



City of Phoenix

INVITATION FOR BID

IFB-2425-WAD-642

FLUKE VERSIV PROFESSIONAL KIT ANALYZERS,  
GOLD SUPPORT PLANS, AND ACCESSORIES

City of Phoenix

Water Services

200 W. Washington Street

9<sup>th</sup> Floor

Phoenix, AZ

85003

RELEASE DATE: May 20, 2024

DEADLINE FOR QUESTIONS: May 29, 2024

RESPONSE DEADLINE: June 10, 2024, 2:00 pm

City of Phoenix  
INVITATION FOR BID

IFB-2425-WAD-642 Fluke Versiv Professional Kit Analyzers, Gold  
Support Plans, and Accessories

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**Attachments:**

Attachment A – References

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**Exhibit:**

Fluke Gold Support Plan (Manufacturer's Description)

## 1. Introduction

### 1.1. Summary

The City of Phoenix ("City") invites bids for Fluke Versiv Professional Kit analyzers, Gold Support Plans, and accessories for a five-year period.

### 1.2. Background

The Water Services Department (WSD) Process Control Technology Support (PCTS) staff utilizes Fluke analyzers to test the integrity of network communications at all water, wastewater, and remote locations to ensure that WSD meets regulatory performance requirements.

### 1.3. Contact Information

**Jennifer Nieschulz**

Contract Specialist II

200 W. Washington Street

9<sup>th</sup> Floor

Phoenix, AZ 85003

Email: [jennifer.nieschulz@phoenix.gov](mailto:jennifer.nieschulz@phoenix.gov)

Phone: [\(602\) 256-4317](tel:(602)256-4317)

**Department:**

Water Services

### 1.4. Timeline

#### **Schedule of Events**

The City reserves the right to change dates, times, and locations, as necessary. The City does not always hold a Pre-Offer Conference or Site Visit.

To request a reasonable accommodation or alternative format for any public meeting, please contact the Procurement Officer (Jennifer Nieschulz) at (602) 256-4317/Voice or 711/TTY, or [jennifer.nieschulz@phoenix.gov](mailto:jennifer.nieschulz@phoenix.gov), no later than two (2) weeks prior to the meeting.

<b>Solicitation Issue Date</b>	May 20, 2024
<b>Written Inquiries Due Date</b>	May 29, 2024, 2:00pm
<b>Offer Due Date</b>	June 10, 2024, 2:00pm

## 2. Instructions

### 2.1. Description – Statement of Need

The City of Phoenix invites sealed offers for Fluke Versiv Kit Analyzers, Accessories, and Gold Support for a 5-year commencing on or about October 1, 2024, in accordance with the specifications and provisions contained herein or the “Effective Date” which is upon award by City Council, conditioned upon signature and recording by the City Clerk’s department, as required by the Phoenix City Code, whichever is later.

This solicitation is available through Arizona Relay Service 7-1-1. Please call TTY 800-367-8939 for assistance.

Notwithstanding the foregoing, this Agreement will terminate upon the earliest occurrence: by reaching the end of the term including any extensions exercised, or termination pursuant to the provisions of this Agreement.

### 2.2. City's Vendor Self-Registration and Notification

Vendors must be registered in the City’s procurePHX Self-Registration System at <https://www.phoenix.gov/procure> to respond to solicitations and access procurement information. The City may, at its sole discretion, reject any offer from an Offeror who has not registered.

### 2.3. Preparation of Offer

All forms provided in Submittal Section must be completed and submitted with the Offer. The signed and completed Conflict of Interest and Transparency form must be included or your Offer may be deemed non-responsive.

It is permissible to copy Submittal forms if necessary. Erasures, interlineations, or other modifications of the Offer must be initialed in original ink by the authorized person signing the Offer. No offer will be altered, amended or withdrawn after the specified offer due date and time. The City is not responsible for Offeror’s errors or omissions.

All time periods stated as a number of days will be calendar days.

It is the responsibility of all Offerors to examine the entire solicitation and seek clarification of any requirement that may not be clear and to check all responses for accuracy before submitting an offer. Negligence in preparing an offer confers no right of withdrawal after due date and time. Offerors are strongly encouraged to:

- A. Consider applicable laws and/or economic conditions that may affect cost, progress, performance, or furnishing of the products or services.
- B. Study and carefully correlate Offeror’s knowledge and observations with the solicitation and other related data.
- C. Promptly notify the City of all conflicts, errors, ambiguities, or discrepancies that Offeror has discovered in or between the solicitation and other related documents.

- D. The City does not reimburse the cost of developing, presenting or providing any response to this solicitation. Offers submitted for consideration should be prepared simply and economically, providing adequate information in a straightforward and concise manner. The Offeror is responsible for all costs incurred in responding to this solicitation. All materials and documents submitted in response to this solicitation become the property of the City and will not be returned.
- E. Offerors are reminded that the specifications stated in the solicitation are the minimum level required and that offers submitted must be for products or services that meet or exceed the minimum level of all features specifically listed in this solicitation. Offers offering less than any minimum specifications or criteria specified are not responsive and should not be submitted.
- F. Offer responses submitted for products considered by the seller to be acceptable alternates to the brand names or manufacturer's catalog references specified herein must be submitted with technical literature and/or detailed product brochures for the City's use to evaluate the products offered. Offers submitted without this product information may be considered as non-responsive and rejected. The City will be the sole judge as to the acceptability of alternate products offered.
- G. Prices will be submitted on a per unit basis by line item, when applicable. In the event of a disparity between the unit price and extended price, the unit price will prevail unless obviously in error.

## 2.4. Fixed Offer Price Period

All offers shall be firm and fixed for a period of 180 calendar days from the solicitation opening date.

## 2.5. Obtaining a Copy of the Solicitation and Addenda

Interested Offerors may download the complete solicitation and addenda from <https://solicitations.phoenix.gov/>. Any interested Offerors without internet access may obtain this solicitation by calling the Procurement Officer or picking up a copy during regular business hours at the City of Phoenix, Water Services Department, 200 W. Washington St. 9th floor Phoenix, AZ 85003. It is the Offeror's responsibility to check the website, read the entire solicitation, and verify all required information is submitted with their Offer.

## 2.6. Exceptions

Offeror must not take any exceptions to any terms, conditions or material requirements of this solicitation. Offers submitted with exceptions may be deemed non-responsive and disqualified from further consideration in the City's sole discretion. Offerors must conform to all the requirements specified in the solicitation. The City encourages Offerors to send inquiries to the Procurement Officer rather than including exceptions in their Offer.

## 2.7. Inquiries

All questions that arise relating to this solicitation should be directed via email to the Procurement Officer and must be received by the due date indicated in the Schedule of Events. The City will not consider questions received after the deadline.

No informal contact initiated by Offerors on the proposed service will be allowed with members of City's staff from date of distribution of this solicitation until after city council awards the contract. All questions concerning or issues related to this solicitation must be presented in writing.

The Procurement Officer will answer written inquiries in an addendum and publish any addendums on the Procurement Website.

## 2.8. Addenda

The City of Phoenix will not be responsible for any oral instructions made by any employees or officers of the City of Phoenix regarding this solicitation. Any changes will be in the form of an addendum. The Offeror must acknowledge receipt of any/all addenda by signing and returning the document with the Offer submittal.

## 2.9. Business in Arizona

The City will not enter contracts with Offerors (or any company(ies)) not granted authority to transact business, or not in good standing, in the state of Arizona by the Arizona Corporation Commission, unless the Offeror asserts a statutory exception prior to entering a contract with the City.

## 2.10. Licenses

If required by law for the operation of the business or work related to this Offer, Offeror must possess all valid certifications and/or licenses as required by federal, state or local laws at the time of submittal.

## 2.11. Certifications

By signature in the Offer section of the Offer and Acceptance page(s), Offeror certifies:

- The submission of the Offer did not involve collusion or other anti-competitive practices.
- The Offeror must not discriminate against any employee, or applicant for employment in violation of Federal or State Law.
- The Offeror has not given, offered to give, nor intends to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted Offer.

## 2.12. Submission of Offer

Offers must be in possession of the Department on or prior to the exact time and date indicated in the Schedule of Events. Late offers will not be considered. The prevailing clock will be the City Department's clock.

Offers must be submitted in one of the following ways:

- A. Submitted in a sealed envelope and the following information should be noted on the outside of the envelope:
  1. Offeror's Name
  2. Offeror's Address (as shown on the Certification Page)
  3. Solicitation Number
  4. Solicitation Title
  5. Offer Opening Date
  6. Such offers must be completed in ink or typewritten. Include the number of copies that are required as indicated in the Submittal section.
- B. Submitted electronically by email to [wsdprocurement@phoenix.gov](mailto:wsdprocurement@phoenix.gov) and the following information should be noted in the email:
  1. Offeror's Name
  2. Offeror's Address (as shown on the Certification Page)
  3. Solicitation Number
  4. Solicitation Title
  5. Offer Opening Date
  6. Due to file size limitations for electronic transmission (for sending or receiving), Offers sent by email may need to be sent in parts with multiple emails. It is the responsibility of the Offeror to ensure that the Offer (including all parts if sent in multiple emails) is timely and to confirm that there are no technical reasons that any offer submitted electronically may be delayed. The date and time on the email(s) as received/stamped by the City's inbox will provide proof of submission and verification whether the Offer was received on or prior to the exact time and date indicated in the Schedule of Events.
  7. Any original documents (such as bonds, guaranties, powers of attorney), if required by the solicitation, must be separately delivered to and received by the City on or prior to the exact time and date indicated in the Schedule of Events, with a clear indication of the Offer for which it is attributed.

## 2.13. Withdrawal of Offer

At any time prior to the solicitation due date and time, an Offeror (or designated representative) may withdraw the Offer by submitting a request in writing and signed by a duly authorized representative. If Offeror withdraws the Offer electronically by email to the Procurement Officer, the request to withdraw must be in the form of a letter attached to the email that includes either

an image of the duly authorized representative's signature or an electronic signature from a verifiable source, such as Adobe Sign, DocuSign or a similar verifiable software program.

## 2.14. Offer Results

Offers will be opened on the offer due date, time and location indicated in the Schedule of Events, at which time the name of each Offeror, and the prices may be read. Offers and other information received in response to the solicitation will be shown only to authorized City personnel having a legitimate interest in them or persons assisting the City in the evaluation. Offers are not available for public inspection until after the City has posted the award recommendation on the City's website.

The City will post a preliminary offer tabulation on the City's website, <https://solicitations.phoenix.gov/Awards> within five business days of the offer opening. The City will post the information on the preliminary tabulation as it was read during the offer opening. The City makes no guarantee as to the accuracy of any information on the preliminary tabulation. Once the City has evaluated the offers, the City will post an award recommendation on the website. By signing and submitting its Offer, each Offeror agrees that this posting of the award recommendation to the City's website effectively serves as the Offeror's receipt of that notice of award recommendation. The City has no obligation to provide any further notification to unsuccessful Offerors.

## 2.15. Pre-Award Qualifications

Offeror must have been in operation a minimum of two years. The Offeror's normal business activity during the past two years will have been for providing the goods or services in this solicitation.

Upon notification of an intent to award, the Offeror will have ten calendar days to submit a complete certificate of insurance in the minimum amounts and the coverages as required in the Insurance Requirements of this agreement. Insurance requirements are non-negotiable.

## 2.16. Award of Contract

Unless otherwise indicated, award(s) will be made to the most responsive, responsible Offeror(s) who are regularly established in the service, or providing the goods, contained in this solicitation and who have demonstrated the ability to perform in an acceptable manner.

### A. Factors that may be considered by the City include:

1. Technical capability of the Offeror to accomplish the scope of work required in the Solicitation. This may include performance history on past and current government or industrial contracts; and,
2. Demonstrated availability of the necessary manpower (both supervisory and operational personnel) and necessary equipment to accomplish the scope of work in the Solicitation; and,
3. Safety record; and,
4. Offeror history of complaints and termination for convenience or cause.

- B. Notwithstanding any other provision of this solicitation, the City reserves the right to: (1) waive any immaterial defect or informality; or (2) reject any or all offers or portions thereof; or (3) reissue a solicitation.
- C. A response to a solicitation is an offer to contract with the City based upon the terms, conditions, and specifications contained in the City's solicitation. Offers do not become contracts until they are executed by the Chief Procurement Officer or Department Director. A contract has its inception in the award, eliminating a formal signing of a separate contract. For that reason, all of the terms, conditions and specifications of the procurement contract are contained in the solicitation, and in any addendum or contract amendment.

## 2.17. Solicitation Transparency Policy

Commencing on the date and time a solicitation is published, potential or actual Offerors or respondents (including their representatives) shall only discuss matters associated with the solicitation with the Mayor, any members of City Council, the City Manager, any Deputy City Manager, or any department director directly associated with the solicitation (including in each case their assigned staff, except for the designated Procurement Officer) at a public meeting, posted under Arizona Statutes, until the resulting contract(s) are awarded to all offers or responses are rejected and the solicitation is cancelled without any announcement by the Procurement Officer of the City's intent to reissue the same or similar solicitation.

As long as the solicitation is not discussed, Offerors may continue to conduct business with the City and discuss business that is unrelated to the solicitation with the City staff. Offerors may not discuss the solicitation with any City employees or evaluation panel members.

Offerors may discuss their proposal or the solicitation with the Mayor or one or more members of the Phoenix City Council, provided such meetings are scheduled through the Procurement Officer, and are posted as open meetings with the City Clerk at least 24 hours prior to the scheduled meetings. The City Clerk will be responsible for posting the meetings. The posted notice shall identify the participants and the subject matter, as well as invite the public to participate.

With respect to the selection of the successful Offerors, the City Manager and/or City Manager's Office will continue the past practice of exerting no undue influence on the process. In all solicitations of bids and proposals, any direction on the selection from the City Manager and/or City Manager's Office and Department Head (or representative) to the proposal review panel or selecting authority must be provided in writing to all prospective Offerors.

This policy is intended to create a level playing field for all Offerors, assure that contracts are awarded in public, and protect the integrity of the selection process. OFFERORS THAT VIOLATE THIS POLICY SHALL BE DISQUALIFIED. After official Notice is received by the City for disqualification, the Offeror may follow the Protest process, unless the Solicitation is cancelled without notice of intent to re-issue.

"To discuss" means any contact by the Offeror, regardless of whether the City responds to the contact. Offerors that violate this policy will be disqualified until the resulting contract(s) are awarded, or all offers or responses are rejected and the solicitation is cancelled without any

announcement by the Procurement Officer of the City's intent to reissue the same or a similar solicitation. The City interprets the policy as continuing through a cancellation of a solicitation until Council award of the contract, as long as the City cancels with a statement that the City will rebid the solicitation.

## 2.18. Protest Process

Offeror may protest the contents of a solicitation no later than seven days before the solicitation deadline when the protest is based on an apparent alleged mistake, impropriety or defect in the solicitation. Protests filed regarding the solicitation may be addressed by an amendment to the solicitation or denied by the City. If denied, the opening and award will proceed unless the City determines that it is in the City's best interests to set new deadlines, amend the solicitation, cancel or re-bid.

Therefore, unless otherwise notified by a formal amendment, the Protester must adhere to all solicitation dates and deadlines, including timely filing of an offer, regardless of filing a protest.

Offeror may protest an adverse determination issued by the City regarding responsibility and responsiveness, within seven days of the date the Offeror was notified of the adverse determination.

Offeror may protest an award recommendation if the Offeror can establish that it had a substantial chance of being awarded the contract and will be harmed by the recommended award. The City will post recommendations on the City's website to award the contract(s) to an Offeror(s). Offeror must submit award protests within seven days after the posting of the award recommendation, with exceptions only for good cause shown, within the City's full and final discretion.

All protests will be in writing, filed with the Procurement Officer identified in the solicitation and include the following:

- Identification of the solicitation number;
- The name, address and telephone number of the protester;
- A detailed statement describing the legal and factual grounds for the protest, including copies of relevant documents;
- The form of relief requested; and
- The signature of the protester or its authorized representative.

The Procurement Officer will render a written decision within a reasonable period after the protest is filed. The City will not request City Council authorization to award the contract until the protest process is complete. All protests and appeals must be submitted in accordance with the City's Procurement Code, (Phoenix City Code, Ch. 43) and any protests or appeals not submitted within the time requirements will not be considered. Protests must be filed with the Procurement Officer.

## 2.19. Public Record

All Offers submitted in response to this solicitation will become the property of the City and become a matter of public record available for review pursuant to Arizona State law. If an Offeror believes that a specific section of its Offer response is confidential, the Offeror will isolate the pages marked confidential in a specific and clearly labeled section of its Offer response. An Offeror may request specific information contained within its Offer is treated by the Procurement Officer as confidential provided the Offeror clearly labels the information "confidential." To the extent necessary for the evaluation process, information marked as "confidential" will not be treated as confidential. Once the procurement file becomes available for public inspection, the Procurement Officer will not make any information identified by the Offerors as "confidential" available to the public unless necessary to support the evaluation process or if specifically requested in accordance with applicable public records law. When a public records request for such information is received, the Procurement Officer will notify the Offeror in writing of any request to view any portion of its Offer marked "confidential." The Offeror will have the time set forth in the notice to obtain a court order enjoining such disclosure. If the Offeror does not provide the Procurement Officer with a court order enjoining release of the information during the designated time, the Procurement Officer will make the information requested available for inspection.

## 2.20. Late Offers

Late Offers must be rejected, except for good cause. If a late Offer is submitted, the Department will document the date and time of the submittal of the late Offer, keep the Offer and notify the Offeror that its Offer was disqualified for being a late Offer.

## 2.21. Right to Disqualify

The City reserves the right to disqualify any Offeror who fails to provide information or data requested or who provides materially inaccurate or misleading information or data. The City further reserves the right to disqualify any Offeror on the basis of any real or apparent conflict of interest that is disclosed by the Offer submitted or any other data or information available to the City. This disqualification is at the sole discretion of the City. By submission of a solicitation response, the Offeror waives any right to object now or at any future time, before any agency or body including, but not limited to, the City Council of the City or any court as to the exercise by the City of such right to disqualify or as to any disqualification by reason of real or apparent conflict of interest determined by the City. The City reserves the right to replace the disqualified Offeror.

## 2.22. Contract Award

In accordance with the City of Phoenix Code, Chapter 43, Section 43-12, Competitive Sealed Bidding, award(s) shall be made to the lowest responsible and responsive offeror(s) whose offer conforms in all material respects to the requirements set forth in this solicitation. The City reserves the right to award a contract by individual line items, by group, all or none, or any other combination most advantageous to the City. The City reserves the right to multiple award.

## 2.23. Determining Responsiveness and Responsibility

Offers will be reviewed for documentation of any required minimum qualifications, and completeness and compliance with the solicitation requirements. The City reserves sole discretion to determine responsiveness and responsibility.

**Responsiveness:** Nonresponsive Offers will not be considered in the evaluation process. The solicitation states criteria that determine responsiveness, and the solicitation includes terms and conditions that if included or excluded from Offers will render an Offer nonresponsive.

**Responsibility:** To obtain true economy, the City must conduct solicitations to minimize the possibility of a subsequent default by the Offeror, late deliveries, or other unsatisfactory performance that may result in additional administrative costs. It is important that the Offeror be a responsible Offeror. Responsibility includes the Offeror's integrity, skill, capacity, experience, and facilities for conducting the work to be performed.

## 2.24. Equal Low Offer

Contract award will be made by putting the names of the tied Offerors in a cup for a blind drawing limited to those bidders with tied Offers. If time permits, the Offerors involved will be given an opportunity to attend the drawing. The drawing will be witnessed by at least three persons, and the contract file will contain the names and addresses of the witnesses.

### **3. Scope of Work**

#### **3.1. Purpose**

This contract is for the purchase of new Fluke Versiv Professional Kit analyzers, Gold Support Plans, and accessories on an as-needed basis. Process Control Technology Support (PCTS) staff utilize Fluke analyzers to test the integrity of network communications at all water, wastewater, and remote locations to ensure the Water Services Department (WSD) meets regulatory performance requirements.

#### **3.2. Scope of Work**

The Contractor shall provide Fluke Versiv Professional Kit analyzers, accessories, Gold Support Plans, repairs, and calibration data.

The Fluke Versiv Professional Kit analyzer shall include:

- The Versiv Mainframe and accessories, DSX-8000 CableAnalyzer, OptiFiber®
- Pro OTDR, CertiFiber® Pro OLTS, Fiber Inspection and accessories that include integrated Wi-Fi.

#### **3.3. Support Plan**

The Gold Support Plan (description in attached exhibit) shall include 90-day repair or replacement on manufacturing defects, annual calibration, and factory refresh, 2-way shipping, 24x7x365 customer support, a technical support engineer as primary case handler, and loaner units during scheduled services and repairs.

The Gold Support Plan must provide comprehensive support and maintenance for all mainframes, parts, and accessories that ship with the kit. The parts and accessories are:

- DSX CableAnalyzer accessories are batteries, channel adapters, Universal Permanent Link Adapters (one set per year), chargers, cables, AxTalk Terminators (one set per year), carrying case, and headsets.
- OptiFiber® Pro OTDR accessories are the interchangeable port adapters, USB interface cable, Launch fibers (one per year), adaptors, batteries, chargers, carrying case.
- CertiFiber® Pro OLTS accessories are the interchangeable port adapters, USB interface cable, Encircled Flex TRCs set of 4 TRCs (1 per year), adaptors, batteries, chargers, carrying case.

The Gold Support Plan may be purchased in increments of one-year or three-years. The one-year plan may be purchased bundled with the analyzer.

All repairs for the items covered by the Gold Support Plan shall have no additional charge to the City. If a product cannot be repaired, it shall be replaced free of charge with the same Gold Support Plan coverage as the original item.

Traceable calibration certificates shall be provided free of charge. Calibration Data Reports may be purchased upon request.

### 3.4. Certification

All new, serviced, and repaired units shall be accompanied by the most current American National Standards Institute (ANSI) and/or International Organization for Standardization (ISO) certification. The unit(s) shall be labeled with the date of calibration.

### 3.5. Scheduled Services under the Gold Support Plan

The City and the Contractor shall adhere to the following Gold Support Plan scheduled services process:

- A. The City will schedule services eight weeks in advance.
- B. The City will access and schedule services through the Fluke website using the PIN number that is supplied with the Gold Support Plan.
- C. Vendor will send a loaner unit with a pre-paid return shipping label will be sent to the City to be used for the duration of the service period.
- D. The City will receive the loaner unit, and use the same box to ship the City's unit to the Fluke Service Center address on the pre-paid return shipping label.
- E. Vendor will return the serviced unit to the City no more than 15 business days from the date unit is received by the Fluke Service Center.
- F. The Fluke Service Center will send back the serviced unit.
- G. The City will receive the serviced unit and use the same box to return the loaner unit to the address on the pre-paid return shipping label.
- H. The City will return the loaner unit within five business days of the serviced unit being received by the City.

### 3.6. Repairs under the Gold Support Plan

The Gold Support Plan covers all repairs, parts, and/or replacement units, shipping fees, loaner units, parts and services at no additional cost to the City.

The City and the Contractor shall adhere to the following Gold Support Plan repair process:

- A. The City representative will contact the Fluke Technical Assistance Center (TAC) for trouble shooting assistance. If it is determined that a repair is required for any reason, the following process shall be followed:
- B. If a loaner is required, the City will make a request to the Fluke Service Center.
- C. The Fluke Service Center will send out the loaner unit with a pre-paid return shipping label.
- D. The City will receive the loaner unit, and use the same box to ship the City's unit in for repair.
- E. The Fluke Service Center will return the repaired unit.

- F. The City will receive the repaired unit and use the same box to return the loaner unit to the address on the pre-paid return shipping label.
- G. The City will return the loaner unit within five business days of the repaired unit being received by the City.
- H. If the unit cannot be repaired, a replacement unit will be shipped to the City at no additional charge.
- I. If a loaner unit is not required, the City will request a pre-paid shipping label from the Fluke Service Center.
- J. Once the City obtains the pre-paid shipping label, the City will ship the unit for repair to the Fluke Service Center.
- K. Once the unit is repaired, it will be shipped back to the City.
- L. If the unit cannot be repaired, a replacement unit will be shipped to the City at no additional charge.

## 4. Standard Terms and Conditions

### 4.1. Definition of Key Words Used in the Solicitation

**Shall, Will, Must:** Indicates a mandatory requirement. Failure to meet these mandatory requirements may result in the rejection of Offer as non-responsive.

**Should:** Indicates something that is recommended but not mandatory. If the Offeror fails to provide recommended information, the City may, at its sole option, ask the Offeror to provide the information or evaluate the Offer without the information.

**May:** Indicates something that is not mandatory but permissible.

For purposes of this solicitation, the following definitions will apply:

"A.R.S." Arizona Revised Statute

"Buyer" or "Procurement Officer" City of Phoenix staff person responsible for the solicitation. The City employee or employees who have specifically been designated to act as a contact person or persons to the Contractor, and responsible for monitoring and overseeing the Contractor's performance under this contract.

"City" The City of Phoenix

"Contractor" The individual, partnership, or corporation who, as a result of the competitive process, is awarded a contract by the City of Phoenix.

"Contract" or "Agreement" The legal agreement executed between the City of Phoenix, AZ and the Contractor.

"Days" Means calendar days unless otherwise specified.

"Chief Procurement Officer" The contracting authority for the City of Phoenix, AZ, authorized to sign contracts and amendments thereto on behalf of the City of Phoenix, AZ.

"Employer" Any individual or type of organization that transacts business in this state, that has a license issued by an agency in this state and employs one or more employees in this state. Employer includes this state, any political subdivision of this state and self-employed persons. In the case of an independent contractor, employer means the independent contractor and does not mean the person or organization that uses contract labor. (A.R.S. 23-211).

"Offer" Means a response from a Supplier, Contractor, or Service Provider to a solicitation request that, if awarded, binds the Supplier, Contractor, or Service Provider to perform in accordance with the contract. Same as bid, proposal, quotation or tender.

"Offeror" Any Vendor, Seller or Supplier submitting a competitive offer in response to a solicitation from the City. Same as Bidder or Proposer.

"Solicitation" Means an Invitation for Bid (IFB), Request for Proposal (RFP), Request for Quotations (RFQ), Request for Qualifications (RFQu) and request for sealed Offers, or any other type of formal procurement which the City makes public through advertising, mailings, or some other method of communication. It is the process by which the City seeks information, proposals, Offers, or quotes from suppliers.

“Suppliers” Firms, entities or individuals furnishing goods or services to the City.

“Vendor or Seller” A seller of goods or services.

## 4.2. 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.
- B. **Contract Order of Precedence:** In the event of a conflict in the provisions of the Contract, as accepted by the City and as they may be amended, the following will prevail in the order set forth below:
1. Federal terms and conditions, if any
  2. Special terms and conditions
  3. Standard terms and conditions
  4. Amendments
  5. Statement or scope of work
  6. Specifications
  7. Attachments
  8. Exhibits
  9. Instructions to Contractors
  10. Other documents referenced or included in the Solicitation
- C. **Organization – Employment Disclaimer:** The Agreement resulting hereunder is not intended to constitute, create, give rise to or otherwise recognize a joint venture agreement or relationship, partnership or formal business organization of any kind, and the rights and obligations of the parties will be only those expressly set forth in the agreement. The parties agree that no persons supplied by the Contractor in the performance of Contractor’s obligations under the agreement are considered to be City’s employees and that no rights of City civil service, retirement or personnel rules accrue to such persons. The Contractor will have total responsibility for all salaries, wage bonuses, retirement, withholdings, workmen’s compensation, occupational disease compensation, unemployment compensation, other employee benefits and all taxes and premiums appurtenant thereto concerning such persons, and will save and hold the City harmless with respect thereto.
- 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.

- E. **Non-Waiver of Liability:** The City of Phoenix as a public entity supported by tax monies, in execution of its public trust, cannot agree to waive any lawful or legitimate right to recover monies lawfully due it. Therefore, any Contractor agrees that it will not insist upon or demand any statement whereby the City agrees to limit in advance or waive any right the City might have to recover actual lawful damages in any court of law under applicable Arizona law.
- F. **Parol Evidence:** This Agreement is intended by the parties as a final expression of their agreement and is intended also as a complete and exclusive statement of the terms of this agreement. No course of prior dealings between the parties and no usage in the trade will be relevant to supplement or explain any term used in this Contract. Acceptance or acquiescence in a course of performance rendered under this contract will not be relevant to determine the meaning of this Contract even though the accepting or acquiescing party has knowledge of the nature of the performance and opportunity to object.

#### 4.3. Contract Administration and Operation

- A. **Records:** All books, accounts, reports, files and other records relating to the contract will be subject at all reasonable times to inspection and audit by the City for five years after completion of the contract. Such records will be produced at a City of Phoenix office as designated by the City. Confidentiality will be maintained, and City will not violate any proprietary or other confidentiality agreements Contractor has in place.
- B. **Discrimination Prohibited:** Contractor agrees to abide by the provisions of the Phoenix City Code Chapter 18, Article V as amended. Any Contractor, in performing under this contract, will not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, sex, national origin, age or disability nor otherwise commit an unfair employment practice. The supplier and/or lessee will take action to ensure that applicants are employed, and employees are dealt with during employment without regard to their race, color, religion, sex, or national origin, age or disability and adhere to a policy to pay equal compensation to men and women who perform jobs that require substantially equal skill, effort and responsibility, and that are performed within the same establishment under similar working conditions. Such action will include but not be limited to the following: Employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training; including apprenticeship. The supplier further agrees that this clause will be incorporated in all subcontracts with all labor organizations furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with this contract. Contractor further agrees that this clause will be incorporated in all subcontracts, job-contractor agreements or subleases of this agreement entered into by supplier/lessee.
- C. **Equal Employment Opportunity and Pay:** In order to do business with the City, Contractor must comply with Phoenix City Code, 1969, Chapter 18, Article V, as

amended, Equal Employment Opportunity Requirements. Contractor will direct any questions in regard to these requirements to the Equal Opportunity Department, (602) 262-6790.

1. **For a Contractor with 35 employees or fewer:** Contractor in performing under this Agreement shall not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, sex, national origin, age, or disability, nor otherwise commit an unfair employment practice. The Contractor will ensure that applicants are employed, and employees are dealt with during employment without regard to their race, color, religion, sex, national origin, age, or disability. Such action shall include but not be limited to the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training; including apprenticeship. The Contractor further agrees that this clause will be incorporated in all subcontracts related to this Agreement that involve furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with this Agreement. Contractor further agrees that this clause will be incorporated in all subcontracts, Contractor agreements or subleases of this agreement entered into by supplier/lessee.
  
2. **For a Contractor with more than 35 employees:** Contractor in performing under this Agreement shall not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, sex, national origin, age, or disability, nor otherwise commit an unfair employment practice. The Contractor will ensure that applicants are employed, and employees are dealt with during employment without regard to their race, color, religion, sex, national origin, age, or disability, and shall adhere to a policy to pay equal compensation to men and women who perform jobs that require substantially equal skill, effort, and responsibility, and that are performed within the same establishment under similar working conditions. Such action shall include but not be limited to the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training; including apprenticeship. The Contractor further agrees that this clause will be incorporated in all subcontracts with all labor organizations furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with this contract. Contractor further agrees that this clause will be incorporated in all subcontracts, job-Contractor agreements or subleases of this Agreement entered into by supplier/lessee. The Contractor further agrees not to discriminate against any worker, employee or applicant, or any member of the public, because of sexual orientation or gender identity or expression and shall ensure that applicants are employed, and employees are dealt with during employment without regard to their sexual orientation or gender identity or expression.

3. **Documentation:** Suppliers and lessees may be required to provide additional documentation to the Equal Opportunity Department affirming that a nondiscriminatory policy is being utilized.
  4. **Monitoring:** The Equal Opportunity Department shall monitor the employment policies and practices of suppliers and lessees subject to this article as deemed necessary. The Equal Opportunity Department is authorized to conduct on-site compliance reviews of selected firms, which may include an audit of personnel and payroll records, if necessary.
- D. **Legal Worker Requirements:** The City of Phoenix is prohibited by A.R.S. § 41-4401 from awarding a contract to any Contractor who fails, or whose subcontractors fail, to comply with A.R.S. § 23-214(A). Therefore, Contractor agrees that:
1. Contractor and each subcontractor it uses warrants their compliance with all federal immigration laws and regulations that relate to their employees and their compliance with A.R.S. § 23-214, subsection A.
  2. A breach of a warranty under paragraph 1 will be deemed a material breach of the contract that is subject to penalties up to and including termination of the contract.
  3. The City of Phoenix retains the legal right to inspect the papers of any Contractor or subcontractor employee who works on the contract to ensure that the Contractor or subcontractor is complying with the warranty under paragraph 1.
- E. **Health, Environmental, and Safety Requirements:** The 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 or not they are referred to by the City. At the request of City representatives, the Contractor will provide the City:
1. Environmental, safety and health regulatory compliance documents (written safety programs, training records, permits, etc.) applicable to services provided by the Contractor in this contract.
  2. A list of all federal, state, or local (EPA, OSHA, Maricopa County, etc.) citations or notice of violations issued against their firm 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 the Contractor or subcontractor. The City will also have the right to inspect operations conducted by the Contractor or subcontractor in the performance of this agreement. The City further reserves the right to make unannounced inspections of the Contractor's facilities (during normal business hours).
- F. **Compliance with Laws:** Contractor agrees to fully observe and comply with all applicable Federal, State and local laws, regulations, standards, codes and ordinances

when performing under this Contract regardless of whether they are being referred to by the City. Contractor agrees to permit City inspection of Contractor's business records, including personnel records to verify any such compliance. Because the contractor will be acting as an independent contractor, the City assumes no responsibility for the Contractor's acts.

- G. **Lawful Presence Requirement:** Pursuant to A.R.S. §§ 1-501 and -502, the City of Phoenix is prohibited from awarding a contract to any natural person who cannot establish that he or she is lawfully present in the United States. In order to establish lawful presence, this person must produce qualifying identification and sign a City-provided affidavit affirming that the identification provided is genuine. This requirement will be imposed at the time of contract award. In the event the prevailing responder is unable to satisfy this requirement, the City will offer the award to the next-highest scoring responder. The law does not apply to fictitious entities such as corporations, partnerships and limited liability companies.
- H. **Continuation During Disputes:** Contractor agrees that notwithstanding the existence of any dispute between the parties, insofar as is possible, under the terms of the contract, the 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.
- I. **Emergency Purchases:** The City reserves the right to purchase from other sources those items which are required on an emergency basis and cannot be supplied immediately from stock by the Contractor.

#### 4.4. Costs and Payments

- A. **General:** Any prompt payment terms offered must be clearly noted by the Contractor on all invoices submitted to the City for the payment of goods or services received. The City will make every effort to process payment for the purchase of material or services within thirty to forty-five calendar days after receipt of a correct invoice, unless a good faith dispute exists to any obligation to pay all or a portion of the account. Payment terms are specified in the Offer.
- B. **Payment Deduction Offset Provision:** Contractor acknowledges that the City Charter requires that no payment be made to any Contractor as long as there is an outstanding obligation due to the City. Contractor agrees that any obligation it owes to the City will be offset against any payment due to the Contractor from the City.
- C. **Late Submission of Claim by Contractor:** The City will not honor any invoices or claims which are tendered one year after the last item of the account accrued.
- D. **Discounts:** If applicable, payment discounts will be computed from the date of receiving acceptable products, materials and/or services or correct invoice, whichever is later to the date payment is mailed.

- E. **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.
- F. **Fund Appropriation Contingency:** The 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. The Contractor and the City herein 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 budget of the City 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.
- G. **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 the Contractor charges other buyers for similar quantities 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. The Contractor will promptly notify the City of such price reductions.
- H. **F.O.B. Point:** All prices are to be quoted F.O.B. destination, unless specified elsewhere in this solicitation.

#### 4.5. Contract Changes

- A. **Contract Amendments:** Contracts will be modified only by a written contract amendment signed by persons duly authorized to enter into contracts on behalf of the Contractor. No verbal agreement or conversation with any officer, agent, or employee of the City either before or after execution of the contract, will affect or modify any of the terms or obligations contained or to be contained in the contract. Any such verbal agreements or conversation shall be considered as unofficial information and in no way binding upon the City or the Contractor. All agreements shall be in writing and contract changes shall be by written amendment signed by both parties.
- B. **Assignment - Delegation:** No right or interest in this contract nor monies due hereunder will be assigned in whole or in part without written permission of the City, and no delegation of any duty of Contractor will be made without prior written permission of the City, which may be withheld for good cause. Any assignment or delegation made in violation of this section will be void.
- C. **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.

#### 4.6. Risk of Loss and Liability

- A. **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 seller from any obligation hereunder.
- B. **Acceptance:** All material or service is subject to final inspection and acceptance by the City. Material or service failing to conform to the specifications of this contract will be held at Contractor's risk and may be returned to the Contractor. If so returned, all costs are the responsibility of the Contractor. Noncompliance will conform to the cancellation clause set forth in this document.
- C. **Force Majeure:** Except for payment of sums due, neither party will be liable to the other nor deemed in default under this contract if and to the extent that such party's performance of this contract is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Force majeure will not include late performance by a subcontractor unless the delay arises out of a force majeure occurrence in accordance with this force majeure term and condition. If either party is delayed at any time in the progress of the work by force majeure, the delayed party will notify the other party in writing of such delay, as soon as is practical, of the commencement thereof and will specify the causes of such delay in such notice. Such notice will be hand-delivered or mailed certified-return receipt and will make a specific reference to this provision, thereby invoking its provisions. The delayed party will cause such delay to cease as soon as practicable and will notify the other party in writing when it has done so. The time of completion will be extended by contract modification for a period of time equal to the time that results or effects of such delay prevent the delayed party from performing in accordance with this contract.
- D. **Loss of Materials:** The City does not assume any responsibility, at any time, for the protection of or for loss of materials, from the time that the contract operations have commenced until the final acceptance of the work by the City.
- E. **Contract Performance:** Contractor will furnish all necessary labor, tools, equipment, and supplies to perform the required services at the City facilities designated, unless otherwise specifically addressed in the scope, 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 the contract. If, in the opinion of the City's authorized representative, performance becomes unsatisfactory, the City will notify the Contractor. The Contractor will have 30 days from that time to correct any specific instances of unsatisfactory performance, unless a different amount of time is specified in the 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 the Contractor. Repeated incidences of unsatisfactory performance may result in cancellation of the agreement for default.

- F. **Damage to City Property:** Contractor will perform all work so that no damage to the building or grounds results. Contractor will repair any damage caused to the satisfaction of the City at no cost to the City. Contractor will take care to avoid damage to adjacent finished materials that are to remain. If finished materials are damaged, Contractor will repair and finish to match existing material as approved by the City at Contractor's expense.

#### 4.7. City's Contractual Rights

Whenever one party to this contract in good faith has reason to question the other party's intent to perform, the former party may demand that the other party give a written assurance of this intent to perform. In the event that a demand is made and no written assurance is given within five days, the demanding party may treat this failure as an anticipatory repudiation of this contract.

- A. **Non-Exclusive Remedies:** The rights and remedies of the City under this Contract are non-exclusive.
- B. **Default in One Installment to Constitute Breach:** Each installment or lot of the agreement is dependent on every other installment or lot and a delivery of non-conforming goods or a default of any nature under one installment or lot will impair the value of the whole agreement and constitutes a total breach of the agreement as a whole.
- C. **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 the Contractor.
- D. **Default:** In case of default by the 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.
- E. **Covenant Against Contingent Fees:** Seller warrants that no person or selling agent has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employers or bona fide established commercial or selling agencies maintained by the seller for the purpose of securing business. For breach or violation of this warranty, the City will have the right to annul the contract without liability or in its discretion to deduct from the contract price a consideration, or otherwise recover the full amount of such commission, brokerage or contingent fee.

- F. **Cost Justification:** In the event only one response is received, the City may require that the Contractor submit a cost proposal in sufficient detail for the City to perform a cost/price analysis to determine if the Offer price is fair and reasonable.
- G. **Work Product, Equipment, and Materials:** All work product, equipment, or materials created or purchased under this contract belongs to the City and must be delivered to the City at City's request upon termination of this contract. Contractor agrees to assign to City all rights and interests Contractor may have in materials prepared under this contract that are "works for hire" within the meaning of the copyright laws of the United States, including any right to derivative use of the material.

#### 4.8. Contract Termination

- A. **Gratuities:** The City may, by written notice to the Contractor, cancel this contract if it is found that gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Contractor or any agent or representative of the Contractor, to any officer or employee of the City making any determinations with respect to the performing of such contract. 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 the Contractor the amount of the gratuity.
- B. **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-day written notice to Contractor. The City at its convenience, 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 of this contract for services rendered and accepted material received by the City before the effective date of termination. Title to all materials, work-in-process and completed but undeliverable goods, will pass to the City after costs are claimed and allowed. The Seller 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.
  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 the contract. The City will issue a written notice of default to Contractor for acting or failing to act as in any of the following:
    - In the opinion of the City, Contractor provides personnel who do not meet the requirements of the contract;
    - 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, which is of an unacceptable quality;

- Contractor fails to furnish the required service and/or product within the time stipulated in the contract;
- In the opinion of the City, Contractor fails to make progress in the performance of the requirements of the contract and/or gives the City a positive indication that Contractor will not or cannot perform to the requirements of the contract.

C. **Contract Cancellation:** All parties acknowledge that this contract is subject to cancellation by the City of Phoenix pursuant to the provision of Section 38-511, Arizona Revised Statutes.

#### 4.9. Notice

Any notice, consent or other communication (“Notice”) required or permitted under this Agreement will be in writing and either: (1) delivered in person; (2) sent via e-mail, return receipt requested; (3) deposited with any commercial air courier or express delivery service; or (4) deposited in the United States mail, postage prepaid.

#### 4.10. Integration

This Agreement constitutes and embodies the full and complete understanding and agreement of the parties hereto and supersedes all prior understandings, agreements, discussions, proposals, bids, negotiations, communications, and correspondence, whether oral or written. No representation, promise, inducement or statement of intention has been made by any party hereto which is not embodied in this Agreement, and no party will be bound by or liable for any statement of intention not so set forth.

#### 4.11. State and Local Transaction Privilege Taxes

In accordance with applicable state and local law, transaction privilege taxes may be applicable to this transaction. The state and local transaction privilege (sales) tax burden and legal liability to remit taxes are on the Contractor that is conducting business in Arizona and the City of Phoenix. Any failure by the Contractor to collect applicable taxes from the City will not relieve the Contractor from its obligation to remit taxes. It is the responsibility of the prospective bidder to determine any applicable taxes. The City will look at the price or offer submitted and will not deduct, add or alter pricing based on speculation or application of any taxes, nor will the City provide advice or guidance. If you have questions regarding your tax liability, please seek advice from a tax professional prior to submitting your Offer. You may also find information at <https://www.phoenix.gov/finance/plt> or <https://www.azdor.gov/Business>. Once your Offer is submitted, the Offer is valid for the time specified in this Solicitation, regardless of mistake or omission of tax liability. If the City finds over payment of a project due to tax consideration that was not due, the Contractor will be liable to the City for that amount, and by contracting with the City, the Contractor agrees to remit any overpayments back to the City for miscalculations on taxes included in an offer price.

#### 4.12. Tax Indemnification

Contractor will pay all federal, state and local taxes applicable to its operation and any persons employed by the Contractor, and require the same of all subcontractors. Contractor will hold the City harmless from any responsibility for taxes, damages and interest, if applicable,

contributions required under federal, and/or state and local laws and regulations and any other costs including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation, and require the same of all subcontractors.

#### **4.13. Tax Responsibility Qualification**

Contractor may be required to establish, to the satisfaction of City, that any and all fees and taxes due to the City or the State of Arizona for any License or Transaction Privilege taxes, Use Taxes or similar excise taxes, are currently paid (except for matters under legal protest). Contractor agrees to a waiver of the confidentiality provisions contained in the City Finance Code and any similar confidentiality provisions contained in Arizona statutes relative to State Transaction Privilege Taxes or Use Taxes. Contractor agrees to provide written authorization to the City Finance Department and to the Arizona State Department of Revenue to release tax information relative to Arizona Transaction Privilege Taxes or Arizona Use Taxes in order to assist the Department in evaluating Contractor's qualifications for and compliance with contract for duration of the term of contract.

#### **4.14. No Israel Boycott**

If this Contract is valued at \$100,000 or more and requires Contractor (a company engaging in for-profit activity and having ten or more full-time employees) to acquire or dispose of services, supplies, information technology, or construction, then Contractor must certify and agree that it does not and will not boycott goods or services from Israel, pursuant to Title 35, Chapter 2, Article 9 of the Arizona Revised Statutes. Provided that these statutory requirements are applicable, Contractor by entering this Contract now certifies that it is not currently engaged in, and agrees for the duration of the Contract to not engage in, a boycott of goods or services from Israel.

#### **4.15. No Forced Labor of Ethnic Uyghurs**

If this Contract requires Contractor (a company engaging in for-profit activity and having ten or more full-time employees) to acquire or dispose of services, supplies, information technology, goods, or construction, then pursuant to Title 35, Chapter 2, Article 10 of the Arizona Revised Statutes Contractor must certify and agree that it and any contractors, subcontractors, or suppliers it utilizes do not and will not use the forced labor of ethnic Uyghurs in the People's Republic of China or any goods or services produced by such forced labor. Provided these statutory requirements are applicable, Contractor, by entering this Contract, now certifies it is not currently engaged in, and agrees for the duration of the Contract to not engage in, (a) the use of forced labor of ethnic Uyghurs in the People's Republic of China; (b) the use of any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China; or (c) the use of any contractors, subcontractors, or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China.

#### **4.16. Advertising**

Except as required by law, Contractor shall not publish, release, disclose or announce to any member of the public, press, official body, or any other third party any information or documents concerning this Agreement or any part thereof without the prior written consent of the City. The name of any City site on which services are performed by the Contractor pursuant to this

Agreement shall not be used in any advertising or other promotional context by Contractor without the prior written consent of the City.

#### 4.17. Strict Performance

Failure of either party to insist upon the strict performance of any item or condition of the contract or to exercise or delay the exercise of any right or remedy provided in the contract, or by law, or the acceptance of materials or services, 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 the contract.

#### 4.18. Authorized Changes

The City reserves the right at any time to make changes in any one or more of the following: (a) specifications; (b) methods of 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 or delivery schedule, or both. Any claim for adjustment will be deemed waived unless asserted in writing within sixty 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.

#### 4.19. Heat Mitigation and Protection

Any contractor whose employees and contract workers perform work in an outdoor environment under this contract must keep on file a written heat safety plan. The city may request a copy of this plan and documentation of all heat safety and mitigation efforts currently implemented to prevent heat-related illnesses and injuries in the workplace. The plan must also be posted where it is accessible to employees. At a minimum, the heat safety and mitigation plan and documentation required under this provision shall include each of the following as it relates to heat safety and mitigation:

- Availability of sanitized cool drinking water free of charge at locations that are accessible to all employees and contract workers.
- Ability to take regular and necessary breaks as needed and additional breaks for hydration.
- Access to shady areas and/or air conditioning.
- Access to air conditioning in vehicles with enclosed cabs. All such vehicles must contain functioning air conditioning by no later than May 1, 2025.
- Effective acclimatization practices to promote the physiological adaptations of employees or contract workers newly assigned or reassigned to work in an outdoor environment.
- Conduct training and make it available and understandable to all employees and contract workers on heat illness and injury that focuses on the environmental and personal risk factors, prevention, how to recognize and report signs and symptoms of heat illness and injury, how to administer appropriate first aid measures and how to report heat illness and injury to emergency medical personnel.

The contractor further agrees that this clause will be incorporated in all subcontracts with subcontractors, sublicensees or sublessees who may perform labor or services in connection with this contract. Additionally, the contractor agrees to require all

subcontractors, sublicensees or sublessees to include this clause in all contracts with any third party who is contracted to perform labor or services in connection with this contract. It is the obligation of the contractor to ensure compliance by its subcontractors.

## 5. Special Terms and Conditions

### 5.1. Term of Contract

The term of this Contract will commence on or about October 1, 2024 and will continue for a period of five (5) years thereafter.

### 5.2. Free on Board (FOB)

Prices quoted shall be FOB destination and delivered, as required, to the following point(s):

23rd Ave Wastewater Treatment Plant (WWTP)  
2470 S. 22nd Ave, Building #38  
Phoenix, AZ 85009

### 5.3. Price

All prices submitted shall be firm and fixed for the initial year of the contract. Thereafter, price increases will be considered annually provided the adjustments are submitted in writing with 60 days' notice to the Procurement Officer. Price increase requests shall be accompanied with written documentation to support the increase, such as a letter from the manufacturer, published price index, applicable change in law, etc. Price decrease requests do not require supporting documentation and are allowed at any time during the contract term.

The City will be the sole judge in determining the allowable increase amount. Price increases agreed to by any staff other than the Chief Procurement Officer are invalid. The Contractor acknowledges and agrees to repay all monies paid because of a requested price increase unless the increase was specifically approved, in writing, by the Chief Procurement Officer.

### 5.4. Method of Ordering

Contractor shall deliver items and/or services only upon receipt of a written purchase order. All Contractor invoices and packing/delivery tickets must include the City of Phoenix purchase order number.

### 5.5. Method of Invoicing

Invoice must be emailed in .pdf format to [invoices@phoenix.gov](mailto:invoices@phoenix.gov) and must include the following:

- City purchase order number or shopping cart number
- Items listed individually by the written description and part number
- Unit price, extended and totaled
- Quantity ordered, back ordered, and shipped
- Applicable tax
- Invoice number and date
- Delivery address
- Payment terms

- FOB terms
- Remit to address

## 5.6. Method of Payment

Payment to be made from Contractor's invoice and a copy of the signed delivery/service ticket submitted to cover items received and accepted during the billing period.

## 5.7. Partial Payments

Partial payments are not authorized on individual purchase orders. Payment will be made upon final delivery and acceptance of all goods and services on the purchase order.

## 5.8. Supplier Profile Changes

It is the responsibility of the Contractor to promptly update their profile in procurePHX at <https://www.phoenix.gov/procure>. If Contractor's legal identify has changed, the Procurement Officer must be notified immediately. Failure to do so may result in non-payment of invoices and contract termination.

## 5.9. Estimated Quantities or Dollar Amounts (Requirements Contracts Only)

Quantities and dollar amounts listed are the City's best estimate and do not obligate the City to order or accept more than City's actual requirements during the period of this agreement, as determined by actual needs and availability or appropriated funds. It is expressly understood and agreed that the resulting contract is to supply the City with its complete actual requirement for the contract period.

## 5.10. Post Award Conference

A post-award conference will be held prior to commencement of any work on the project. The purpose of this conference is to discuss critical elements of the work schedule and operational problems and procedures.

## 5.11. Performance Interference

Contractor shall notify the City's authorized Department representative immediately of any occurrence and/or condition that interferes with the full performance of the contract and confirm it in writing within 24 hours.

## 5.12. Cooperative Agreement

In addition to the City and with approval of the Contractor, this contract may be extended for use by other municipalities and government agencies in the State of Arizona.

## 5.13. Licenses and Permits

Contractor will keep current Federal, State, and local licenses and permits required for the operation of the business conducted by the Contractor as applicable to this contract.

## 5.14. Delivery

All deliveries shall be made between 7 am - 3 pm, local time, Monday through Friday, excluding City holidays. City holiday calendar: <https://www.phoenix.gov/calendar/holidays>

## 5.15. Delivery / Service Ticket

Contractor shall provide a packing list or service ticket for items delivered to the City or services provided to the City. Tickets should include the following and a legible copy shall be provided to the City:

- Date
- City purchase order number
- Written description of services which were provided
- Itemized list of materials which were delivered, including quantity
- A unique identification number and Contractor name
- Signature of City employee who accepted for the materials/services

## 5.16. Miscellaneous Fees

Additional charges for fuel surcharges, delivery charges, dealer prep, environmental fees, waste disposal, shop supplies, set-up, freight and/or shipping and handling, etc. will not be paid. These costs must be incorporated in the pricing provided.

Labor rates (Shop and On-site) shall be charged as a flat hourly rate and are allowed only in performance of services under this agreement. Travel hours and other incidental fees will not be permitted under this agreement. Labor hours will be from “check-in” to “check-out” at the worksite.

## 5.17. Warranty

All equipment supplied under this contract shall be fully guaranteed by the Contractor for a minimum period of one year from the date of acceptance by the City. Any defects of design, workmanship, or materials that would result in non-compliance with the contract specifications shall be fully corrected by the Contractor (including parts and labor) without cost to the City.

## 5.18. Evaluation Literature

Offers submitted for products considered by the Contractor to be equal or better than the products specified herein must be submitted with technical literature and/or product brochures for the City’s use to evaluate the offered products. Complete specifications, literature, illustrations, blueprints, photos etc. describing the offered product shall be included with the Offer. Contractor shall indicate any variation between the product offered and the literature submitted.

## 5.19. Industry Standards

It is intended that the manufacturer in the selection of components will use material and design practices that are the best available in the industry for the type of operating conditions to which

the item will be subjected. Component parts shall be selected to give maximum performance, service life and safety and not merely meet the minimum requirements of this specification. All parts, equipment and accessories shall conform in strength, quality of material and workmanship to recognized industry standards.

The term "heavy duty" if used in these specifications shall mean that the item to which the term is applied shall exceed the usual quantity, quality, or capacity supplied with standard production items and it shall be able to withstand unusual straining, exposure, temperature, wear and use.

The City reserves the right to waive minor variations if, in the opinion of the City's authorized Department representative, the basic unit meets the general intent of these specifications.

The product offered shall not include a major component that is of a prototype nature or has not been in production for a sufficient length of time to demonstrate reliability.

If the specifications stated herein for component items do not comply with legal requirements, the Contractor shall so notify the City prior to the offer opening due date.

## 5.20. Inspection and Acceptance

Each product delivered shall be subject to complete inspection by the City prior to acceptance. Inspection criteria shall include, but not be limited to, conformity to the specifications, mechanical integrity, quality, workmanship and materials. Ten business days will be allowed for this process. If delivered items are unacceptable and returned to the Contractor prior to acceptance, an additional five business days will be allowed for inspection when subsequent delivery occurs. It shall be the Contractor's responsibility to pick up unacceptable products, correct the deficiencies, and return the product following the corrections.

## 5.21. Samples

Upon request, Offerors are required to furnish a sample of the goods to be supplied. Any sample submitted shall create an express warranty that the whole of the goods shall conform to the sample submitted. All samples become the property of the City unless designated otherwise by the Offeror.

## 5.22. Substitution of Specified Items

Whenever in the specifications any item or process is requested or identified by manufacturer name, proprietary name, or patent such specifications shall be used to facilitate descriptions of the item or process and shall be followed by the words "or equal". The Contractor may offer any item or process that is equal in every respect. However, if the item or process delivered is not, in the opinion of the City of Phoenix, equal in every respect to the specifications, then the Contractor must furnish the item or material that is equal, in the opinion of the City.

## 5.23. 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.

## 5.24. Background Screening – Maximum Risk

- A. **Determined Risk Level:** The current risk level and background screening required is MAXIMUM RISK.
- B. **Maximum Risk Level:** A maximum risk background screening will be performed every **five** years when the Contract Worker's work assignment will:
  - 1. work directly with vulnerable adults or children, (under age 18); or
  - 2. any responsibility for the receipt of payment of City funds or control of inventories, assets, or records that are at risk of misappropriation; or
  - 3. unescorted access to:
    - a. City data centers, money rooms, high-value equipment rooms; or
    - b. unescorted access to private residences; or
    - c. access to critical infrastructure sites/facilities; or
    - d. direct or remote access to Criminal Justice Information Systems (CJIS) infrastructure.
- C. **Requirements:** The background screening for maximum risk level will include a background check for real identity/legal name and will include felony and misdemeanor records from any county in the United States, the State of Arizona, plus any other jurisdiction where the Contractor worker has lived at any time in the preceding seven years from the Contract Worker's proposed date of hire. In addition, Maximum screening levels may require additional checks as included herein, depending on the scope of work, and may be amended if the scope of work changes.

## 5.25. Contractor Certification; City Approval of Maximum Risk Background Screening

Unless otherwise provided for in the Scope of Work, Contractor will be responsible for:

- A. determining whether Contract Worker(s) are disqualified from performing work for the City for maximum risk level background checks; and,
- B. submitting pass/fail results to the City for approval; and,
- C. reviewing the results of the background check every three to five years, dependent on scope; and,
- D. to engage in whatever due diligence is necessary to make the decision on whether to disqualify a Contract Worker; and,
- E. Submitting the list of qualified Contract Workers to the contracting department; and,
- F. If, upon review of the background information, the City will advise the Contractor if it believes a Contract Worker should be disqualified. The Contractor will evaluate the

Contract Worker and if the Contractor believes that there are extenuating circumstances that suggest that the person should not be disqualified, the Contractor will discuss those circumstances with the contracting department. The contracting department decision on disqualification of a Contract Worker is final.

- G. For sole proprietors, the Contractor must comply with the background check for himself and any business partners, or members or employees who will assist on the contract and for whom the requirements of the Agreement apply.
- H. By executing this agreement, Contractor certifies and warrants that Contractor has read the background screening requirements and criteria in this section, and that all background screening information furnished to the City is accurate and current.
- I. The City final documented decision will be an “approve” or “deny” for identified Contract Workers.
- J. The City will not keep records related to background checks once they are confirmed. Information to verify the results will be returned to the Contractor, or any contracted agency that assists with review, after the City’s completed review.
- K. By executing this agreement, Contractor further certifies and warrants that Contractor has satisfied all such background screening requirements for the maximum risk background screening, and verified legal worker status, as required.
- L. Contract Workers will not apply for the appropriate City of Phoenix identification and access badge or keys until Contractor has received the City’s written acceptance of Contract Worker’s maximum risk background screening. The City may, in its sole discretion, accept or reject any or all the Contract Workers proposed by Contractor for performing work under this Agreement. A Contract Worker rejected for work at a maximum risk level under this agreement will not be proposed to perform work under other city contracts or engagements without city’s prior written approval.
- M. For any childcare or health worker positions, or Criminal Justice Information Systems access in the scope of work, Contractor is required to send the City updated background checks every three years.
- N. The Contractor will submit prior to scheduling any services, a current list of names, addresses, and social security numbers of all employees requiring access to the facility. The Contractor is responsible for obtaining security clearance from the Police Department for all employees. The City reserves the right to change the restricted areas as needed. The Contractor grants the rights to the Police Department to conduct background checks of all employees entering the building. All employees will submit to the background check before access to the facility is given.
- O. The background checks will be conducted prior to any employee entering to work and will be based upon information provided to the Police Department including, but not limited to: name, address, date and place of birth, social security number, INS number if

applicable, and a copy of a valid photo identification. The information will be provided to the City's authorized Department representative at least five business days (excluding weekends and holidays) in advance of the need for access. The form will be provided by the City's authorized Department representative. The City's authorized Department representative will conduct the security check.

- P. The City may, at any time, in its sole discretion, refuse to allow an employee access to an area for any of the following reasons, but not limited to:
1. Conviction of a felony.
  2. Conviction of a misdemeanor (not including traffic or parking violation).
  3. Any outstanding warrants (including traffic and parking violations).
  4. A person currently on parole or probation.
  5. A person currently involved in an investigation.

## **6. Defense and Indemnification**

### **6.1. Standard General Defense and Indemnification**

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, attorney 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 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 Indemnitee accrues immediately at the time a claim is threatened or a claim is made against Indemnitee, whichever is first. Indemnitor's duty to defend exists regardless of whether Indemnitor is ultimately found liable. Indemnitor must indemnify Indemnitee from and against any and all Losses, except where it is proven that those Losses are solely a result of Indemnitee'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 Indemnitee 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.

## **7. Insurance Requirements**

### **7.1. Contractor's Insurance**

Contractor and subcontractors must procure insurance against claims that may arise from or relate to performance of the work hereunder by Contractor and its agents, representatives, employees and subcontractors. Contractor and subcontractors must maintain that insurance until all their obligations have been discharged, including any warranty periods under this Contract.

The City in no way warrants that the limits stated in this section are sufficient to protect the Contractor from liabilities that might arise out of the performance of the work under this Contract by the Contractor, its agents, representatives, employees or subcontractors and Contractor may purchase additional insurance as they determine necessary.

### **7.2. Scope and Limits of Insurance**

Contractor must provide coverage with limits of liability not less than those stated below. An excess liability policy or umbrella liability policy may be used to meet the liability limits provided that (1) the coverage is written on a "following form" basis, and (2) all terms under each line of coverage below are met.

### **7.3. Commercial General Liability – Occurrence Form**

General Aggregate \$2,000,000

Products – Completed Operations Aggregate \$1,000,000

Personal and Advertising Injury \$1,000,000

Each Occurrence \$1,000,000

- The policy must name the City of Phoenix as an additional insured with respect to liability for bodily injury, property damage and personal and advertising injury with respect to premises, ongoing operations, products and completed operations and liability assumed under an insured contract arising out of the activities performed by, or on behalf of the Contractor related to this Contract.
- There shall be no endorsement or modification which limits the scope of coverage or the policy limits available to the City of Phoenix as an additional insured.
- City of Phoenix is an additional insured to the full limits of liability purchased by the Contractor.
- The Contractor's insurance coverage must be primary and non-contributory with respect to any insurance or self-insurance carried by the City.

### **7.4. Worker's Compensation and Employers' Liability**

Workers' Compensation Statutory

Employers' Liability:

Each Accident \$100,000

Disease – Each Employee \$100,000

Disease – Policy Limit \$500,000

- Policy must contain a waiver of subrogation against the City of Phoenix.
- This requirement does not apply when a contractor or subcontractor is exempt under A.R.S. §23-902(E), **AND** when such contractor or subcontractor executes the appropriate sole proprietor waiver form.

## 7.5. Notice of Cancellation

For each insurance policy required by the insurance provisions of this Contract, the Contractor must provide to the City, within 5 business days of receipt, a notice if a policy is suspended, voided or cancelled for any reason. Such notice must be mailed, emailed, or hand delivered to [wsdprocurement@phoenix.gov](mailto:wsdprocurement@phoenix.gov).

## 7.6. Acceptability of Insurers

Insurance is to be placed with insurers duly licensed or authorized to do business in the state of Arizona and with an “A.M. Best” rating of not less than B+ VI. The City in no way warrants that the required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

## 7.7. Verification of Coverage

Contractor must furnish the City with certificates of insurance (ACORD form or equivalent approved by the City) as required by this Contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

All certificates and any required endorsements are to be received and approved by the City before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Contract or to provide evidence of renewal is a material breach of contract.

All certificates required by this Contract must be sent directly to [wsdprocurement@phoenix.gov](mailto:wsdprocurement@phoenix.gov). The City project/contract number and project description must be noted on the certificate of insurance. The City reserves the right to review complete copies of all insurance policies required by this Contract at any time. **DO NOT SEND CERTIFICATES OF INSURANCE TO THE CITY’S RISK MANAGEMENT DIVISION.**

## 7.8. Subcontractors

Contractor’s certificates shall include all subcontractors as additional insureds under its policies **OR** Contractor shall be responsible for ensuring and verifying that all subcontractors have valid and collectable insurance. At any time throughout the life of the contract, the City of Phoenix reserves the right to require proof from the Contractor that its subcontractors have insurance coverage. All subcontractors providing services included under this Contract’s Scope of Services are subject to the insurance coverages identified above and must include the City of Phoenix as an additional insured. In certain circumstances, the Contractor may, on behalf of its subcontractors, waive a specific type of coverage or limit of liability where appropriate to the

type of work being performed under the subcontract. Contractor assumes liability for all subcontractors with respect to this Contract.

### 7.9. Approval

Any modification or variation from the insurance coverages and conditions in this Contract must be documented by an executed contract amendment.

## 8. Submittals

### 8.1. Copies

Please submit one original or electronic copy, of the Submittal Section and all other required documentation. Please do not lock the electronic copy with password protection so that the City may digitally incorporate the successful offer into the awarded contract.

**Please submit only the Submittal Section, do not submit a copy of the entire solicitation document.** This Offer will remain in effect for a period of 180 calendar days from the opening date, and is irrevocable unless it is in the City's best interest to release offer(s).

### 8.2. Solicitation Response Check List

Use this check list as a tool to review your submission to ensure that all required documents and forms are included.

The written offer should be:

- Typewritten for ease of evaluation
  - Signed by an authorized representative of the Offeror
  - Submitted with contact information for the individual(s) authorized to negotiate with the City
- A. Offeror's Proposal - A detailed proposal describing the firm or individual's qualifications and experience responsive to the requirements of the solicitation and evaluation criteria.
  - B. Pricing Proposal - A completed pricing proposal with all requested prices, quantities, and/or discounts completed.
  - C. Submittal Forms - All submittal forms are completed and signed.
  - D. Addenda - Signed copies of all published addenda.

Offers must be in possession of the Department on or prior to the exact time and date indicated in the Schedule of Events. Late offers will not be considered. Electronic submission is preferred. Due to file size limitations for electronic transmission, offers sent by email may need to be sent in parts with multiple emails. It is the responsibility of the Offeror to ensure that the offer is received timely and that there are no technical reasons for delay. Please refer to the Instructions Section for complete information regarding the submission of offers.

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**WARRANTY**

(please complete and return with the submittal)

Specify the Contractor or dealership / manufacturer where warranty work will be done:

Contractor \_\_\_\_\_

Address \_\_\_\_\_

City, State, Zip Code \_\_\_\_\_



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## COSTS AND PAYMENTS

(please complete and return with the submittal)

**PAYMENT TERMS & OPTIONS:** Vendors must choose an option, if a box is not checked, the City **will default to 0% - net 45 days:**

\_\_\_\_ Contractor offers a prompt payment discount of either \_\_\_\_\_% - 30 days or 0% – 45 days - to apply after receipt of invoice or final acceptance of the products (invoice approval), whichever date is later, starts the 30 days. If no prompt payment discount is offered, the default is 0%, net 45 days; effective after receipt of invoice or final acceptance of the products, whichever is later. **Payment terms offering a discount will not be considered in the price evaluation of your offer.**

\_\_\_\_ Contractor may be paid immediately upon invoice approval, if enrollment is made to the Single Use Account (SUA) Program, administered by the City's servicing bank ("Bank"). By checking this box, the vendor accepts transaction costs charged by their merchant bank and agrees not to transfer to the City those extra charges. The City will not pay an increase in our services for the SUA charges; if an audit uncovers an upcharge for the SUA charges the vendor will owe the City all costs. The vendor may opt-out of the SUA program once, but then may not rejoin during the same contract term. **For more information about the SUA program or to enroll, send email to [mailbox.sua@phoenix.gov](mailto:mailbox.sua@phoenix.gov).**

**DELIVERY**

(please complete and return with the submittal)

Contractor states that in-stock item(s) ordered will be delivered \_\_\_\_\_ days after receipt of order. This delivery schedule shall include any time for shipping.

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**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER INELIGIBILITY  
AND VOLUNTARY EXCLUSION**

(please sign and return with the submittal)

The prospective participant (Contractor for a federally funded project) certifies, by submission of this solicitation and certification, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. Where the prospective participant is unable to certify to any of the statements in this certification, such participant shall attach an explanation to this solicitation.

THE PARTICIPANT (Contractor for a federally funded project), CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF THE CONTENTS OF THE STATEMENTS SUBMITTED ON OR WITH THIS CERTIFICATION AND UNDERSTANDS THAT THE PROVISIONS OF 31 U.S.C. 3801 ET SEQ. ARE APPLICABLE THERETO.

\_\_\_\_\_  
Authorized Official Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title of Authorized Official

\_\_\_\_\_  
Date



**EMERGENCY 24-HOUR SERVICE CONTACT**

(please complete and return with the submittal)

Contact Name: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Alternate Contact: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

## CONFLICT OF INTEREST AND TRANSPARENCY FORM

(please complete, sign, and return with the submittal)

This form must be signed and submitted to the City and all questions must be answered (or N/A) or your Offer may be considered non-responsive.

1. Name of person submitting this disclosure form.

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First	MI	Last	Suffix
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2. Contract Information

Solicitation # or Name:

3. Name of individual(s) or entity(ies) seeking a contract with the City (i.e. parties to the Contract)

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4. List any individuals(s) or entity(ies) that are owners, partners, parent, sublessees, joint venture, or subsidiaries of the individual or entity listed in Question 3. Please include all Board members, executive committee members and officers for each entry. If not applicable, indicate N/A.

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5. List any individuals or entities that will be subcontractors on this contract or indicate N/A.

- Subcontractors may be retained, but not known as of the time of this submission.
- List of subcontracts, including the name of the owner(s) and business name:

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6. List any attorney, lobbyist, or consultant retained by any individuals listed in Questions 3, 4, or 5 to assist in the proposal or seeking the resulting contract. If none, indicate N/A.

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**7. Disclosure of Conflict of Interest:****A. City Code Section 43-34**

Are you aware of any fact(s) with regard to this solicitation or resulting contract that would raise a “conflict of interest” issue under City Code Section 43-34?

“An elected City official or a City employee shall not represent any person or business for compensation before the City regarding any part of a procurement, including any resulting contract, if during the time the elected official is or was in office or the employee is or was employed by the City such elected official or employee played a material or significant role in the development of the solicitation, any other part of the procurement, or the contract award.”

- I am not aware of any conflict(s) of interest under City Code Section 43-34.
- I am aware of the following potential or actual conflict(s) of interest:

**B. ARS Sections 38-501 et. Seq. & City Charter Chapter 11**

State law and the Phoenix City Charter and Code prohibit public officers or employees, their close relatives, and any businesses they, or their relatives, own from (1) representing before the City any person or business for compensation, (2) doing business with the City by any means other than through a formal procurement, and (3) doing business with the City without disclosing that the person has an interest in the contract. This prohibition extends to subcontracts on City contracts and also applies to parent, subsidiary, or partner businesses owned by a public officer or employee. See A.R.S. Sections 38-501 through 38-511, for more information (City Charter, Chapter 11, applies the state conflict-of-interest law to City employees).

Please note that any contract in place at the time a person becomes a public officer or employee may remain in effect. But the contract may not be amended, extended, modified, or changed in any manner during the officer’s or employee’s city service without following city administrative regulations.

Are you aware of any fact(s) with regard to this contract that would raise a “conflict of interest” issue under A.R.S. Sections 38-501 through 38-511 (See Arizona Revised Statutes regarding conflict of interest at [www.azleg.gov](http://www.azleg.gov)).

- I am not aware of any conflict(s) of interest under Arizona Revised Statutes Sections 38-501 through 38-511.
- I am aware of the following conflict(s) of interest:

## 8. Acknowledgements

### A. Solicitation Transparency Policy – No Contact with City Officials or Staff During Evaluation

- I understand that a person or entity who seeks or applies for a city contract, or any other person acting on behalf of that person or entity, is prohibited from contacting city officials and employees regarding the contract after a solicitation has been posted.
  
- This “no-contact” provision only concludes when the contract is awarded at a City Council meeting. If contact is required with City official or employees, the contact will take place in accordance with procedures by the City. Violation of this prohibited contacts provision, set out in City Code Sections 2-190.4 and 43-36, by respondents, or their agents, will lead to **disqualification**.

### B. Fraud Prevention and Reporting Policy

- I acknowledge that the City has a fraud prevention and reporting policy and takes fraud seriously. I will report fraud, suspicion of fraud, or any other inappropriate action to: telephone no. 602-261-8999 or 602-534-5500 (TDD); or [aud.integrity.line@phoenix.gov](mailto:aud.integrity.line@phoenix.gov).

The purpose of the fraud policy is to maintain the City's high ethical standards. The policy includes a way for our business partners to report wrongdoing or bad behavior. Suspected fraud should be reported immediately to the Phoenix Integrity Line. The City has adopted a zero-tolerance policy regarding fraud.

### OATH

I affirm that the statements contained in this form, including any attachments, to the best of my knowledge and belief are true, correct, and complete.  
 Should any of the answers to the above questions change during the course of the contract, particularly as it relates to any changes in ownership, applicant agrees to update this form with the new information within 30 days of such changes. Failure to do so may be deemed a breach of contract.

PRINT NAME

TITLE

SIGNATURE

DATE

COMPANY (CORPORATION, LLC, ETC.) NAME and DBA

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**CONTRACTOR INFORMATION**

(please complete and return with the submittal)

Company Name \_\_\_\_\_

Street/Mailing Address \_\_\_\_\_

City, State, Zip Code \_\_\_\_\_

Contact Person \_\_\_\_\_

Telephone Number \_\_\_\_\_

Email Address \_\_\_\_\_

Arizona Sales Tax No. \_\_\_\_\_

City of Phoenix Sales Tax  
No. \_\_\_\_\_

Arizona Corporation  
Commission File No. \_\_\_\_\_

City's Vendor Registration ID  
No. \_\_\_\_\_

**SERVICE COMPLETION DATE**

(please complete and return with the submittal)

Contractor states that all services will be completed \_\_\_\_\_ days after receipt of order. This completion schedule shall include any time for shipping of needed materials and/or equipment.



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## ACCEPTANCE OF OFFER

The Offer is hereby accepted.

The Contractor is now bound to sell the material(s) or service(s) listed by the attached contract and based upon the solicitation, including all terms, conditions, specifications, amendments, etc. and the Contractor's Offer as accepted by the City.

This contract shall henceforth be referred to as Contract No. \_\_\_\_\_. The Contractor has been cautioned not to commence any billable work or provide any material or service under this contract until Contractor receives purchase order, or contract documentation.

### CITY OF PHOENIX

A Municipal Corporation  
Jeffrey Barton, City Manager

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Director or delegate:

Title:

Department:

Attest:

\_\_\_\_\_ this \_\_\_\_ day of \_\_\_\_\_ 2024

City Clerk

Approved as to form this 19th day of January 2017. This document has been approved as to form by the City Attorney and is on file with the City Clerk. It need not be submitted to the City Attorney for approval unless the form document is altered.

Last Updated: 11/23/2021

## General Terms & Conditions - Fluke Premium Care

The terms and conditions (“Terms”) under which Fluke will provide Fluke Premium Care and Gold Support (“Premium Care”), as more fully defined herein, to the purchaser of Premium Care (“Member” or “you”), and the responsibilities of the Member and Fluke are as follows:

### 1. PURPOSE

Premium Care is a paid membership for Fluke customers only, providing a range of Services not available to the regular customer base. These Services are established by the purchase of Premium Care coverage and as described within the applicable then-current Fluke Product data sheets.

### 2. GENERAL

Members are given priority for any Services. The Services will remain available for each applicable Product for 12 months from the date of purchase of Premium Care and upon annual renewal for each subsequent year. A 3-year option is available for some Products, and when selected, Premium Care will be paid in advance and remain in effect for 3 years. Member’s issuance of a purchase order is conclusive evidence of Member’s acceptance of these terms and conditions. Fluke reserves the right to change or modify these Terms at any time and in its sole discretion. If Fluke makes changes to these Terms, Fluke will provide notice by updating the “Last Updated” date at the top of these Terms. Fluke encourages you to frequently review the terms and conditions to ensure that you understand the terms and conditions that apply to Premium Care. Your continued use of the Services will confirm your acceptance of the revised Terms.

### 3. RESPONSIBILITIES

Determination of duties and Services will be based upon information the User provides to Fluke.

3.1 - Member will: Maintain accurate and up-to-date records of the number and location of all Hardware, serial numbers and copies of the Software supplied to Member under the terms of the applicable license agreement. Cooperate with Fluke personnel in the diagnosis of any error or defect in the Hardware, Software, Updates, or Upgrades reported by Member. Make available to Fluke all reasonable information, facilities, services, and access required by Fluke in order to perform Services.

3.2 - Fluke will: Use its reasonable commercial efforts to ensure that Premium Care will be performed with reasonable skill and care in such a way as to cause only minimal interruptions to Member business processes. There may be occasions when interruption will be required in order to perform the program support in a proper and efficient manner. The express terms of Premium Care are in lieu of all warranties, conditions, undertakings, terms of obligations implied by statute, common law, trade usage, course of dealing or otherwise, all of which are hereby excluded to the fullest extent permitted by law.

## **4. DESCRIPTION OF PREMIUM CARE SERVICES**

### **4.1 Priority Technical Assistance (for Premium Care Products that include 24X7 technical support)**

4.1.1- Premium Care provides 24-hour, seven days a week coverage for technical support except Fluke company holidays for most Products. The data sheet for the Product describes if 24-hour support is included for that particular Product. Our worldwide Technical Assistance Centers (TAC), staffed by trained technicians, are based at our corporate headquarters near Seattle, Washington (US), Eindhoven (NL) and locations in Asia. Priority Technical Assistance benefit includes live troubleshooting assistance with our TAC, escalation to engineering support as required and unrestricted knowledge base access. There may be times that technicians are busy helping other customers.

### **4.2 Hardware Repair or Replacement**

4.2.1 - When Hardware has been pre-qualified as defective or faulty, Fluke will either exchange or repair the unit, at Fluke's discretion, at no charge to the Member. Exchange units will be new or refurbished at Fluke's option. The model exchanged will be the same unit covered by Premium Care. Faulty or defective accessories that were shipped with the Product and that are considered essential to the operation of the primary Hardware are covered provided a) the TAC approves its return and b) the accessory is returned to Fluke for evaluation.

4.2.2 - Any repair Service must be performed by a Fluke authorized Service representative. Requests for Service must be submitted via the internet or by phone and will be pre-qualified by TAC.

4.2.3. - Any item, either abused or simply "worn out" due to normal usage does not qualify for Services. Fluke reserves the right to determine if the cause of failure or out of specification performance is due to expected normal wear and tear or abuse of the Product. Should Fluke determine that the Product failure is due to abuse, any applicable warranty or Premium Care coverage will be immediately voided for that Product. Future coverage will be denied to this Product unless it has undergone repair and is deemed suitable for coverage by an authorized Fluke Service repair facility.

4.2.4 - Hardware must have been continuously covered by the standard warranty or Premium Care coverage to be eligible for Premium Care repair/replacement Services. Out of warranty hardware or hardware with lapse Premium Care coverage must be judged "warranty supportable" by a Fluke authorized service center to be eligible for initiation or re-installment into Premium Care. There is a nominal charge for this service; however, the Member may forego the charge, but they must wait a minimum of thirty (30) days before using any repair/exchange or loaner Service of the program.

4.2.5 - Fluke pays for shipping for Premium Care Hardware repair or replacement Services of Member Products. Shipping from Fluke is by common carrier, "next day" or "second day" unless circumstances require a different method, or the common carrier does not offer next or second shipment in your region.

4.2.6 - Repair/exchange (with pre-paid shipping) may not be available in certain countries worldwide. For a list of countries these Services are available, please see section 5.

### **4.3 Hardware Calibration/Performance Verification**

4.3.1 - Calibration is the precision adjustment of electronic measurement characteristics, traceable to officially recognized standards. Certificates are not available in all countries free of charge due to local government regulations. This Service is offered once annually free of charge to Members. Traceable calibration data can be provided upon request for an additional fee. In certain countries, these Services are performed by authorized Service partners. In certain situations, Fluke is unable to pay for return shipping, VAT, duties, insurance, or handling.

4.3.2 - Any calibration/performance verification must be performed by a Fluke authorized Service representative. Requests for Service must be submitted via the internet or by phone and will be pre-qualified by Fluke's Technical Assistance Center (TAC).

4.3.3 - Fluke pays for shipping for Premium Care calibration and performance tests Services of Member Products. Shipping from Fluke is by common carrier, "next day" or "second day" unless circumstances require a different method, or the common carrier does not offer next or second shipment in your region.

4.3.4 - Calibration/performance verification (with pre-paid shipping) for primary Hardware/Accessories are not available in all countries. For a list of countries these Services are available, please see section 5.

#### **4.4 Hardware Loaner Units (for Premium Care Products that include loaners)**

4.4.1 – If your Product includes hardware loaner units and a Hardware unit is being repaired or calibrated. If needed and approved, the Member can be shipped a refurbished loaner or new unit of the same, or greater, model as that covered by Premium Care ("loaner equipment" or "loaner unit").

Loaner equipment is and remains the property of Fluke and must be returned in the condition they were received within five (5) business days of receipt of the repaired/serviced Product. Costs of repair or replacement of the loaner equipment will be as per Fluke's quotation and Members who fail to return the Fluke loaner equipment within 5 business days after they received the repaired/serviced Product will be invoiced for the replacement price (at local MSRP) of the delinquent items. Non-return of loaners is grounds for termination of Premium Care. Loaner units are not provided during a voluntary Enhancement or Option to the Product.

4.4.2 - Fluke pays for all shipping for loaner equipment under a valid Premium Care program. Shipping from Fluke is by common carrier, "next day" unless circumstances require later shipment.

4.4.3 - In order to receive a calibration loaner unit, calibration must be scheduled at least 6 weeks in advance, and the Member must ship their unit to Fluke when the loaner arrives. Commercially reasonable effort will be made by Fluke to provide calibration loaners within 6 weeks, but this timeline is indicative only and Fluke will not accept liability for any delays in providing a loaner unit.

4.4.4 - Loaner units (with pre-paid shipping) for Hardware/Accessories are not available in all countries. For a list of countries these Services are available, please see section 5.

4.4.5 – To the maximum extent permitted by law in Member's jurisdiction: (a) Member assumes all risks associated with use of the loaner equipment, and shall indemnify, defend, and hold harmless Fluke and its officers, directors, employees, agents, affiliates, successors, and permitted from and assigns against any and all losses, damages, liabilities, claims, costs, or expenses of whatever kind, arising out of or occurring in connection with the loaner equipment or Member's or End-User's

negligence, willful misconduct, or breach of law or this Agreement; and (b) Loaner equipment is provided on an “AS-IS, WHERE IS” basis and Fluke makes no warranty whatsoever, including any warranty of merchantability, fitness for a particular purpose, non-interference, or non-infringement.

#### 4.5 Accessory Repair or Replacement (for Premium Care Products that include accessory coverage)

4.5.1 - When an Accessory covered by the Program is pre-qualified as defective or faulty, Fluke will either exchange or repair the accessory, at our discretion, at no charge to the Premium Care Member. Exchange accessories will be new or refurbished (like new) at our option. The model exchanged will be the same accessory covered by the Premium Care. Faulty or defective Accessories that were shipped with the product and are considered essential to the operation of the primary Hardware are covered provided a) the technical assistance center approves its return and b) the accessory is returned to Fluke for evaluation when requested. Members are entitled to a replacement of a maximum of one defective set per year per the terms of this Premium Care.

4.5.2 - Fluke pays for shipping for replacement Accessories under a valid Premium Care program.

4.5.3 - Accessory repair or replacement not available in all countries. For a list of countries these Services are available, please see section 5.

#### 4.6 Software and Firmware Support

4.6.1 - Premium Care will provide technical support for the current version of the Software and firmware associated with the covered Product. Fluke shall have no obligation to support Software that is not the current release.

#### 5.0 - Support Availability

5.1 Most Services are available in the countries listed below. Loaners and 24 X 7 support may not be available in all countries. Varying levels of Premium Care may be available in other countries not listed above. Contact your local sales representative or TAC for questions on availability of Services in your area

Asia/Pacific	Latin America	North America	Europe	
Australia	Argentina	Canada	Austria	Luxembourg
China	Brazil	United States (excluding territories)	Belgium	Malta
Hong Kong	Chile		Czech Republic	Netherlands
India	Columbia		Denmark	Norway
Japan	Costa Rica		Estonia	Poland
Korea	Mexico		Finland	Portugal
Malaysia	Peru		France	Romania
Singapore	Uruguay		Germany	Slovenia
Taiwan			Greece	Spain
			Hungary	Sweden
			Ireland	Slovakia
			Italy	Switzerland
			Liechtenstein	United Kingdom

5.2 - Services vary by Product. Contact your local sales representative or TAC for questions on availability of Services for your products.

5.3 - In certain situations Fluke is unable to pay for return shipping, VAT, duties, insurance, or handling. Contact your local sales representative or TAC for questions on availability of Services in your area.

## **6. PAYMENT TERMS, TERM OF AGREEMENT, AND GOVERNING LAW**

6.1 - Full payment for Premium Care is to be made at purchase, unless otherwise stipulated. No refunds will be granted for unused Services. Members that have utilized repair, Accessory replacement, calibration Services or had a firmware release made available via Premium Care during the term of the Premium Care program are ineligible for a refund.

6.2 - An account is considered delinquent under the following circumstances: a) Fluke loaner or Member's replaced (exchange) equipment is overdue to the Fluke designated return location; or b) The Member has failed to complete the purchase process with specified terms.

6.3 - Grounds for termination include, but may not be limited to: a) Member is delinquent with equipment; b) Non-payment of any fees related to the Service; c) (i) Member or any user resides in a country on the US Department of Commerce embargo list, (ii) any Product or any part thereof is exported or re-exported: (A) into (or to a national or resident of) any embargoed or terrorist-supporting county, (B) to anyone on the U.S. Commerce Department's Table of Denial Orders or U.S. Treasury Department's list of Specially Designated Nationals, (C) to any country to which such export or re-export is restricted or prohibited, or as to which the U.S. government or any agency thereof requires an export license or other governmental approval at the time of export or re-export without first obtaining such license or approval, or (D) otherwise in violation of any export or import restrictions, laws or regulations of any U.S. or foreign agency or authority; d) Member is found to be falsifying any claims on Hardware or Accessories; e) Member knowingly used Premium Care to take advantage of Services for products not covered. Fluke may terminate this agreement immediately in the event of any of the foregoing or in the event of Member's default, violation of applicable law, or breach of any Premium Care terms and conditions, policies, or rules. Fluke shall be under no obligation or liability to Member under the Premium Care or in relation to such termination.

6.4 - Premium Care is non-transferable, including to a new owner if the Hardware is resold. Fluke Software license agreements and accompanying Software Support are non-transferable.

6.5 - Premium Care coverage that has lapsed more than 30 days may require a reinstatement fee per Hardware item to be covered by Premium Care. See paragraph 4.2.4

6.6 - This Agreement is governed, construed and enforced according to the laws of the country where Fluke is registered (and if in the United States, then according to the laws of the State of Washington), without applying any conflicts or choice of law provisions under such law that might refer the construction or interpretation of any term hereof to the laws of any other jurisdiction.

## **7. LIMITATIONS OF LIABILITY**

7.1 - THESE TERMS AND CONDITIONS DO NOT CONSTITUTE A PRODUCT WARRANTY. THE PRODUCT AND ALL MATERIALS RELATED TO THE PRODUCT ARE SUBJECT EXCLUSIVELY TO THE WARRANTY ACCOMPANYING THE PRODUCT AT TIME OF PURCHASE.

7.2 – SUBJECT TO CLAUSE 8, AND TO THE MAXIMUM EXTENT PERMITTED AT LAW, THE TOTAL AGGREGATE LIABILITY OF FLUKE OR THIRD-PARTY PROVIDERS UNDER THESE TERMS OR IN CONNECTION WITH THE PREMIUM CARE, UNDER ANY THEORIES OF ACTION WHATSOEVER OR IN ANY FORUMS, SHALL NOT EXCEED THE ORIGINAL PURCHASE PRICE PAID FOR THE PRODUCT COVERED BY THE PREMIUM CARE. FLUKE OR THIRD PARTY PROVIDERS SHALL NOT BE LIABLE UNDER THESE TERMS OR IN CONNECTION WITH THE PREMIUM CARE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES OF ANY KIND (INCLUDING LOSS OF PROFITS, LOSS OF BUSINESS, LOSS OF USE OR DATA AND INTERRUPTION OF BUSINESS), WHETHER BASED ON CONTRACT, TORT (INCLUDING NEGLIGENCE), WARRANTY, GUARANTEE OR ANY OTHER LEGAL OR EQUITABLE GROUNDS, EVEN IF THEY HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

7.3 – PREMIUM CARE DOES NOT COVER AND SPECIFICALLY EXCLUDES ANY LOST OR STOLEN PRODUCT.

## **8. CUSTOMERS IN AUSTRALIA**

8.1 If you are in Australia, nothing in these Terms and Conditions is to be interpreted as having the effect of excluding, restricting or modifying any condition or warranty, or right or liability implied by any State or Federal legislation applicable to the sale of goods or supply of services which cannot be excluded, restricted or modified.

8.2 If you are in Australia and are a consumer as defined in the *Australian Consumer Law*, then the following statement applies to you:

*Our goods and services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the Service, you are entitled:*

- *to cancel your Service contract with us; and*
- *to a refund for the unused portion, or to compensation for its reduced value.*

*You are also entitled to choose a refund or replacement for major failures with goods. If a failure with the goods or a service does not amount to a major failure, you are entitled to have the failure rectified in a reasonable time. If this is not done you are entitled to a refund for the goods and to cancel the contract for the Service and obtain a refund of any unused portion. You are also entitled to be compensated for any other reasonably foreseeable loss or damage from a failure in the goods or service.*

8.3 If you have any queries, please contact us on:

FLUKE  
6920 Seaway Blvd, Everett, WA 98203  
1-888-498-9367  
support@flukenetworks.com

## **9. DEFINITIONS**

What follows are broad definitions of terms used in these Premium Care terms and conditions. They are further defined by Fluke normal business practices and procedures.

*ACCESSORIES:* Accessories are any products that accompany the primary Hardware product. Accessories covered within the Premium Care do NOT include individually purchased or ancillary accessories.

*ENHANCEMENTS:* Enhancements are defined as a modification that changes the product form, fit or function. Software and firmware upgrades to a product are not considered Enhancements.

*FLUKE:* Fluke is the regional Fluke entity providing Premium Care and as identified on either the Fluke quote or by your distributor or sales representative.

*SERVICES:* Services are the support functions which apply to the Member's Products covered by Premium Care. Members may access their Services immediately upon purchase (unless their Product is out of warranty in which case, they will be required to have the Product performance verified or to wait 30 days before using any repair/exchange or loaner features of the program). For security reasons, proof of purchase may be required in certain instances if Fluke is unable to identify the Member.

*HARDWARE:* Hardware refers to primary physical equipment that is covered by Premium Care.

*OPTIONS:* Options are new Software or firmware functionality (not upgrades) that can be purchased after owning Hardware. Options are not included with the original Hardware purchase and are not provided free of charge to Members.

*PREVIOUS RELEASE:* The release of Software that has been replaced by the then-current release of the same Software.

*PRODUCT:* Fluke Hardware, Software, or Accessory, which is covered by a valid annual Premium Care program.

*SOFTWARE:* The software program(s) licensed by Fluke to the licensee that is covered by Premium Care. It may also refer to a program that was sold with Hardware. **In no case shall Software Premium Care coverage be construed to cover 'Operating System Software'.**

*TECHNICAL SUPPORT:* Support services as described in these Software Premium Care terms and conditions.

*UPDATE:* A modification to the Software Product within the current version. Typically, these are known as 'dot releases', i.e.: 3.1, 3.2 and 3.3 are dot releases to base Software program release 3.0. Updates are provided to Software Premium Care Members at no additional charge.

*UPGRADES:* A major revision to existing Software that augments current functionality. These are typically referred to as major version releases and are accompanied by a new leading digit in the Software version identification i.e.: 3.x to 4.x Software Upgrades are also provided to Software Premium Care Members at no additional charge.

## **10. PRIVACY POLICY and INTERNATIONAL TRANSFERS**

Fluke and Member each represents and warrants that all personal data and information collected and shared under this Premium Care program has been and will be processed in compliance with all applicable law (including the content and presentation of any required privacy notices).

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**WARRANTY**

(please complete and return with the submittal)

Specify the Contractor or dealership / manufacturer where warranty work will be done:

Contractor \_\_\_\_\_

Address \_\_\_\_\_

City, State, Zip Code \_\_\_\_\_



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## COSTS AND PAYMENTS

(please complete and return with the submittal)

**PAYMENT TERMS & OPTIONS:** Vendors must choose an option, if a box is not checked, the City **will default to 0% - net 45 days:**

\_\_\_\_ Contractor offers a prompt payment discount of either \_\_\_\_\_% - 30 days or 0% – 45 days - to apply after receipt of invoice or final acceptance of the products (invoice approval), whichever date is later, starts the 30 days. If no prompt payment discount is offered, the default is 0%, net 45 days; effective after receipt of invoice or final acceptance of the products, whichever is later. **Payment terms offering a discount will not be considered in the price evaluation of your offer.**

\_\_\_\_ Contractor may be paid immediately upon invoice approval, if enrollment is made to the Single Use Account (SUA) Program, administered by the City’s servicing bank (“Bank”). By checking this box, the vendor accepts transaction costs charged by their merchant bank and agrees not to transfer to the City those extra charges. The City will not pay an increase in our services for the SUA charges; if an audit uncovers an upcharge for the SUA charges the vendor will owe the City all costs. The vendor may opt-out of the SUA program once, but then may not rejoin during the same contract term. **For more information about the SUA program or to enroll, send email to [mailbox.sua@phoenix.gov](mailto:mailbox.sua@phoenix.gov).**

**DELIVERY**

(please complete and return with the submittal)

Contractor states that in-stock item(s) ordered will be delivered \_\_\_\_\_ days after receipt of order. This delivery schedule shall include any time for shipping.

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**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER INELIGIBILITY  
AND VOLUNTARY EXCLUSION**

(please sign and return with the submittal)

The prospective participant (Contractor for a federally funded project) certifies, by submission of this solicitation and certification, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. Where the prospective participant is unable to certify to any of the statements in this certification, such participant shall attach an explanation to this solicitation.

THE PARTICIPANT (Contractor for a federally funded project), CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF THE CONTENTS OF THE STATEMENTS SUBMITTED ON OR WITH THIS CERTIFICATION AND UNDERSTANDS THAT THE PROVISIONS OF 31 U.S.C. 3801 ET SEQ. ARE APPLICABLE THERETO.

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Authorized Official Name

---

Signature

---

Title of Authorized Official

---

Date



**EMERGENCY 24-HOUR SERVICE CONTACT**

(please complete and return with the submittal)

Contact Name: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Alternate Contact: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

## CONFLICT OF INTEREST AND TRANSPARENCY FORM

(please complete, sign, and return with the submittal)

This form must be signed and submitted to the City and all questions must be answered (or N/A) or your Offer may be considered non-responsive.

1. Name of person submitting this disclosure form.

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First	MI	Last	Suffix
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2. Contract Information

Solicitation # or Name:

3. Name of individual(s) or entity(ies) seeking a contract with the City (i.e. parties to the Contract)

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4. List any individuals(s) or entity(ies) that are owners, partners, parent, sublessees, joint venture, or subsidiaries of the individual or entity listed in Question 3. Please include all Board members, executive committee members and officers for each entry. If not applicable, indicate N/A.

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5. List any individuals or entities that will be subcontractors on this contract or indicate N/A.

- Subcontractors may be retained, but not known as of the time of this submission.
- List of subcontracts, including the name of the owner(s) and business name:

--

6. List any attorney, lobbyist, or consultant retained by any individuals listed in Questions 3, 4, or 5 to assist in the proposal or seeking the resulting contract. If none, indicate N/A.

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**7. Disclosure of Conflict of Interest:****A. City Code Section 43-34**

Are you aware of any fact(s) with regard to this solicitation or resulting contract that would raise a “conflict of interest” issue under City Code Section 43-34?

“An elected City official or a City employee shall not represent any person or business for compensation before the City regarding any part of a procurement, including any resulting contract, if during the time the elected official is or was in office or the employee is or was employed by the City such elected official or employee played a material or significant role in the development of the solicitation, any other part of the procurement, or the contract award.”

- I am not aware of any conflict(s) of interest under City Code Section 43-34.
- I am aware of the following potential or actual conflict(s) of interest:

**B. ARS Sections 38-501 et. Seq. & City Charter Chapter 11**

State law and the Phoenix City Charter and Code prohibit public officers or employees, their close relatives, and any businesses they, or their relatives, own from (1) representing before the City any person or business for compensation, (2) doing business with the City by any means other than through a formal procurement, and (3) doing business with the City without disclosing that the person has an interest in the contract. This prohibition extends to subcontracts on City contracts and also applies to parent, subsidiary, or partner businesses owned by a public officer or employee. See A.R.S. Sections 38-501 through 38-511, for more information (City Charter, Chapter 11, applies the state conflict-of-interest law to City employees).

Please note that any contract in place at the time a person becomes a public officer or employee may remain in effect. But the contract may not be amended, extended, modified, or changed in any manner during the officer’s or employee’s city service without following city administrative regulations.

Are you aware of any fact(s) with regard to this contract that would raise a “conflict of interest” issue under A.R.S. Sections 38-501 through 38-511 (See Arizona Revised Statutes regarding conflict of interest at [www.azleg.gov](http://www.azleg.gov)).

- I am not aware of any conflict(s) of interest under Arizona Revised Statutes Sections 38-501 through 38-511.
- I am aware of the following conflict(s) of interest:

## 8. Acknowledgements

### A. Solicitation Transparency Policy – No Contact with City Officials or Staff During Evaluation

- I understand that a person or entity who seeks or applies for a city contract, or any other person acting on behalf of that person or entity, is prohibited from contacting city officials and employees regarding the contract after a solicitation has been posted.
  
- This “no-contact” provision only concludes when the contract is awarded at a City Council meeting. If contact is required with City official or employees, the contact will take place in accordance with procedures by the City. Violation of this prohibited contacts provision, set out in City Code Sections 2-190.4 and 43-36, by respondents, or their agents, will lead to **disqualification**.

### B. Fraud Prevention and Reporting Policy

- I acknowledge that the City has a fraud prevention and reporting policy and takes fraud seriously. I will report fraud, suspicion of fraud, or any other inappropriate action to: telephone no. 602-261-8999 or 602-534-5500 (TDD); or [aud.integrity.line@phoenix.gov](mailto:aud.integrity.line@phoenix.gov).

The purpose of the fraud policy is to maintain the City's high ethical standards. The policy includes a way for our business partners to report wrongdoing or bad behavior. Suspected fraud should be reported immediately to the Phoenix Integrity Line. The City has adopted a zero-tolerance policy regarding fraud.

### OATH

I affirm that the statements contained in this form, including any attachments, to the best of my knowledge and belief are true, correct, and complete.  
 Should any of the answers to the above questions change during the course of the contract, particularly as it relates to any changes in ownership, applicant agrees to update this form with the new information within 30 days of such changes. Failure to do so may be deemed a breach of contract.

PRINT NAME

TITLE

SIGNATURE

DATE

COMPANY (CORPORATION, LLC, ETC.) NAME and DBA

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**CONTRACTOR INFORMATION**

(please complete and return with the submittal)

Company Name \_\_\_\_\_

Street/Mailing Address \_\_\_\_\_

City, State, Zip Code \_\_\_\_\_

Contact Person \_\_\_\_\_

Telephone Number \_\_\_\_\_

Email Address \_\_\_\_\_

Arizona Sales Tax No. \_\_\_\_\_

City of Phoenix Sales Tax  
No. \_\_\_\_\_

Arizona Corporation  
Commission File No. \_\_\_\_\_

City's Vendor Registration ID  
No. \_\_\_\_\_

**SERVICE COMPLETION DATE**

(please complete and return with the submittal)

Contractor states that all services will be completed \_\_\_\_\_ days after receipt of order. This completion schedule shall include any time for shipping of needed materials and/or equipment.



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## ACCEPTANCE OF OFFER

The Offer is hereby accepted.

The Contractor is now bound to sell the material(s) or service(s) listed by the attached contract and based upon the solicitation, including all terms, conditions, specifications, amendments, etc. and the Contractor's Offer as accepted by the City.

This contract shall henceforth be referred to as Contract No. \_\_\_\_\_. The Contractor has been cautioned not to commence any billable work or provide any material or service under this contract until Contractor receives purchase order, or contract documentation.

### CITY OF PHOENIX

A Municipal Corporation  
Jeffrey Barton, City Manager

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Director or delegate:

Title:

Department:

Attest:

\_\_\_\_\_ this \_\_\_\_ day of \_\_\_\_\_ 2024

City Clerk

Approved as to form this 19th day of January 2017. This document has been approved as to form by the City Attorney and is on file with the City Clerk. It need not be submitted to the City Attorney for approval unless the form document is altered.

Last Updated: 11/23/2021

## General Terms & Conditions - Fluke Premium Care

The terms and conditions (“Terms”) under which Fluke will provide Fluke Premium Care and Gold Support (“Premium Care”), as more fully defined herein, to the purchaser of Premium Care (“Member” or “you”), and the responsibilities of the Member and Fluke are as follows:

### 1. PURPOSE

Premium Care is a paid membership for Fluke customers only, providing a range of Services not available to the regular customer base. These Services are established by the purchase of Premium Care coverage and as described within the applicable then-current Fluke Product data sheets.

### 2. GENERAL

Members are given priority for any Services. The Services will remain available for each applicable Product for 12 months from the date of purchase of Premium Care and upon annual renewal for each subsequent year. A 3-year option is available for some Products, and when selected, Premium Care will be paid in advance and remain in effect for 3 years. Member’s issuance of a purchase order is conclusive evidence of Member’s acceptance of these terms and conditions. Fluke reserves the right to change or modify these Terms at any time and in its sole discretion. If Fluke makes changes to these Terms, Fluke will provide notice by updating the “Last Updated” date at the top of these Terms. Fluke encourages you to frequently review the terms and conditions to ensure that you understand the terms and conditions that apply to Premium Care. Your continued use of the Services will confirm your acceptance of the revised Terms.

### 3. RESPONSIBILITIES

Determination of duties and Services will be based upon information the User provides to Fluke.

3.1 - Member will: Maintain accurate and up-to-date records of the number and location of all Hardware, serial numbers and copies of the Software supplied to Member under the terms of the applicable license agreement. Cooperate with Fluke personnel in the diagnosis of any error or defect in the Hardware, Software, Updates, or Upgrades reported by Member. Make available to Fluke all reasonable information, facilities, services, and access required by Fluke in order to perform Services.

3.2 - Fluke will: Use its reasonable commercial efforts to ensure that Premium Care will be performed with reasonable skill and care in such a way as to cause only minimal interruptions to Member business processes. There may be occasions when interruption will be required in order to perform the program support in a proper and efficient manner. The express terms of Premium Care are in lieu of all warranties, conditions, undertakings, terms of obligations implied by statute, common law, trade usage, course of dealing or otherwise, all of which are hereby excluded to the fullest extent permitted by law.

## **4. DESCRIPTION OF PREMIUM CARE SERVICES**

### **4.1 Priority Technical Assistance (for Premium Care Products that include 24X7 technical support)**

4.1.1- Premium Care provides 24-hour, seven days a week coverage for technical support except Fluke company holidays for most Products. The data sheet for the Product describes if 24-hour support is included for that particular Product. Our worldwide Technical Assistance Centers (TAC), staffed by trained technicians, are based at our corporate headquarters near Seattle, Washington (US), Eindhoven (NL) and locations in Asia. Priority Technical Assistance benefit includes live troubleshooting assistance with our TAC, escalation to engineering support as required and unrestricted knowledge base access. There may be times that technicians are busy helping other customers.

### **4.2 Hardware Repair or Replacement**

4.2.1 - When Hardware has been pre-qualified as defective or faulty, Fluke will either exchange or repair the unit, at Fluke's discretion, at no charge to the Member. Exchange units will be new or refurbished at Fluke's option. The model exchanged will be the same unit covered by Premium Care. Faulty or defective accessories that were shipped with the Product and that are considered essential to the operation of the primary Hardware are covered provided a) the TAC approves its return and b) the accessory is returned to Fluke for evaluation.

4.2.2 - Any repair Service must be performed by a Fluke authorized Service representative. Requests for Service must be submitted via the internet or by phone and will be pre-qualified by TAC.

4.2.3. - Any item, either abused or simply "worn out" due to normal usage does not qualify for Services. Fluke reserves the right to determine if the cause of failure or out of specification performance is due to expected normal wear and tear or abuse of the Product. Should Fluke determine that the Product failure is due to abuse, any applicable warranty or Premium Care coverage will be immediately voided for that Product. Future coverage will be denied to this Product unless it has undergone repair and is deemed suitable for coverage by an authorized Fluke Service repair facility.

4.2.4 - Hardware must have been continuously covered by the standard warranty or Premium Care coverage to be eligible for Premium Care repair/replacement Services. Out of warranty hardware or hardware with lapse Premium Care coverage must be judged "warranty supportable" by a Fluke authorized service center to be eligible for initiation or re-installment into Premium Care. There is a nominal charge for this service; however, the Member may forego the charge, but they must wait a minimum of thirty (30) days before using any repair/exchange or loaner Service of the program.

4.2.5 - Fluke pays for shipping for Premium Care Hardware repair or replacement Services of Member Products. Shipping from Fluke is by common carrier, "next day" or "second day" unless circumstances require a different method, or the common carrier does not offer next or second shipment in your region.

4.2.6 - Repair/exchange (with pre-paid shipping) may not be available in certain countries worldwide. For a list of countries these Services are available, please see section 5.

### **4.3 Hardware Calibration/Performance Verification**

4.3.1 - Calibration is the precision adjustment of electronic measurement characteristics, traceable to officially recognized standards. Certificates are not available in all countries free of charge due to local government regulations. This Service is offered once annually free of charge to Members. Traceable calibration data can be provided upon request for an additional fee. In certain countries, these Services are performed by authorized Service partners. In certain situations, Fluke is unable to pay for return shipping, VAT, duties, insurance, or handling.

4.3.2 - Any calibration/performance verification must be performed by a Fluke authorized Service representative. Requests for Service must be submitted via the internet or by phone and will be pre-qualified by Fluke's Technical Assistance Center (TAC).

4.3.3 - Fluke pays for shipping for Premium Care calibration and performance tests Services of Member Products. Shipping from Fluke is by common carrier, "next day" or "second day" unless circumstances require a different method, or the common carrier does not offer next or second shipment in your region.

4.3.4 - Calibration/performance verification (with pre-paid shipping) for primary Hardware/Accessories are not available in all countries. For a list of countries these Services are available, please see section 5.

#### **4.4 Hardware Loaner Units (for Premium Care Products that include loaners)**

4.4.1 – If your Product includes hardware loaner units and a Hardware unit is being repaired or calibrated. If needed and approved, the Member can be shipped a refurbished loaner or new unit of the same, or greater, model as that covered by Premium Care ("loaner equipment" or "loaner unit").

Loaner equipment is and remains the property of Fluke and must be returned in the condition they were received within five (5) business days of receipt of the repaired/serviced Product. Costs of repair or replacement of the loaner equipment will be as per Fluke's quotation and Members who fail to return the Fluke loaner equipment within 5 business days after they received the repaired/serviced Product will be invoiced for the replacement price (at local MSRP) of the delinquent items. Non-return of loaners is grounds for termination of Premium Care. Loaner units are not provided during a voluntary Enhancement or Option to the Product.

4.4.2 - Fluke pays for all shipping for loaner equipment under a valid Premium Care program. Shipping from Fluke is by common carrier, "next day" unless circumstances require later shipment.

4.4.3 - In order to receive a calibration loaner unit, calibration must be scheduled at least 6 weeks in advance, and the Member must ship their unit to Fluke when the loaner arrives. Commercially reasonable effort will be made by Fluke to provide calibration loaners within 6 weeks, but this timeline is indicative only and Fluke will not accept liability for any delays in providing a loaner unit.

4.4.4 - Loaner units (with pre-paid shipping) for Hardware/Accessories are not available in all countries. For a list of countries these Services are available, please see section 5.

4.4.5 – To the maximum extent permitted by law in Member's jurisdiction: (a) Member assumes all risks associated with use of the loaner equipment, and shall indemnify, defend, and hold harmless Fluke and its officers, directors, employees, agents, affiliates, successors, and permitted from and assigns against any and all losses, damages, liabilities, claims, costs, or expenses of whatever kind, arising out of or occurring in connection with the loaner equipment or Member's or End-User's

negligence, willful misconduct, or breach of law or this Agreement; and (b) Loaner equipment is provided on an “AS-IS, WHERE IS” basis and Fluke makes no warranty whatsoever, including any warranty of merchantability, fitness for a particular purpose, non-interference, or non-infringement.

#### 4.5 Accessory Repair or Replacement (for Premium Care Products that include accessory coverage)

4.5.1 - When an Accessory covered by the Program is pre-qualified as defective or faulty, Fluke will either exchange or repair the accessory, at our discretion, at no charge to the Premium Care Member. Exchange accessories will be new or refurbished (like new) at our option. The model exchanged will be the same accessory covered by the Premium Care. Faulty or defective Accessories that were shipped with the product and are considered essential to the operation of the primary Hardware are covered provided a) the technical assistance center approves its return and b) the accessory is returned to Fluke for evaluation when requested. Members are entitled to a replacement of a maximum of one defective set per year per the terms of this Premium Care.

4.5.2 - Fluke pays for shipping for replacement Accessories under a valid Premium Care program.

4.5.3 - Accessory repair or replacement not available in all countries. For a list of countries these Services are available, please see section 5.

#### 4.6 Software and Firmware Support

4.6.1 - Premium Care will provide technical support for the current version of the Software and firmware associated with the covered Product. Fluke shall have no obligation to support Software that is not the current release.

#### 5.0 - Support Availability

5.1 Most Services are available in the countries listed below. Loaners and 24 X 7 support may not be available in all countries. Varying levels of Premium Care may be available in other countries not listed above. Contact your local sales representative or TAC for questions on availability of Services in your area

Asia/Pacific	Latin America	North America	Europe	
Australia	Argentina	Canada	Austria	Luxembourg
China	Brazil	United States (excluding territories)	Belgium	Malta
Hong Kong	Chile		Czech Republic	Netherlands
India	Columbia		Denmark	Norway
Japan	Costa Rica		Estonia	Poland
Korea	Mexico		Finland	Portugal
Malaysia	Peru		France	Romania
Singapore	Uruguay		Germany	Slovenia
Taiwan			Greece	Spain
			Hungary	Sweden
			Ireland	Slovakia
			Italy	Switzerland
			Liechtenstein	United Kingdom

5.2 - Services vary by Product. Contact your local sales representative or TAC for questions on availability of Services for your products.

5.3 - In certain situations Fluke is unable to pay for return shipping, VAT, duties, insurance, or handling. Contact your local sales representative or TAC for questions on availability of Services in your area.

## **6. PAYMENT TERMS, TERM OF AGREEMENT, AND GOVERNING LAW**

6.1 - Full payment for Premium Care is to be made at purchase, unless otherwise stipulated. No refunds will be granted for unused Services. Members that have utilized repair, Accessory replacement, calibration Services or had a firmware release made available via Premium Care during the term of the Premium Care program are ineligible for a refund.

6.2 - An account is considered delinquent under the following circumstances: a) Fluke loaner or Member's replaced (exchange) equipment is overdue to the Fluke designated return location; or b) The Member has failed to complete the purchase process with specified terms.

6.3 - Grounds for termination include, but may not be limited to: a) Member is delinquent with equipment; b) Non-payment of any fees related to the Service; c) (i) Member or any user resides in a country on the US Department of Commerce embargo list, (ii) any Product or any part thereof is exported or re-exported: (A) into (or to a national or resident of) any embargoed or terrorist-supporting county, (B) to anyone on the U.S. Commerce Department's Table of Denial Orders or U.S. Treasury Department's list of Specially Designated Nationals, (C) to any country to which such export or re-export is restricted or prohibited, or as to which the U.S. government or any agency thereof requires an export license or other governmental approval at the time of export or re-export without first obtaining such license or approval, or (D) otherwise in violation of any export or import restrictions, laws or regulations of any U.S. or foreign agency or authority; d) Member is found to be falsifying any claims on Hardware or Accessories; e) Member knowingly used Premium Care to take advantage of Services for products not covered. Fluke may terminate this agreement immediately in the event of any of the foregoing or in the event of Member's default, violation of applicable law, or breach of any Premium Care terms and conditions, policies, or rules. Fluke shall be under no obligation or liability to Member under the Premium Care or in relation to such termination.

6.4 - Premium Care is non-transferable, including to a new owner if the Hardware is resold. Fluke Software license agreements and accompanying Software Support are non-transferable.

6.5 - Premium Care coverage that has lapsed more than 30 days may require a reinstatement fee per Hardware item to be covered by Premium Care. See paragraph 4.2.4

6.6 - This Agreement is governed, construed and enforced according to the laws of the country where Fluke is registered (and if in the United States, then according to the laws of the State of Washington), without applying any conflicts or choice of law provisions under such law that might refer the construction or interpretation of any term hereof to the laws of any other jurisdiction.

## **7. LIMITATIONS OF LIABILITY**

7.1 - THESE TERMS AND CONDITIONS DO NOT CONSTITUTE A PRODUCT WARRANTY. THE PRODUCT AND ALL MATERIALS RELATED TO THE PRODUCT ARE SUBJECT EXCLUSIVELY TO THE WARRANTY ACCOMPANYING THE PRODUCT AT TIME OF PURCHASE.

7.2 – SUBJECT TO CLAUSE 8, AND TO THE MAXIMUM EXTENT PERMITTED AT LAW, THE TOTAL AGGREGATE LIABILITY OF FLUKE OR THIRD-PARTY PROVIDERS UNDER THESE TERMS OR IN CONNECTION WITH THE PREMIUM CARE, UNDER ANY THEORIES OF ACTION WHATSOEVER OR IN ANY FORUMS, SHALL NOT EXCEED THE ORIGINAL PURCHASE PRICE PAID FOR THE PRODUCT COVERED BY THE PREMIUM CARE. FLUKE OR THIRD PARTY PROVIDERS SHALL NOT BE LIABLE UNDER THESE TERMS OR IN CONNECTION WITH THE PREMIUM CARE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES OF ANY KIND (INCLUDING LOSS OF PROFITS, LOSS OF BUSINESS, LOSS OF USE OR DATA AND INTERRUPTION OF BUSINESS), WHETHER BASED ON CONTRACT, TORT (INCLUDING NEGLIGENCE), WARRANTY, GUARANTEE OR ANY OTHER LEGAL OR EQUITABLE GROUNDS, EVEN IF THEY HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

7.3 – PREMIUM CARE DOES NOT COVER AND SPECIFICALLY EXCLUDES ANY LOST OR STOLEN PRODUCT.

## **8. CUSTOMERS IN AUSTRALIA**

8.1 If you are in Australia, nothing in these Terms and Conditions is to be interpreted as having the effect of excluding, restricting or modifying any condition or warranty, or right or liability implied by any State or Federal legislation applicable to the sale of goods or supply of services which cannot be excluded, restricted or modified.

8.2 If you are in Australia and are a consumer as defined in the *Australian Consumer Law*, then the following statement applies to you:

*Our goods and services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the Service, you are entitled:*

- *to cancel your Service contract with us; and*
- *to a refund for the unused portion, or to compensation for its reduced value.*

*You are also entitled to choose a refund or replacement for major failures with goods. If a failure with the goods or a service does not amount to a major failure, you are entitled to have the failure rectified in a reasonable time. If this is not done you are entitled to a refund for the goods and to cancel the contract for the Service and obtain a refund of any unused portion. You are also entitled to be compensated for any other reasonably foreseeable loss or damage from a failure in the goods or service.*

8.3 If you have any queries, please contact us on:

FLUKE  
6920 Seaway Blvd, Everett, WA 98203  
1-888-498-9367  
support@flukenetworks.com

## **9. DEFINITIONS**

What follows are broad definitions of terms used in these Premium Care terms and conditions. They are further defined by Fluke normal business practices and procedures.

*ACCESSORIES:* Accessories are any products that accompany the primary Hardware product. Accessories covered within the Premium Care do NOT include individually purchased or ancillary accessories.

*ENHANCEMENTS:* Enhancements are defined as a modification that changes the product form, fit or function. Software and firmware upgrades to a product are not considered Enhancements.

*FLUKE:* Fluke is the regional Fluke entity providing Premium Care and as identified on either the Fluke quote or by your distributor or sales representative.

*SERVICES:* Services are the support functions which apply to the Member's Products covered by Premium Care. Members may access their Services immediately upon purchase (unless their Product is out of warranty in which case, they will be required to have the Product performance verified or to wait 30 days before using any repair/exchange or loaner features of the program). For security reasons, proof of purchase may be required in certain instances if Fluke is unable to identify the Member.

*HARDWARE:* Hardware refers to primary physical equipment that is covered by Premium Care.

*OPTIONS:* Options are new Software or firmware functionality (not upgrades) that can be purchased after owning Hardware. Options are not included with the original Hardware purchase and are not provided free of charge to Members.

*PREVIOUS RELEASE:* The release of Software that has been replaced by the then-current release of the same Software.

*PRODUCT:* Fluke Hardware, Software, or Accessory, which is covered by a valid annual Premium Care program.

*SOFTWARE:* The software program(s) licensed by Fluke to the licensee that is covered by Premium Care. It may also refer to a program that was sold with Hardware. **In no case shall Software Premium Care coverage be construed to cover 'Operating System Software'.**

*TECHNICAL SUPPORT:* Support services as described in these Software Premium Care terms and conditions.

*UPDATE:* A modification to the Software Product within the current version. Typically, these are known as 'dot releases', i.e.: 3.1, 3.2 and 3.3 are dot releases to base Software program release 3.0. Updates are provided to Software Premium Care Members at no additional charge.

*UPGRADES:* A major revision to existing Software that augments current functionality. These are typically referred to as major version releases and are accompanied by a new leading digit in the Software version identification i.e.: 3.x to 4.x Software Upgrades are also provided to Software Premium Care Members at no additional charge.

## **10. PRIVACY POLICY and INTERNATIONAL TRANSFERS**

Fluke and Member each represents and warrants that all personal data and information collected and shared under this Premium Care program has been and will be processed in compliance with all applicable law (including the content and presentation of any required privacy notices).