of the following: (a) specifications; (b) methods of	Expansion to the project's scope must be agreed to be OFFEROR.	Scope changes will be subject to Section 5.5, Contract Changes.

	5.16, Authorized Changes	shipment or packing; (c) place of delivery; (d) time of delivery; and/or (e) quantities. If the change causes an increase or decrease in the cost of or the time required for performance, an equitable adjustment may be made in the price, delivery schedule, or both. Any claim for adjustment will be deemed waived unless asserted in writing within sixty (60) days from the receipt of the change. Price increases or extensions of delivery time will not be binding on the City unless evidenced in writing and approved by the Chief Procurement Officer prior to the institution of the change.		
17.	Section 6, Standard Terms and Conditions, 6.2, Cooperative Purchasing	This Contract may be extended for use by any eligible entities, to include government agencies, any court, a county, a political subdivision, a city, municipality, or town in the State of Arizona. A current listing of eligible entities may be found at https://www.mesaaz.gov/business/purchasing/save (listing Strategic Alliance for Volume Expenditures ("S.A.V.E.") members). Any such usage by an eligible entity must be in accordance with the ordinance, charter and/or procurement rules and regulations of that respective entity. Orders placed by eligible entities and payment, thereof, will be the sole responsibility of that entity. The City shall not be responsible for any disputes arising out of transactions made by other entities utilizing this solicitation.	OFFEROR is glad to include a cooperative purchasing term, provided that pricing for other agencies will naturally vary based on the unique specifications of systems to be delivered for those agencies.	No response is needed.
18.	Section 6, Standard Terms and Conditions, 6.3, Price	All prices offered shall be firm and fixed for the entire term of this Contract.	OFFEROR can agree to the inclusion of a "fixed fee" term, provided language is included clarifying: (i) that there will be an annual CPI adjustment on the recurring license, maintenance, support (and hosting, if applicable) fees, (ii) there would be additional fees for users added by	The City of Phoenix rejects this exception.

			the City, for additional work requested by the City, and for additional hosted storage space (as applicable) required by the City, and (iii) that the fixed fee for professional services may be subject to a maximum number of professional service hours to be dedicated by OFFEROR, beyond which there would be additional costs at OFFEROR's standard hourly rate.	
19.	Section 6, Standard Terms and Conditions, 6.11, Performance Interference	Contractor shall immediately notify the City's authorized Department representative of any occurrence and/or condition that interferes with the full performance of this Contract and confirm it in writing within 24 hours.	Considering the substantial duration of the project, it may not be reasonable to expect notification within 24 hours of "any occurrence and/or condition that interferes with the full performance of this Contract." OFFEROR would request the time period be changed to "promptly," and for the provision to be mutual, as City will have obligations to perform under the contract.	The City of Phoenix rejects this exception.
20.	Section 6, Standard Terms and Conditions, 6.16, Liquidated Damages	If Contractor fails to deliver the supplies or perform the services within the time specified in this Contract, or any extension thereof, the actual damages to the City for the delay will be difficult or impossible to determine. Therefore, in lieu of actual damages, Contractor shall pay to the City as fixed, agreed, and liquidated damages for each calendar day of the delay, the amount of \$5,000. The City may terminate this Contract in whole, or in part, as provided in the "Default" provision. In that event, Contractor shall be liable for such liquidated damages accruing until the City may reasonably obtain delivery or performance of similar supplies and/or services. Contractor shall not be charged with liquidated damages when the delay arises out of causes beyond its control and without fault or negligence, as determined by the City.	OFFEROR will not agree to the inclusion of a liquidated damages clause. As noted, timely delivery of the system will depend in part on the City.	The City of Phoenix rejects this exception.

21.	Section 6, Standard Terms and Conditions, 6.17, Holdbacks; Shift in Payment Schedule	If Contractor fails to meet, perform, or deliver any of the Deliverables specified within the Scope of Work, the City, at its discretion, may holdback (retain a portion of any payment due), or adjust the payment schedule (if applicable) until the Deliverable not met, performed, or delivered is met, performed, or delivered as specified or required.	In general OFFEROR does not agree to the inclusion of a holdback clause. However, because the payment schedule will generally be in conjunction with deliverable milestones (e.g. \$40,000 for delivery of the project plan), in practical effect I don't believe City would have any issue with payment being expected without the completion of some deliverable/milestone.	The City of Phoenix rejects this exception.
22.	Section 6, Standard Terms and Conditions, 6.18, Procurement Reports	Contractor shall submit quarterly reports in an electronic format acceptable to the City during the term of this Contract commencing one month after the effective date. These reports are due by the 15th day of the month following the reporting period. Total purchases for each department must be shown on a separate line. The report should be rounded to the nearest dollar. Contractor will provide sample forms for approval by the City.	OFFEROR does not believe this term is applicable in this context.	The City Of Phoenix agrees to this exception. The language has been removed with this Addendum No. 3.
23.	Section 6, Standard Terms and Conditions, 6.20, Warranty	Contractor will provide twelve (12) months of operations (aka production) and maintenance support after release, or Go-Live. If Contractor provides a phased deployment, the City requires twelve (12) months of operations and maintenance support per release. Contractor will coordinate the transition to Contractor's ongoing support and maintenance team upon achieving Go-Live, and initiating production. Prior to deployment, Contractor will develop processes, policies, and procedures for post-production support. Contractor must work to ensure successful adoption and user transition and keep the project active until all Deliverables have been accepted in accordance with Scope of Work, Section 3.12 Deliverables, Payment Schedule, and Acceptance Criteria.	For clarity, OFFEROR does not provide a warranty for a set term of months, but rather warrants the system will perform as accepted at Go Live for the full duration of the software license agreement, presuming City continues paying annual license, maintenance, support (and hosting, if applicable) fees.	The City of Phoenix rejects this exception.

<p>24.</p>	<p>Section 6, Standard Terms and Conditions, Intellectual Property Warranties, (D)</p>	<p>INTELLECTUAL PROPERTY WARRANTIES: Contractor warrants that: A. The hardware, software, application(s), or other technology provided to the City pursuant to this Contract (collectively, the “Technology Assets”) will be free of the rightful claim of any third-party for, or by way of, infringement or misappropriation of patent, copyright, trade secret, trademark or other rights arising under the laws of the United States; B. No act or omission of Contractor will result in a third-party holding any other claim that interferes with the City’s enjoyment or use of the Technology Assets; C. Contractor owns or possesses all right(s), titles(s) and license(s) necessary to perform its obligations, hereunder; and D. As of the effective date and throughout the term (duration) of this Agreement, Contractor has not conveyed and will not convey any rights or licenses to any third-party regarding the Technology Assets, except to the extent the Technology Assets consist of commercial-off-the-shelf or similar software product(s).</p>	<p>For the avoidance of doubt, eCourt is licensed to many other third parties.</p>	<p>No response is needed.</p>
<p>25.</p>	<p>Section 6, Standard Terms and Conditions, 6.23, Final Inspection and Approval</p>	<p>All services and materials provided by Contractor are subject to final inspection and acceptance by the City in accordance with the acceptance criteria provided in the Scope of Work: more specifically, (1) the Final Cutover Plan requirements and deliverables; (2) the Service Level Performance Dashboard requirements and deliverables; (3) the Monthly Production Support Report requirements and deliverables; and (4) the Project Closeout Report requirements and deliverables.</p>	<p>As noted, acceptance of the software must occur no later than Go Live. City will have all necessary opportunities for testing and provision of feedback. By going live City will have agreed the system meets all specifications therefor.</p>	<p>The City of Phoenix rejects this exception.</p>

26.	Section 6, Standard Terms and Conditions, 6.26, Transition of Contract	Contractor will, without limitation, provide important information to a successor Contractor and the City to ensure continuity of service at the required level of proficiency and agrees to provide to the City all files, supplies, data, records, and any other properties or materials of the City, which the City owns or has rights to pursuant to this Contract and which are in the possession of Contractor. The provisions of this section will survive the expiration or termination of this Contract.	Performance of transition services (beyond provision by OFFEROR to City of City's data and documents) would be subject to a subsequent SOW.	The City of Phoenix rejects this exception.
27.	Section 6, Standard Terms and Conditions, 6.28, Contractor and Subcontract Workers Background Screening	Contractor's employees and its subcontractors' employees (collectively Contract Workers) will provide all information requested by the City and required for the City to perform background checks. The City will be responsible for performing the background checks it requires and the City will be responsible for all costs associated with performing the background checks. In performing the background checks, the City has the sole, absolute, and unfettered discretion, to accept or reject any or all of the Contract Workers proposed for performing work under this Contract. Those Contract Workers rejected by the City for performing services under this Contract may still be engaged by Contractor for other work with the City not involving the Scope of Work and the Requirements specified under this Contract. However, such Contract Workers rejected for work under this Contract shall not be proposed to perform work under other City contracts or engagements without the City's prior approval. Further, the City, in its sole discretion, reserves the right, but not the obligation to: • act on newly acquired information whether or not such information	OFFEROR does not object to City's performance of background checks at City's expense. In general, though, as OFFEROR manages a large number of simultaneous software implementations, we do not agree that individual customers can make decisions as to the deployment of our personnel. If there is a significant issue with a member of our project team that bears on their performance in relation to your implementation, OFFEROR will work with City to address the issue or replace the personnel if no other reasonable option exists.	The City of Phoenix rejects this exception.

		<p>should have been previously discovered;</p> <ul style="list-style-type: none"> • unilaterally change its standards and criteria relative to the acceptability of Contract Workers and/or prospective Contract Workers; and • object, at any time and for any reason, to any Contract Worker performing work (including supervision and oversight) under this Agreement. <p>Any Contractor that is a sole proprietor must comply with the background check requirements; and any business partners, or members or employees of the sole proprietor that will assist on this Contract are additionally required to comply with the background check requirements, herein.</p> <p>Contract Workers will not apply for the appropriate City identification and access badge(s) or keys until Contractor has received the City's written approval of Contract Workers' maximum risk background screening.</p> <p>By executing this Contract, Contractor certifies and warrants that Contractor has read the background screening requirements and criteria, and that all background screening information furnished to the City to conduct background checks is accurate and current.</p>		
28.	Section 6, Standard Terms and Conditions, 6.36, Confidentiality	<p>"Confidential Information" means all non-public, confidential, sensitive, or proprietary information disclosed or made available by the City to Contractor or its affiliates, employees, contractors, partners, or agents (collectively "Recipient"), whether disclosed before or after the term of the Agreement, whether disclosed orally, in writing, or via permitted electronic access, and whether or not marked, designated,</p>	<p>OFFEROR has no issue with the confidentiality obligations described herein, but would require that indemnification obligations related thereto be capped by the contract's limitation of liability clause (see note below in "Required Additional Section"). Additionally, OFFEROR would require this provision to be mutual, as City will be receiving</p>	<p>The City of Phoenix rejects this exception.</p>



	<p>or otherwise identified as confidential. Confidential Information includes, but is not limited to: user contents, electronic data, meta data, employment data, network configurations, information security practices, business operations, strategic plans, financial accounts, personally identifiable information, protected health information, protected criminal justice information, and any other information that by the nature and circumstance of the disclosure should be deemed confidential. Confidential Information does not include this document or information that: (a) is now or subsequently becomes generally available to the public through no wrongful act or omission of Recipient; (b) Recipient can demonstrate by its written records to lawfully have had in its possession prior to receiving such information from the City; (c) Recipient can demonstrate by its written records to have been independently developed by Recipient without direct or indirect use of any Confidential Information; (d) Recipient lawfully obtains from a third-party who has the right to transfer or disclose it; or (e) the City has approved in writing for disclosure.</p> <p>Recipient shall: (a) protect and safeguard Confidential Information with at least the same degree of care as Recipient would protect its own Confidential Information, but in no event with less than a commercially reasonable degree of care, such as ensuring data is encrypted in transit and at rest and maintaining appropriate technical and organizational measures in performing the Services under this Agreement; (b) not use Confidential Information, or permit it to be accessed or used, for any purpose</p>	OFFEROR proprietary and confidential information.	
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	<p>other than in accordance with this Agreement; (c) not use Confidential Information, or permit it to be accessed or used, in any manner that would constitute a violation of law, including, without limitation, export control and data privacy laws; and (d) not disclose Confidential Information except to the minimum number of recipients who have a need to know and who have been informed of and agree to abide by confidentiality obligations that are no less restrictive than the terms of this Agreement. If Recipient is required by law or court order to disclose any Confidential Information, Recipient will first give written notice to the City and provide the City with a meaningful opportunity to seek a protective order to preclude or limit disclosure.</p> <p>Upon the City's written request or expiration of this Agreement, whichever is earlier, Recipient shall, at no additional costs to the City, promptly return or destroy all Confidential Information belonging to the City that Recipient has in its possession or control. After return or destruction of the Confidential Information, Recipient shall certify in writing as to its compliance with this paragraph.</p> <p>If applicable, Contractor agrees to comply with all City information technology policies and security standards, as may be updated from time to time, when accessing City networks and computerized systems, whether onsite or remotely.</p> <p>In addition to, and not in lieu of, all other rights and remedies available to the City, Contractor will defend, indemnify, and hold the City harmless against all losses, claims, costs, attorneys' fees, damages or proceedings arising out of Contractor's breach of this Section</p>		
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		<p>(Confidentiality). Contractor's obligations pursuant to this Section (Confidentiality) shall not be subject to any limits of liability or exclusions as may be stated elsewhere in this Agreement.</p> <p>A violation of this Section shall be deemed to cause irreparable harm that justifies injunctive relief in court. A violation of this Section may at the City's discretion result in immediate termination of this Agreement without notice. The obligations of Contractor under this Section shall survive the termination of this Agreement.</p>		
<p>29.</p>	<p>Section 6, Standard Terms and Conditions, 6.37, Data Protection</p>	<p>The Parties agree this Section shall apply to the City's Confidential Information and all categories of legally protected personally identifiable information (collectively "PII") that Contractor processes pursuant to the Agreement.</p> <p>"Personally identifiable information" is defined as in the Federal Privacy Council's Glossary available at https://www.fpc.gov/resources/glossary/.</p> <p>As between the Parties, the City is the data controller and owner of PII and Contractor is a data processor. In this Section, the term "process," "processing," or its other variants shall mean: an operation or set of operations which is performed on PII, whether or not by automated means, including without limitation: collection, recording, copying, analyzing, caching, organizing, structuring, storage, adaptation, alteration, retrieval, transmission, dissemination, alignment, combination, restriction, erasure, or destruction.</p> <p>A. When Contractor processes PII pursuant to this Agreement, Contractor shall, at no additional cost to the City:</p>	<p>OFFEROR would ask that in lieu of our warranting to a variety of security provisions detailed by City, that instead City review OFFEROR's SOC 2 Type 2 audit and alert OFFEROR to the extent our security controls do not meet the level City requires. OFFEROR – in conjunction with AWS GovCloud for cloud hosting infrastructure – provides operational security in keeping with or exceeding that provided by other reputable software vendors, as evidenced by our SOC 2 Type 2 report, which can be provided pursuant to confidentiality terms.</p>	<p>The City of Phoenix rejects this exception.</p>

	<p>1. process PII only within the United States and only in accordance with this Agreement and not for Contractor's own purposes, including product research, product development, marketing, or commercial data mining, even if the City's data has been aggregated, anonymized, or pseudonymized;</p> <p>2. implement and maintain appropriate technical and organizational measures to protect PII against unauthorized or unlawful processing and against accidental loss, destruction, damage, theft, alteration or disclosure, including at a minimum, and as applicable, those measures specified by the National Institute of Standards and Technology (NIST) SP800-53; A.R.S. § 18-552 (Notification of Security System Breaches); A.R.S. § 44-7601 (Discard and Disposal of Personal Identifying Information Records); Health Information Technology for Economic and Clinical Health (HITECH) Act; Payment Card Industry Data Security Standards; and good industry practice: When considering what measures are appropriate and in line with good industry practice, Contractor shall keep abreast of current regulatory trends in data security and the state of technological development to ensure a level of security appropriate to the nature of the data to be protected and the harm that might result from such unauthorized or unlawful processing or accidental loss, destruction, damage, theft, alteration or disclosure. At minimum, Contractor will timely remediate any vulnerabilities found within its network that are rated medium or more critical by the Common Vulnerability Scoring System (CVSS); however, Contractor must remediate vulnerabilities that are</p>		
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	<p>rated critical within 14 days and vulnerabilities that are rated high within 30 days. If requested by the City, Contractor shall promptly provide a written description of the technical and organizational methods it employs for processing PII.</p> <p>3. not subcontract any processing of PII to any third-party (including affiliates, group companies or sub-contractors) without the prior written consent of the City; and Contractor shall remain fully liable to the City for any processing of PII conducted by a sub-processor appointed by Contractor;</p> <p>4. as applicable, implement and maintain appropriate policies and procedures to manage payment card service providers with whom Contractor shares sensitive financial information or cardholder data; and provide the City with a Qualified Security Assessor Attestation of Compliance for Payment Card Industry Data Security Standards on an annual basis, but no later than within 30 days of attestation report completion;</p> <p>5. take reasonable steps to ensure the competence and reliability of Contractor's personnel or sub-processor who have access to the PII, including verifications and background checks appropriate to the security level required for such data access;</p> <p>6. maintain written records of all information reasonably necessary to demonstrate Contractor's compliance with this Agreement and applicable laws;</p> <p>7. allow the City or its authorized agents to conduct audit inspection during the term of this Agreement, but no more than once per year, which may include providing access to the premises, documents, resources, personnel of Contractor</p>		
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		<p>or Contractor's sub-contractors use in connection with the Services; provided however, the City may at its sole discretion accept a qualified and industry recognized independent third-party assessment report or certification (such as SSAE 18 SOC 2 or ISO/IEC 27001) provided by Contractor at no cost to the City in lieu of the audit inspection rights of this Section;</p>		
30.	<p>Section 6, Standard Terms and Conditions, 6.37,(B), Data Protection</p>	<p>B. If the Contractor becomes aware of any actual or potential data breach (each an "Incident") arising from Contractor's processing obligations pursuant to this Agreement, Contractor shall notify the City at SOC@phoenix.gov without undue delay within 48 hours; and:</p> <ol style="list-style-type: none"> 1. provide the City with a detailed description of the Incident, the type of data that was the subject of the Incident, and the identity of each affected person as soon as such information can be collected or otherwise becomes available; 2. take action immediately, at Contractor's own expense, to investigate the Incident and to identify, prevent, and mitigate the effects of the Incident and to carry out any recovery or other action necessary to remedy the Incident; 3. cooperate with the City in investigating the occurrence, including making available all relevant records, logs, files, data reporting, and other materials required to comply with applicable laws or as otherwise required by the City; and 4. not directly contact any individuals who may be impacted by the Incident or release or publish any filing, communication, notice, press release, or report concerning the Incident without the City's prior written approval (except where 	<p>OFFEROR would require that indemnity obligations arising from a breach of this section be subject to the contract's limitation of liability clause.</p>	<p>The City of Phoenix rejects this exception.</p>

		<p>required to do so by applicable laws). In addition to, and not in lieu of, all other rights and remedies available to the City, Contractor will defend, indemnify, and hold the City harmless against all losses, claims, costs, attorneys' fees, damages or proceedings arising out of Contractor's breach of this Section (Data Protection). Contractor's obligations pursuant to this Section shall not be subject to any limits of liability or exclusions as may be stated elsewhere in this Agreement. A violation of this Section shall be deemed to cause irreparable harm that justifies injunctive relief in court. A violation of this Section may at the City's discretion result in immediate termination of this Agreement without notice. The obligations of Contractor under this Section shall survive the termination of this Agreement.</p>		
<p>31.</p>	<p>Section 7, Standard Terms and Conditions, 7.1, Standard General Defense and Indemnification</p>	<p>Contractor ("Indemnitor") must defend, indemnify, and hold harmless the City of Phoenix and its officers, officials (elected or appointed), agents, and employees ("Indemnitee") from and against any and all claims, actions, liabilities, damages, losses or expenses (including but not limited to court costs, attorneys' fees, expert fees, and costs of claim processing, investigation and litigation) of any nature or kind whatsoever ("Losses") caused, or alleged to be caused, in whole or in part, by the wrongful, negligent or willful acts, or errors or omissions of Indemnitor or any of its owners, officers, directors, members, managers, agents, employees or subcontractors ("Indemnitor's Agents") arising out of or in connection with this Contract. This defense and indemnity obligation includes holding Indemnitee harmless for any Losses</p>	<p>OFFEROR is willing to provide a general indemnity to the City for any claims, losses, &c. arising directly from OFFEROR's negligence or willful misconduct in connection with our performance under the contract, and except to the extent contributed to by City's negligence or willful misconduct. To the extent Section 7.1 contemplates a general indemnification beyond this level, OFFEROR objects.</p>	<p>No response needed.</p>

		<p>arising out of or recovered under any state's Workers' Compensation Law or arising out of the failure of Indemnitor or Indemnitor's Agents to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. Indemnitor's duty to defend Indemnatee accrues immediately at the time a claim is threatened or a claim is made against Indemnatee, whichever is first. Indemnitor's duty to defend exists regardless of whether Indemnitor is ultimately found liable. Indemnitor must indemnify Indemnatee from and against any and all Losses, except where it is proven that those Losses are solely a result of Indemnatee's own negligent or willful acts or omissions. Indemnitor will be responsible for primary loss investigation, defense and judgment costs where this indemnification applies. In consideration of the award of this Contract, Indemnitor waives all rights of subrogation against Indemnatee for losses arising from the work performed by Indemnitor or Indemnitor's Agents for the City of Phoenix. The obligations of Indemnitor under this provision survive the termination or expiration of this Contract.</p>		
<p>32.</p>	<p>Section 6, Standard Terms and Conditions, 7.2, Technology Software and Hardware Contracts</p>	<p>INDEMNIFICATION – PATENT COPYRIGHT, AND TRADEMARK In addition to any other indemnification required by this Agreement, Contractor agrees to defend, at its own expense, and to indemnify and hold harmless the City and its officers, agents, and employees from and against all judgments, claims, damages, suits, liabilities, settlements, costs and demands, including reasonable attorneys' fees, suffered or incurred by the City as a result of any claim that the Technology Assets infringe the patents, copyrights, or other</p>	<p>OFFEROR would also limit its indemnity obligations in this context where losses arise from the City's use of the software (i) in conjunction with other software not approved by OFFEROR, (ii) otherwise in violation of the License Agreement.</p>	<p>The City of Phoenix rejects this exception.</p>

		<p>intellectual property rights of third-parties, provided that Contractor is notified in writing of such claim. The City will reasonably cooperate with Contractor, at Contractor's expense, to facilitate the settlement or defense of such claim. Without limiting in any way the Contractor obligations set forth herein, if, as a result of any claim of infringement with respect to the Technology Assets, the City is enjoined from using the Technology Assets, or if Contractor reasonably believes that the Technology Assets are likely to become the subject of a claim of infringement, Contractor may, at Contractor's option and expense, (1) procure the right for the City to continue to use the Technology Assets, or (2) replace or modify the Technology Assets so as to make them non-infringing and of equal or superior functionality and capability for the purpose(s) for which the Technology Assets were provided. The Contractor's obligation to indemnify, defend, and hold harmless the City pursuant to this subsection shall be reduced to the extent the applicable infringement is caused or alleged to be caused by the alteration or modification of the Technology Assets by the City (including its employees and contractors other than the Contractor and its subcontractors) other than in connection with the ordinary or expected use of the Technology Assets.</p>		
33.	<p>Exhibit D - Service Level Agreements - Case Management System Replacement Project</p>		<p>To efficiently provide software maintenance and support across a worldwide customer cohort, OFFEROR follows our standard Service Level Agreement (attached hereto), and would request its use in lieu of the proposed Exhibit D.</p>	<p>Consideration of the proposed SLA is premature at this time.</p>

34.	N/A	N/A	<p>REQUIRED ADDITIONAL SECTION: Limitation of Liability. OFFEROR's competitive prices are premised on the inclusion of an industry-standard limitation of liability clause, capping damages for losses arising in relation to the contract. OFFEROR proposes this cap to be 1x the contract value for professional services, for claims arising therefrom, and 1x the contract value for license, maintenance, support (and hosting, if applicable) fees (limited to the first three years of the license term), for claims arising therefrom. We would propose this cap to be mutual, and also to disclaim (for both parties) any consequential, special, exemplary or punitive damages.</p>	The City of Phoenix rejects this exception.
35.	Section 6, Standard Terms and Conditions, 6.20, Warranty	<p>Contractor will provide twelve (12) months of operations (aka production) and maintenance support after release, or Go-Live. If Contractor provides a phased deployment, the City requires twelve (12) months of operations and maintenance support per release. Contractor will coordinate the transition to Contractor's ongoing support and maintenance team upon achieving Go-Live, and initiating production. Prior to deployment, Contractor will develop processes, policies, and procedures for post-production support. Contractor must work to ensure successful adoption and user transition and keep the project active until all Deliverables have been accepted in accordance with Scope of Work, Section 3.12 Deliverables, Payment Schedule, and Acceptance Criteria.</p>	<p>Section 6 - Special Terms and Conditions – 6.20 Warranty – Will the PMC allow the vendor to provide 12-month warranty period? The annual maintenance/SaaS will begin prior to the start of the Warranty period.</p>	The City of Phoenix rejects this exception.
36.	Section 5 - Standard Terms and Conditions –	<p>Contract Termination A. Gratuities: The City may, by written notice to Contractor, cancel this Contract if it is found that</p>	<p>Section 5 - Standard Terms and Conditions – 5.8 Contract Termination - Would the City be willing to make this paragraph</p>	The City of Phoenix rejects this exception.

	<p>5.8 Contract Termination</p> <p>gratuities, in the form of entertainment, gifts or otherwise, were offered or given by Contractor or any agent or representative of Contractor, to any officer or employee of the City making any determinations with respect to the contract performance. In the event this Contract is canceled by the City pursuant to this provision, the City will be entitled, in addition to any other rights and remedies, to recover or withhold from Contractor the amount of the gratuity.</p> <p>B. Conditions and Causes for Termination:</p> <p>1. This Contract may be terminated at any time by mutual written consent, or by the City, with or without cause, upon giving thirty (30) days' written notice to Contractor. The City, at its convenience and by written notice, may terminate this Contract, in whole or in part. If this Contract is terminated, the City will be liable only for payment under the payment provisions for services rendered and accepted material received by the City before the effective date of termination. Title to all materials, work-in-process, and any completed but undeliverable goods will pass to the City after costs are claimed and allowed. Contractor will submit detailed cost claims in an acceptable manner and will permit the City to examine such books and records as may be necessary in order to verify the reasonableness of any claims.</p> <p>2. The City reserves the right to cancel the whole or any part of this Contract due to failure of Contractor to carry out any term, promise, or condition of this Contract. The City will issue a written notice of default to Contractor for acting or failing to act as in any of the following:</p>	<p>apply both ways? If that is not possible, we need a stronger definition of delays and failures as well as a defined cure period.</p>	
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	<ul style="list-style-type: none"> ▪ In the opinion of the City, Contractor provides personnel who do not meet the contract requirements; ▪ In the opinion of the City, Contractor fails to perform adequately the stipulations, conditions or services/specifications required in this Contract; ▪ □ In the opinion of the City, Contractor attempts to impose on the City personnel or materials, products, or workmanship of an unacceptable quality; ▪ Contractor fails to furnish the required Services and/or product within the time stipulated in this Contract; ▪ In the opinion of the City, Contractor fails to make progress in the performance of the requirements of this Contract and/or gives the City a positive indication that Contractor will not or cannot perform to the contract requirements. <p>C. Contract Cancellation: All Parties acknowledge that this Contract is subject to cancellation by the City pursuant to A.R.S. § 38-511.</p>		
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The balance of the specifications and instructions remain the same. Offeror must acknowledge receipt and acceptance of this addendum by signing below and returning the entire addendum with the bid or proposal submittal.

Name of Company: _____

Address: _____

Authorized Signature: _____

Print Name and Title: _____