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**UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA  
PHOENIX DIVISION**

American Muslims for Palestine and Dr.  
Hatem Bazian

Plaintiffs,

vs.

Arizona Board of Regents on behalf of  
Arizona State University; and Mark  
Brnovich, in his official capacity as  
Attorney General of Arizona

Defendants.

Case No. CV-18-670-PHX-JJT

**Plaintiffs' Memorandum in Opposition  
to Defendants' Motion to Dismiss**

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## INTRODUCTION

This is a First Amendment challenge to an Arizona Act which punishes advocacy in support of the Boycott, Divestment and Sanctions movement. This law constitutes a facial violation of the First Amendment. Perhaps understanding this, the Arizona Board of Regents sidestepped the Act and permitted Plaintiffs to speak about the Boycott, Divestment and Sanctions movement on campus on April 3, 2018. However the Act remains in force, the Arizona Board of Regents continues to incorporate “No Boycott of Israel” clauses into its various university contracts, and Plaintiffs will be visiting campus again next academic year. Accordingly, this case remains a live controversy. Defendants’ Motion to Dismiss should be denied and this case should proceed to discovery and adjudication on the merits.

## FACTUAL BACKGROUND

The relationship between Israel and Palestine is an internationally significant political conflict. *See* Complaint (“Compl.”), Dkt. 1 ¶¶ 2, 15; Preliminary Injunction Declaration of Dr. Hatem Bazian (“1st Bazian Decl.”), Dkt. 9-3 ¶ 4. One of the core disputes within the conflict concerns Israeli occupation and political control over Palestinian territory, including the West Bank and Golan Heights. Compl., Dkt. 1 ¶ 15; 1st Bazian Decl., Dkt. 9-3 ¶ 4. Since 2005 the “Boycott, Divestment and Sanctions” movement has strived to peacefully impose international economic and cultural pressure on Israel, with the goal of changing Israeli policy towards Palestinians. Compl., Dkt. 1 ¶ 17; 1st Bazian Decl., Dkt. 9-3 ¶¶ 7-8; Preliminary Injunction Declaration of Taher Herzallah (“1st Herzallah Decl.”), Dkt. 9-2 ¶ 3. Plaintiffs American Muslims for Palestine and Dr. Hatem Bazian are leaders of that movement. Compl., Dkt. 1 ¶¶ 6-7; 1st Herzallah Decl., Dkt. 9-2 ¶ 3; 1st Bazian Decl., Dkt. 9-3 ¶ 9.

Historically, the United States’ friendly relationship with Israel has tended to mute its criticism of Israel’s maltreatment of Palestinians. *See* Compl. ¶¶ 18; 1st Bazian Decl., Dkt. 9-3 ¶ 5. The United States’ prevailing political support for Israel has caused state

1 governments and public officials to oppose the Palestinian-led Boycott, Divestment, and  
 2 Sanctions (“BDS”) movement. *See* Compl. ¶¶ 20-22.

3 Arizona is one of the states opposed to the BDS movement. On March 17, 2016,  
 4 Arizona enacted HB 2617, codified at Ariz. Rev. Stat. § 35-393 *et seq.* (the “Act”). Ariz.  
 5 Rev. Stat. § 35-393.01(A) provides: “A public entity may not enter into a contract with a  
 6 company to acquire or dispose of services, supplies, information technology or  
 7 construction unless the contract includes a written certification that the company is not  
 8 currently engaged in, and agrees for the duration of the contract to not engage in, a  
 9 boycott of Israel.” The Act also forbids state entities from adopting any “procurement,  
 10 investment or other policy that has the effect of inducing ... a person ... to boycott Israel.”  
 11 Ariz. Rev. Stat. § 35-393.01(B). The Act defines “Boycott” to include “engaging in a  
 12 refusal to deal, terminating business activities or performing other actions that are  
 13 intended to limit commercial relations with Israel.” Ariz. Rev. Stat. § 35-393.

14 The Arizona Board of Regents oversees Arizona’s public universities including  
 15 Arizona State University (“ASU”). Ariz. Rev. Stat. § 15-1601. It is a public entity  
 16 subject to the Act. Shortly after the Act was signed in 2016, “ASU incorporated an anti-  
 17 boycott provision into various contract templates, including its form speaker agreement.”  
 18 Declaration of José A. Cárdenas, Dkt. 24-1 ¶ 3; Compl., Dkt. 1 ¶ 34. The anti-boycott  
 19 clause reads: “No Boycott of Israel. As required by Arizona Revised Statutes § 35-  
 20 393.01, Entity certifies it is not currently engaged in a boycott of Israel and will not  
 21 engage in a boycott of Israel during the term of this Contract.” Cárdenas Decl., Dkt. 24-1  
 22 ¶ 3 & Ex. A; Compl., Dkt. 1 ¶ 34.

23 On December 13, 2017, the Arizona Board of Regents asserts that it partially  
 24 elected to not comply with the Act: “ASU determined that the Act did not apply to  
 25 speakers invited to speak on campus. It therefore revised the speaker form agreement to  
 26 remove the anti-boycott provision.” Cárdenas Decl., Dkt. 24-1 ¶ 3 & Ex. B. However,  
 27 the prior version of the contract remained in circulation; the ASU Muslim Students  
 28 Association sent a contract containing the “No Boycott of Israel” clause to Plaintiffs on

February 22, 2018. Compl. ¶¶ 31-34; 1st Herzallah Decl., Dkt. 9-2 ¶ 7 & Ex. A; 1st Bazian Decl., Dkt. 9-3 ¶ 12 & Ex. B. After this lawsuit was filed, a reporter sent Plaintiffs’ counsel a copy of a revised ASU Speaker/Artist/Performer Agreement the reporter had obtained. The revised contract omits the “No Boycott of Israel” clause and on its face is dated February 9, 2018. *See* Second Declaration of Gadeir Abbas, Ex. A. However, the metadata of that document says it was created by an ASU administrative assistant on February 22, 2018. *See* 2nd Abbas Decl. ¶ 2. February 22 was the same day the Muslim Students Association sent the version they possessed to Plaintiffs, which still contained a “No Boycott of Israel” clause. Compl. ¶¶ 31-34; 1st Herzallah Decl., Dkt. 9-2 ¶ 7 & Ex. A; 1st Bazian Decl., Dkt. 9-3 ¶ 12 & Ex. B.

The “No Boycott of Israel” clause is still present in other Arizona Board of Regents contracts. *See* Cárdenas Decl., Dkt. 24-1 ¶ 3. An overarching ASU form contract states that the “No Boycott of Israel” clause is “[r]equired in contracts to acquire or dispose of services, supplies, information technology, and construction.” *See* 2nd Abbas Decl., Ex. B (Arizona State University Supplemental Terms and Conditions). Thus, for example, all ASU vendors must still certify that do not boycott Israel. *See* 2nd Abbas Decl., Ex. C (Arizona State University Independent Contractor Agreement for Consulting, Services, and Deliverables).

The Arizona Board of Regents also oversees Arizona’s other public universities, including the University of Arizona and Northern Arizona University (“NAU”). Despite the decision at ASU to remove the “No Boycott of Israel” clause, the Arizona Board of Regents has not adhered to that same action elsewhere. For example, the University of Arizona’s contract guidance states that “The following clauses are to be incorporated into *all* contracts: ... f) No Boycott of Israel.” 2nd Abbas Decl., Ex. D (University of Arizona Contracting FAQs, emphasis added). The University of Arizona classifies “speakers” who are “engaged by student organizations” as “entertainers” or “performers.” 2nd Abbas Decl., Ex. E ¶¶ 7, 30 (University of Arizona policy on Independent Contractor Services). As of today, May 14, 2018, both of the University of Arizona’s form contracts for outside



1 speakers contain the “No Boycott of Israel” clause. 2nd Abbas Decl., Exs. F (links to  
 2 University of Arizona performance contracts), G (contract over \$1,000), H (contract under  
 3 \$1,000). The “Standard Terms and Conditions” for Northern Arizona University  
 4 contracts, including speaker contracts, also contain “No Boycott of Israel” clauses. 2nd  
 5 Abbas Decl., Exs. I (contract definition), J (standard terms).

6 Based on its inconsistent interpretation of the Act, the Arizona Board of Regents let  
 7 Plaintiffs speak on ASU’s campus on April 3, 2018. *See* Second Declaration of Taher  
 8 Herzallah ¶ 2. The event was a success. *Id.* Campus events like these are a core  
 9 component of Plaintiffs’ BDS advocacy. *Id.* Plaintiffs have since been re-invited by  
 10 ASU’s Muslim Students Association to speak again next academic year. *Id.* ¶ 3 & Ex. A.  
 11 Plaintiffs have also been exploring speaking at the University of Arizona on the same trip.  
 12 *Id.* ¶ 4. A significant roadblock, however, is the Arizona Board of Regents’ continued  
 13 inclusion of the “No Boycott of Israel” clause in the University of Arizona’s speaker  
 14 contracts. *Id.* ¶ 5; 2nd Abbas Decl. ¶¶ 8-9 & Exs. G-H.

### 15 ARGUMENT

16 Defendants’ Motion to Dismiss centers around mootness, rather than addressing  
 17 the merits of Plaintiffs’ First Amendment challenge to Arizona’s anti-BDS Act. This  
 18 tactical choice is likely because Arizona’s anti-BDS Act engages in facial viewpoint and  
 19 content discrimination and Defendants know it cannot withstand judicial scrutiny.

20 Defendants’ Motion to Dismiss arises under Federal Rule of Civil Procedure  
 21 12(b)(1), raising a factual challenge to this Court’s subject-matter jurisdiction. *See*  
 22 Motion to Dismiss (“MTD”), Dkt. 24 at 4-5. It is thus “necessary for the party opposing  
 23 the motion to present affidavits or any other evidence necessary to satisfy its burden of  
 24 establishing that the court, in fact, possesses subject matter jurisdiction.” *St. Clair v.*  
 25 *Chico*, 880 F.2d 199, 201 (9th Cir. 1989); *accord, e.g., GEICO Indem. Co. v. Brown*, No.  
 26 11-cv-0025, 2011 U.S. Dist. LEXIS 70448, at \*8 (D. Ariz. June 29, 2011) (denying  
 27 motion to dismiss and finding ripeness). Plaintiffs rely on their prior preliminary  
 28 injunction declarations, as well as proffer two additional declarations, in order to establish

1 the subject-matter jurisdiction of this court.

2 This case continues to be a live controversy. Plaintiffs continue to experience harm  
 3 due to Ariz. Rev. Stat. § 35-393's requirement that public contracts and policies must  
 4 condemn boycotts of Israel. Plaintiffs are repeat speakers at Arizona state universities.  
 5 They intend to return next academic year, and they may face a "No Boycott of Israel"  
 6 clause again. The governing anti-BDS Act is unchanged, the Arizona Board of Regents is  
 7 still including the clause in contracts across its three universities, and the Arizona Board  
 8 of Regents remains free to re-insert it into ASU's speaker contract. "The fact that the  
 9 statute is facially deficient ... presents too great a risk of potential infringement of First  
 10 Amendment rights" to allow the government "to side-step constitutional review by relying  
 11 on its voluntary" non-enforcement. *See, e.g., In re Nat'l Sec. Letter*, 930 F. Supp. 2d  
 12 1064, 1074 (N.D. Cal. March 14, 2013).

13 **I. ARIZONA'S ANTI-BDS ACT AND THE ARIZONA BOARD OF**  
 14 **REGENTS' "NO BOYCOTT OF ISRAEL" CLAUSE FACIALLY VIOLATE**  
**THE FIRST AMENDMENT**

15 The First Amendment provides: "Congress shall make no law . . . abridging the  
 16 freedom of speech, or of the press." U.S. CONST. Amend. I. The First Amendment  
 17 equally binds the State of Arizona through the incorporation doctrine of the Fourteenth  
 18 Amendment. *See, e.g., Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819,  
 19 822 (1995). Arizona has "no power to restrict expression because of its message, its ideas,  
 20 its subject matter, or its content." *Reed v. Town of Gilbert*, 135 S. Ct. 2218, 2226 (2015).  
 21 Arizona's anti-BDS Act facially restricts individuals from engaging in expressive conduct  
 22 or speech which supports boycotts of Israel. Ariz. Rev. Stat. § 35-393.01. The Act, and  
 23 the "No Boycott of Israel" clauses implementing the Act, must be stricken as  
 24 unconstitutional.

25 **A. Support for the Boycott, Divestment, and Sanctions Movement is**  
 26 **Protected Speech**

27 Politically-motivated boycotts like those the Boycott, Divestment, and Sanctions  
 28 movement encourages are fully protected speech under the First Amendment. *See NAACP*

1 *v. Claiborne Hardware Co.*, 458 U.S. 886, 907, 915 (1982) (upholding civil rights  
 2 boycotts). Such activity “rest[s] on the highest rung of the hierarchy of First Amendment  
 3 values.” *Id.* at 913 (internal citation omitted). As the District of Kansas recently  
 4 recognized, BDS participants “seek to amplify their voices to influence change, as did the  
 5 boycotters in *Claiborne*.” *Koontz v. Watson*, No. 17-cv-4099, 283 F. Supp. 3d 1007, 2018  
 6 U.S. Dist. LEXIS 14260, at \*24 (D. Kan. Jan. 30, 2018) (enjoining similar anti-BDS law  
 7 in Kansas).

### 8 **B. Arizona’s anti-BDS Act Targets Specific Viewpoints**

9 The Arizona Board of Regents operates three Arizona universities: Arizona State  
 10 University, the University of Arizona, and Northern Arizona University. These  
 11 universities permit a wide range of educational activities by a wide range of student  
 12 organizations. Compl., Dkt. 1 ¶¶ 29-30. They thus provide limited public forums for  
 13 speech. *Rosenberger*, 515 U.S. at 829. Within these forums, any “ideologically driven  
 14 attempts to suppress a particular point of view” “are presumptively unconstitutional.” *Id.*  
 15 at 830.

16 Yet the anti-BDS Act and the “No Boycott of Israel” clause are both ideologically  
 17 driven attempts to suppress the Palestinian point of view surrounding Middle East  
 18 conflict. “Denial on that basis [is] plainly invalid” viewpoint discrimination. *Lamb’s*  
 19 *Chapel v. Center Moriches Union Free School District*, 508 U.S. 384, 394 (1993);  
 20 *Rosenberger*, 515 U.S. at 828-29; accord *Police Dep’t of City of Chicago v. Mosley*, 408  
 21 U.S. 92, 96 (1972) (Illinois statute distinguishing between labor and anti-labor protestors  
 22 failed strict scrutiny because the First Amendment condemns “discrimination among  
 23 different users of the same medium for expression”). The viewpoint-discriminatory  
 24 purpose of both the Act and “No Boycott of Israel” clauses is apparent by what they do  
 25 *not* prohibit. University events discussing Israeli settlements in the West Bank are  
 26 permitted so long as the speakers are neutral or identify as pro-Israeli; it is only pro-  
 27 Palestinian participants in the BDS movement who are barred from speaking. *See*  
 28

1 Cárdenas Decl., Dkt. 24-1 ¶ 3 & Ex. A; 2nd Abbas Decl., ¶¶ 3, 5, 8, 9, 11 & Ex. B, D, G,  
 2 H, J (Arizona Board of Regents contract terms pertaining to speakers containing No  
 3 Boycott of Israel clauses).

#### 4 **C. Arizona’s anti-BDS Act Targets Specific Content and Speakers**

5 Although viewpoint-based discrimination is the most “egregious” First Amendment  
 6 violation, content-based and speaker-based restrictions on speech are also presumptively  
 7 unconstitutional. *See Rosenberger*, 515 U.S. at 828-29 (“It is axiomatic that the  
 8 government may not regulate speech based on its substantive content or the message it  
 9 conveys...In the realm of private speech or expression, government regulation may not  
 10 favor one speaker over another.”).

11 A law is content-based, and presumptively unconstitutional, if “the government has  
 12 adopted a regulation of speech because of disagreement with the message it conveys.”  
 13 *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989). Arizona’s anti-BDS Act is  
 14 content-based because it singles out those who participate in boycotts against Israel for  
 15 disfavored treatment. *See* Ariz. Rev. Stat. § 35-393 (defining “boycott” as engaging in  
 16 business or “other actions” that are “intended to limit commercial relations with Israel”).  
 17 The Act does not prohibit all economic boycotts against countries or national origins, it  
 18 only prohibits boycotts *against Israel*. Ariz. Rev. Stat. § 35-393. Arizona contractors  
 19 remain free, for example, to economically boycott Palestine – or Syria, Lebanon, Jordan,  
 20 or Iran. This statutory country-preference is akin to the Supreme Court’s rejection of a  
 21 D.C. ordinance which assessed “whether individuals may picket in front of a foreign  
 22 embassy” as entirely dependent “upon whether their picket signs are critical of the  
 23 foreign government or not.” *Boos v. Barry*, 485 U.S. 312, 318-19 (1988). Arizona’s  
 24 statutory “Israel” qualification proves that the anti-BDS Act is impermissibly content-  
 25 based.

26 The Act is also impermissibly speaker-based because it only bars Arizona  
 27 *contractors* from boycotting Israel. Meanwhile, Arizona businesses, residents and visitors  
 28

1 who do not contract with the State of Arizona may still boycott Israel without censure.  
 2 Singling out Government contractors in this manner is an unconstitutional condition on  
 3 speech, a contractual term amounting to a prior restraint. The purpose and effect of  
 4 Arizona’s anti-BDS Act is to “weed out disfavored expression before it occurs” by  
 5 preemptively limiting government contractors’ advocacy and speech. *See Forsyth 4*  
 6 *County, Ga. v. Nationalist Movement*, 505 U.S. 123, 130 (1992). Arizona cannot “coerce  
 7 support” for its preferred “political association[s] by subjecting government contractors to  
 8 “direct and specific abridgement[s] of First Amendment rights.” *O’Hare Truck Serv. v.*  
 9 *City of Northlake*, 518 U.S. 712, 720 (1996); *accord Agency for International*  
 10 *Development v. Alliance for Open Society International, Inc.*, 133 S. Ct. 2321, 2328  
 11 (2013) (holding that unconstitutional conditions “seek to leverage [state] funding to  
 12 regulate speech outside the contours of the program itself”). It is plain that Arizona’s  
 13 “speaker preference reflects a content preference” – *i.e.* support for Israel – and is  
 14 therefore invalid. *See Reed*, 135 S. Ct. at 2230 (internal citations omitted).

15 The District of Kansas recently agreed that a near-identical statute violated the First  
 16 Amendment. Examining comparable legislative history, the Kansas district concluded  
 17 that Kansas’s “goal is to undermine the message of those participating in a boycott of  
 18 Israel. This is either viewpoint discrimination against the opinion that Israel mistreats  
 19 Palestinians or subject matter discrimination on the topic of Israel. Both are  
 20 impermissible goals under the First Amendment.” *Koontz*, 283 F. Supp. 3d 1007, 2018  
 21 U.S. Dist. LEXIS 14260 at \*25. The same analysis governs Arizona’s proclaimed intent  
 22 to prevent “economic warfare” against the “dynamic and innovative” nation of Israel.  
 23 Ariz. Rev. Stat. § 35-393.03. Arizona’s anti-BDS Act is a facially viewpoint-based,  
 24 content-based, and speaker-based restriction on those who support anti-Israel boycotts

25 Facially unconstitutional laws “may have a chilling effect on protected speech  
 26 because potential speakers may choose to self-censor rather than either acquire a  
 27 [contract] or risk sanction for speaking without one.” *Epona, Ltd. Liab. Co. v. Cty. of*  
 28 *Ventura*, 876 F.3d 1214, 1221 (9th Cir. 2017). Plaintiffs, as Arizona contractors engaged

1 in campus speaking events, seek to eliminate that chill as to themselves and all  
2 contractors.

3 **D. The Anti-BDS Act Requires the Arizona Board of Regents to put “No**  
4 **Boycott of Israel Clauses” in its Contracts**

5 The mechanism by which the anti-BDS Act enforces its unconstitutional aims is  
6 through regulation of Arizona public entities. The Arizona Board of Regents is a public  
7 entity. Ariz. Rev. Stat. § 35-393 (definition of “public entity”); Ariz. Const. Art. XI, § 5  
8 (establishing the Arizona Board of Regents as a state agency); *Quade v. Ariz. Bd. of*  
9 *Regents*, 700 F. App’x 623, 625 (9th Cir. 2017) (recognizing the Arizona Board of  
10 Regents as a state agency). The Arizona Board of Regents is required by law to maintain  
11 Arizona State University, the University of Arizona, and Northern Arizona University.  
12 Ariz. Rev. Stat. § 15-1601. Only the Arizona Board of Regents, and not the three  
13 universities themselves, has the power to enter into contracts and engage in litigation  
14 related to the universities. Ariz. Rev. Stat. § 15-1625.

15 The anti-BDS Act imposes two principle restrictions on the Arizona Board of  
16 Regents. It first provides that “[a] public entity may not enter into a contract with a  
17 company to acquire ... services ... unless the contract includes a written certification that  
18 the company is not currently engaged in, and agrees for the duration of the contract to not  
19 engage in, a boycott of Israel.” Ariz. Rev. Stat. § 35-393.01(A). The Arizona Board of  
20 Regents’ form speaker contract for Arizona State University – even after its recent  
21 amendments – is an agreement whereby “ASU hereby engages Speaker to personally  
22 provide the following *services*,” namely, a speech. *See* Cárdenas Decl., Dkt. 24-1 ¶ 5 &  
23 Ex. C (emphasis added).

24 Second, the anti-BDS Act restrains public entities from adopting *any* “policy that  
25 has the effect of inducing...a person or company to boycott Israel.” Ariz. Rev. Stat. § 35-  
26 393.01(A). The dictionary definition of “induce” is to “succeed in persuading or leading  
27 (someone) to do something.” *See* Induce, OXFORD LIVING DICTIONARIES, available at  
28 <https://en.oxforddictionaries.com/definition/induce>. Arizona’s definition of “boycott”

1 encompasses both a “refusal to deal” with Israel and “performing other actions that are  
 2 intended to limit commercial relations with Israel.” Ariz. Rev. Stat. § 35-393. The plain  
 3 language of the anti-BDS Act therefore bars *any* Arizona Board of Regents policy which  
 4 would permit campus advocacy for the Boycott, Divestment, and Sanctions movement,  
 5 because that advocacy would be intended towards and might have the effect of persuading  
 6 others to limit their commercial relations with Israel.

7 This plain language is why Arizona Board of Regents’ overarching form contract,  
 8 known as the “Arizona State University Supplemental Terms and Conditions,” is  
 9 annotated to “require” insertion of the “No Boycott of Israel” clause in all “contracts to  
 10 acquire or dispose of services.” See 2nd Abbas Decl., Ex. B ¶ 25. The Foundation for  
 11 Individual Rights in Education concurs: the “No Boycott of Israel” clause is a state law  
 12 requirement, even for speaker contracts. See Adam Steinbaugh, *Arizona’s anti-BDS*  
 13 *statute lands Arizona State University in federal court*, FIRE (Mar. 12, 2018) available at  
 14 [https://www.thefire.org/arizonas-anti-bds-statute-lands-arizona-state-university-in-federal-](https://www.thefire.org/arizonas-anti-bds-statute-lands-arizona-state-university-in-federal-court/)  
 15 [court/](https://www.thefire.org/arizonas-anti-bds-statute-lands-arizona-state-university-in-federal-court/). FIRE concludes “[t]he university’s hands have been tied by the state legislature.”  
 16 *Id.*

17 Defendants insist that they have agreed amongst themselves that the anti-BDS Act  
 18 does not legally apply to university speakers. See MTD, Dkt. 24 at 1, 4. But Defendants  
 19 have not even applied their implausible interpretation to all Arizona public universities,  
 20 leaving in place requirements that all University of Arizona and Northern Arizona  
 21 University contracts—including student group negotiated speaker agreements—contain  
 22 the anti-BDS provision. See 2nd Abbas Decl., Exs. D, G, H, J. Furthermore, except a  
 23 cross reference to a prior motion, Defendants’ brief offers no legal basis as to how or why  
 24 they reached that interpretative decision, how that interpretative decision only covers ASU  
 25 speaker agreements and not other ASU contracts, or how or why they had previously  
 26 decided to include the anti-BDS provision. See MTD, Dkt. 24 at 9 (citing Dkt. 17 at 3).

27 Defendants’ position appears to fully rely upon a conveniently narrow and unlikely  
 28 definition of the word “services.” See Dkt. 17 at 3 (arguing “this type of guest speech is



not a provision of ‘services’ within the meaning of the Act”). Just as professors who lecture provide educational “services” to ASU’s students, guest speakers who present information to students likewise provide “services” within the meaning of the anti-BDS Act. Even the current ASU speaker contract makes clear that speakers provide “services.” *See* Cárdenas Decl., Dkt. 24-1 ¶ 5 & Ex. C. Defendants’ motion does not and cannot explain how a contract “engage[ing] Speaker to personally provide the following services” is not a contract for “services” within the meaning of the anti BDS-Act. *Compare* Cárdenas Decl., Dkt. 24-1 ¶ 5 & Ex. C *with* Ariz. Rev. Stat. § 35-393.01(A). Nor do Defendants deny that their current legal interpretation is subject to change.

Whatever the basis of Defendants’ decision to amend ASU’s speaker contract and attempt to moot out this case’s claims, binding interpretations of the law are the province of courts and not Defendants’ internal agreements. Ultimately, whether the anti-BDS Act legally applies to university contracts with outside speakers is a question only this Court can resolve. *See, e.g., Kingdomware Techs., Inc. v. United States*, 136 S. Ct. 1969, 1977 (2016) (holding that federal agency lacked discretion to skip over mandatory statute related to small business contracting). *Cf. e.g., Regents of the Univ. of Cal. v. United States, Dep’t of Homeland Sec.*, 279 F. Supp. 3d 1011, 1037-1043 (N.D. Cal. 2018) (explaining that federal agency’s reversal of its own interpretation of a statute reflected a “flawed legal premise”); *NAACP v. Trump*, 2018 U.S. Dist. LEXIS 68589 at \*92 (D.D.C. Apr. 24, 2018) (“The cases are clear that courts have the authority to review an agency’s interpretation of the law if it is relied on to justify an enforcement policy.”).

## **II. PLAINTIFFS’ FIRST AMENDMENT CHALLENGE TO ARIZONA’S ANTI-BDS ACT IS NOT MOOT**

### **A. Defendants’ Voluntary Cessation is Flimsy and Inconsistent, and Therefore Cannot Moot this Dispute**

Defendants cannot carry their heavy burden of demonstrating this case is moot. “It has long been established that the ‘mere voluntary cessation of allegedly illegal conduct does not moot a case; if it did, the courts would be compelled to leave the defendant . . .



1 free to return to his old ways.’” *Porter v. Bowen*, 496 F.3d 1009, 1017 (9th Cir. 2007)  
 2 (quoting *United States v. Concentrated Phosphate Export Ass’n*, 393 U.S. 199, 203  
 3 (1968)) (cleaned up). Even though the Arizona Board of Regents contends that it has  
 4 “ceased the complained-of conduct,” mootness is inappropriate unless it is “absolutely  
 5 clear that the allegedly wrongful behavior could not reasonably be expected to recur.” *Id.*  
 6 (citing *Los Angeles County v. Davis*, 440 U.S. 625, 631 (1979)); accord *Friends of the*  
 7 *Earth, Inc. v. Laidlaw Environmental Serv.*, 528 U. S. 167, 190 (2000).

8 A government agency’s discretionary non-enforcement of binding law does not  
 9 make it “absolutely clear” that the agency will not later reverse course. *See Porter*, 496  
 10 F.3d at 1017 (holding that First Amendment dispute had not been mooted by agency letter  
 11 avowing non-enforcement, particularly since the new administration could reverse course  
 12 at any time). Absolute clarity typically requires a formal legislative change – *i.e.* the  
 13 expiration, repeal, or material amendment of a statute. *Bell v. City of Boise*, 709 F.3d 890,  
 14 898-99 (9th Cir. 2013). Defendants’ lead case is inapposite because it features the *repeal*  
 15 of the challenged *statute*. *See, e.g., Log Cabin Republicans v. United States*, 658 F.3d  
 16 1162, 1166 (9th Cir. 2011) (Congress repealed Don’t Ask Don’t Tell during pendency of  
 17 appeal). Here, Arizona’s anti-BDS statute – the root of Plaintiffs’ continuing First  
 18 Amendment harm – remains untouched. *See Ariz. Rev. Stat. § 35-393 et seq.*

19 By contrast, voluntary and discretionary changes to contracts, licenses, or even  
 20 local ordinances are *insufficient* guarantees that the government has permanently reversed  
 21 course. *See Bell*, 709 F.3d at 899. (informal policy change did not moot controversy);  
 22 accord *City of Mesquite v. Aladdin’s Castle*, 455 U.S. 283, 289 (1982) (dispute not moot  
 23 where only the lower court judgment prevented city from reenacting the ordinance);  
 24 *Friends of the Earth*, 528 U.S. at 189 (Defendant’s shutdown of a polluting plant did not  
 25 moot controversy, in part because operation permit was still active); *Porter*, 496 F.3d at  
 26 1017-18 (letter to legislature promising non-enforcement did not moot prior threat of  
 27 prosecution).

28 The potential for inconsistency is evident in light of the Arizona Board of Regents’

own wild variance. Arizona State University incorporated the “No Boycott of Israel” clause into its speaker contracts for more than a year. Cárdenas Decl., Dkt. 24-1 ¶ 3, Ex. A & B. Arizona State University then suddenly eliminated the clause only one week after the American Civil Liberties Union filed the first constitutional challenge to the anti-BDS Act. *Compare* Cárdenas Decl., Dkt. 24-1 ¶ 4, Ex. B (Dec. 13, 2017) *with Jordahl v. Brnovich*, No. 17-cv-8263, Dkt. 1 (D. Ariz. Dec. 6, 2017) (cited by MTD, Dkt. 24 at 9). The old contract version containing the No Boycott of Israel clause remained in circulation and in use by student groups at least until February 2018 when Plaintiffs received their invitations. Compl. ¶¶ 31-34; 1st Herzallah Decl., Dkt. 9-2 ¶ 7 & Ex. A; 1st Bazian Decl., Dkt. 9-3 ¶ 12 & Ex. B. And other ASU contracts continue to incorporate the No Boycott of Israel clause, including in ASU’s form instructions requiring insertion of the clause into any contract for services. 2nd Abbas Decl., Exs. B-C.

Meanwhile, as of the day of this filing, the Arizona Board of Regents has taken no action to remove the No Boycott of Israel Clause from its *other* university contracts, including the speaker contracts in force at the University of Arizona and Northern Arizona University. *See* 2nd Abbas Decl., Exs. D, G, H, J. With respect to the University of Arizona, the Arizona Board of Regents has taken no action to amend its form speaker contracts. Rather, the University of Arizona proclaims that the “No Boycott of Israel” clause must “be incorporated into *all* contracts.” 2nd Abbas Decl., Ex. D (emphasis added). Both of the University of Arizona contracts that apply to student-invited speakers provide: “As required by ARS §§ 35-393 to 35-393.01, Performer certifies it is not currently engaged in a boycott of Israel and will not engage in a boycott of Israel during the term of this contract.” 2nd Abbas Decl., Exs. G-H.

Northern Arizona University also appears to be enforcing Ariz. Rev. Stat. § 35-393 as to speakers. Although the exact form contract for speakers appears to only be accessible to those with a university login, there is no public indication that NAU has removed the “No Boycott of Israel” clause. Rather, NAU’s Contracting, Purchasing and Risk Management department provides public information on its standard contractual

1 terms. It describes “[t]ypical standard NAU contracts [as] contracts for facility use,  
 2 consulting and performers...These contracts have all the terms and conditions required for  
 3 compliance with state regulations.” 2nd Abbas Decl., Ex. I. The contracting page then  
 4 links to NAU’s “standard terms and conditions,” including a “Participation in Boycott of  
 5 Israel” clause. 2nd Abbas Decl. ¶¶ 10-11 & Exs. I, J ¶ 56. “Pursuant to Arizona Revised  
 6 Statute §§ 35-393 and 35-393.01, Offeror certifies that it is not currently engaged in and  
 7 agrees, for the duration of the Contract, to not engage in a Boycott of Israel.” 2nd Abbas  
 8 Decl. ¶ 11 & Ex. J ¶ 56.

9 Defendant Arizona Board of Regents is a unitary entity governing Arizona State  
 10 University, the University of Arizona, and Northern Arizona University. Ariz. Rev. Stat.  
 11 § 15-1601. Yet it is only at Arizona State University – the site of Plaintiffs’ campus BDS  
 12 event – that the Arizona Board of Regents has decided state law does *not* require inclusion  
 13 of the “No Boycott of Israel” clause, and even then it only exempts speakers. Defendant’s  
 14 inconsistent legal conduct reeks of voluntary cessation.

15 At best, Arizona’s contractual scheme surrounding anti-BDS Act compliance  
 16 “lack[s] clear standards.” *Epona*, 876 F.3d at 1221. As presented, the Arizona Board of  
 17 Regents is in effect claiming an “unbridled direction to grant or revoke” contracts with “No  
 18 Boycott of Israel” clauses. *See id.* Given the facial free speech violations implicit in No  
 19 Boycott of Israel clauses and the anti-BDS Act as a whole, the Arizona Board of Regents’  
 20 conduct poses a “real and substantial threat of censorship.” *Id.* at 1221 (cleaned up).

21 **B. Plaintiffs Have Been Invited to Return to Campus and May Encounter**  
 22 **anti-BDS Contract Terms Again**

23 Defendants separately argue this dispute is moot because the April 3, 2018 event  
 24 has already happened. MTD, Dkt. 24 at 1, 5-6. Plaintiffs’ dispute is not moot because, as  
 25 evidenced by the Arizona Board of Regents’ inconsistent and discretionary conduct, it is  
 26 not absolutely clear Plaintiffs will not encounter the No Boycott of Israel clause on their  
 27 next visit to Arizona.

28 Prior to the April 3, 2018 event at Arizona State University, Dr. Hatem Bazian had

1 previously spoken at both ASU and the University of Arizona. 1st Bazian Decl., Dkt. 9-2  
 2 ¶ 11. Mr. Taher Herzallah had also previously visited ASU as a student participant in a  
 3 Palestine event. 1st Herzallah Decl., Dkt. 9-3 ¶¶ 6, 9-10. He remains in contact with  
 4 current ASU students as the Associate Direct of Outreach & Community Organizing for  
 5 American Muslims for Palestine. *See id.* ¶ 2. Due to the success of the April 3, 2018  
 6 event, Dr. Bazian and AMP have been invited to return to ASU next year. 2nd Herzallah  
 7 Decl. ¶ 3 & Ex. A. They are also exploring opportunities to speak at the University of  
 8 Arizona on the same trip. 2nd Herzallah Decl. ¶ 4. Accordingly, the Arizona Board of  
 9 Regents' compliance with the anti-BDS Act, through university contractual terms,  
 10 remains a live controversy with continuing First Amendment harm to Plaintiffs.

11 The repetitive cycle of short-term speaker contracts across Arizona  
 12 universities also qualifies under the “capable of repetition, yet evading review”  
 13 exception to mootness. *See, e.g., Kingdomware*, 136 S. Ct. at 1976 (finding dispute  
 14 not moot and proceeding to strike down agency’s short-term contract practice on  
 15 the merits). So long as the anti-BDS Act exists, it will require the Arizona Board of  
 16 Regents to incorporate “No Boycott of Israel” clause. *See* Section I-D, *supra*.  
 17 Plaintiffs have a reasonable expectation of encountering Arizona’s mandatory “No  
 18 Boycott of Israel” contractual terms again, yet each individual speaking  
 19 engagement may be of too short duration to challenge. The Supreme Court has  
 20 recognized that courts have jurisdiction when “the same legal issue in this case is  
 21 likely to recur in future controversies between the same parties in circumstances  
 22 where the period of contract performance is too short to allow full judicial review  
 23 before performance is complete.” *Kingdomware*, 136 S. Ct. at 1976.

24 “A case becomes moot only when it is impossible for a court to grant any effectual  
 25 relief whatever to the prevailing party.... As long as the parties have a concrete interest,  
 26 however small, in the outcome of the litigation, the case is not moot.” *Knox v. SEIU*,  
 27 *Local 1000*, 567 U.S. 298, 307-08 (2012) (cleaned up). The case is not moot because  
 28 there is still effectual relief this Court can award. Plaintiffs are leaders of the BDS

1 movement; they are not engaged in a mere “pretense to challenge the Act.” *Contra* MTD,  
 2 Dkt. 24 at 1. Rather, they face continuing state-imposed roadblocks aimed directly at  
 3 their Boycott, Divestment and Sanctions advocacy within Arizona and at Arizona  
 4 universities. *See* 2nd Herzallah Decl. ¶ 5.

5 This Court can grant relief by declaring that the anti-BDS Act violates the First  
 6 Amendment, and by striking the “No Boycott of Israel” clause from *all* Arizona Board of  
 7 Regents contracts. Such an order would provide Plaintiffs with permanent relief from the  
 8 burden and chill caused by the anti-BDS Act’s plainly unconstitutional scope. The  
 9 temporary relief provided by the Arizona Board of Regents’ piecemeal voluntary  
 10 cessation does not suffice to cure Plaintiffs’ present and future First Amendment harms.

### 11 **III. PLAINTIFFS HAVE STATED A SECTION 1983 CLAIM**

12 The Arizona Board of Regents briefly contends that it has taken no unconstitutional  
 13 action because the invitation Plaintiffs received originated from a student group. *See*  
 14 MTD, Dkt. 24 at 17. Pursuant to the Arizona Board of Regents’ own policies, however,  
 15 student groups are not distinct legal entities. *See* Policy 5-202: Associated Students,  
 16 ARIZONA BOARD OF REGENTS, available at [https://public.azregents.edu/Policy%20Manual](https://public.azregents.edu/Policy%20Manual/5-202-Associated%20Students.pdf)  
 17 [/5-202-Associated%20Students.pdf](https://public.azregents.edu/Policy%20Manual/5-202-Associated%20Students.pdf). Yet even when invited by students, all speaker  
 18 contracts are promulgated by and must be signed by the Arizona Board of Regents. *See*  
 19 Cárdenas Decl., Dkt. 24-1, Exs. A-C. The Arizona Board of Regents ultimately signed  
 20 the modified contracts here. *See* 2nd Abbas Decl., Exs. K-M.<sup>1</sup> The Arizona Board of  
 21 Regents is also bound to follow state law, and thus continues to incorporate objectionable  
 22 “No Boycott of Israel” clauses in other contracts, including speaker contracts at other  
 23 universities. *See* Section II-A, *supra*. Accordingly, Plaintiffs have plausibly alleged that  
 24

25 \_\_\_\_\_  
 26 <sup>1</sup> Defendants attach what purport to be copies of the modified speaker agreement,  
 27 as executed during this litigation. *See* Cárdenas Decl., Dkt. 24-1 ¶ 7 & Ex. D. However,  
 28 Defendants do not disclose that they *rejected* the executed agreements they provided to  
 the Court because student organizations lack the authority to sign them. The final  
 versions, crossing out the student signatures and bearing the Arizona Board of Regents  
 signatures, are attached. *See* 2nd Abbas Decl. Exs. L-M.

1 the Arizona Board of Regents itself has engaged and will continue to engage in conduct  
2 harming Plaintiffs' First Amendment rights.

3 The Attorney General likewise contends that because, to date, he has only defended  
4 the Act's constitutionality and not actively enforced it, he is not a proper Defendant to this  
5 suit. *See* MTD, Dkt. 24 at 15-17. The question regarding the Attorney General's  
6 propriety as a defendant, however, is whether there is a sufficient connection between his  
7 responsibilities and any injury that Plaintiffs might suffer. *Planned Parenthood of Idaho,*  
8 *Inc. v. Wasden*, 376 F.3d 908, 919-20 (9th Cir. 2004). The requisite connection exists  
9 here. The Attorney General is responsible for enforcing the anti-BDS law, including to  
10 prosecute custodians of public funds for paying those funds to another person "[w]ithout  
11 authority of law." Ariz. Rev. Stat. § 35-301(1). Any payment of expenses or an  
12 honorarium to a contracted BDS speaker would violate this term. The Attorney General  
13 thus "has 'a powerful coercive effect on the action agency,'" which makes him a proper  
14 defendant in this action challenging the constitutionality of the anti-BDS Act. *Planned*  
15 *Parenthood of Ariz., Inc. v. Brnovich*, 172 F. Supp. 3d 1075, 1094 (D. Ariz. 2016)  
16 (citation omitted); *see also Duke Power Co. v. Carolina Env'tl. Study Group, Inc.*, 438  
17 U.S. 59, 71-72 & n.16 (1978).

18 Separately, it appears that the Attorney General's enforcement arm may be, or is  
19 likely to be, at odds with the position of the Arizona Board of Regents. The Attorney  
20 General is currently engaged in litigation with the Arizona Board of Regents regarding  
21 universities' perceived compliance with state law on tuition matters related to  
22 undocumented immigrants. *State of Arizona v. Arizona Board of Regents*, No. CV2017-  
23 012115 (Maricopa Sup. Ct. filed Sept. 8, 2017). Plaintiffs thus plausibly allege that a  
24 court order limited to the Arizona Board of Regents alone would not provide the full  
25 scope of relief, as the Attorney General could still enforce the anti-BDS Act against the  
26 universities.

## 27 CONCLUSION

28 The Court should deny Defendants' Motion to Dismiss.

1 Dated: May 14, 2018

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**UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA  
PHOENIX DIVISION**

American Muslims for Palestine and Dr.  
Hatem Bazian

Plaintiffs,

vs.

Arizona Board of Regents on behalf of Ari-  
zona State University; and Mark Brnovich,  
in his official capacity as Attorney General  
of Arizona

Defendants.

Case No. CV-18-670-PHX-JJT

**Second Declaration of Gadeir I. Abbas  
In Support Of Plaintiffs' Opposition to  
Defendants' Motion to Dismiss**



**DECLARATION OF GADEIR I. ABBAS**

1  
2           1.       My name is Gadeir I. Abbas. I am a Senior Litigation Attorney with the  
3 CAIR Legal Defense Fund in Washington, D.C. I represent Plaintiffs American Muslims  
4 for Palestine and Dr. Hatem Bazian in this case. I previously submitted a declaration in  
5 support of Plaintiffs' Motion for a Preliminary Injunction (Dkt. 9-4). I have personal  
6 knowledge of the facts set out in this Declaration. If called upon as a witness I would  
7 competently testify as to the matters stated herein.

8           2.       Attached as **Exhibit A** is a true and correct copy of a blank Arizona State  
9 University's "Speaker / Artist / Performer Agreement" dated February 9, 2018. I received  
10 this copy from a reporter at the Arizona Capitol Times on March 5, 2018. According to the  
11 metadata of the PDF I received, it was created by Cynthia Leedom (an assistant in ASU's  
12 Office of General Counsel) on February 22, 2018.

13           3.       Attached as **Exhibit B** is a true and correct copy of the form *Arizona State*  
14 *University Supplemental Terms and Conditions* (Nov. 3, 2017). It is available as of today at  
15 [https://ogc.asu.edu/sites/default/files/supptermconditions\\_ogc\\_11.11.17.pdf](https://ogc.asu.edu/sites/default/files/supptermconditions_ogc_11.11.17.pdf).

16           4.       Attached as **Exhibit C** is a true and correct copy of the form *Arizona State*  
17 *University Independent Contractor Agreement for Consulting, Services, and Deliverables*  
18 (Feb. 14, 2018). It is available as of today at [https://www.asu.edu/purchasing/forms/con-](https://www.asu.edu/purchasing/forms/consultant-agr.pdf)  
19 [sultant-agr.pdf](https://www.asu.edu/purchasing/forms/consultant-agr.pdf).

20           5.       Attached as **Exhibit D** is a true and correct copy of the University of Ari-  
21 zona's "Contracting FAQs," website with the answer to "What are the standard contracting  
22 language requirements?" expanded. It is available as of today at [https://pacs.ari-](https://pacs.arizona.edu/contracting_faqs)  
23 [zona.edu/contracting\\_faqs](https://pacs.arizona.edu/contracting_faqs).

1           6. Attached as **Exhibit E** is a true and correct copy of Section 9.12: Independ-  
2 ent Contractor Services as set forth in the University of Arizona’s Financial Services Man-  
3 ual. It is available as of today at <https://policy.fso.arizona.edu/fsm/900/912>.

4           7. Attached as **Exhibit F** is a true and correct copy of the University of Ari-  
5 zona’s “Contracting FAQs,” website with the answer to “What standard contract forms are  
6 available through the Contracting Office?” expanded. It is available as of today at  
7 [https://pacs.arizona.edu/contracting\\_faqs](https://pacs.arizona.edu/contracting_faqs).

8           8. Attached as **Exhibit G** is a true and correct copy of the University of Ari-  
9 zona’s Form # 108, *Performance Contract for Entertainers at University Events*, used for  
10 compensation greater than \$1,000. It is available as of today at [https://pacs.arizona.edu/sites/pacs/files/108\\_performance\\_contract\\_over\\_1000\\_8-01-164\\_1.pdf](https://pacs.arizona.edu/sites/pacs/files/108_performance_contract_over_1000_8-01-164_1.pdf). Para-  
11 graph 9 reads: “As required by ARS §§ 35-393 to 35-393.01, Performer certifies it is not  
12 currently engaged in a boycott of Israel and will not engage in a boycott of Israel during  
13 the term of this contract.”  
14

15           9. Attached as **Exhibit H** is a true and correct copy of the University of Ari-  
16 zona’s Form # 109, *Performance Arrangements for Entertainers at University Events*, used  
17 for compensation less than \$1,000. It is available as of today at [https://pacs.arizona.edu/sites/pacs/files/109\\_performance\\_arrangement\\_under\\_1000\\_updated\\_8-01-](https://pacs.arizona.edu/sites/pacs/files/109_performance_arrangement_under_1000_updated_8-01-164_1.pdf)  
18 [164\\_1.pdf](https://pacs.arizona.edu/sites/pacs/files/109_performance_arrangement_under_1000_updated_8-01-164_1.pdf). Paragraph 9 reads: “As required by ARS §§ 35-393 to 35-393.01, Performer  
19 certifies it is not currently engaged in a boycott of Israel and will not engage in a boycott  
20 of Israel during the term of this contract.”  
21  
22  
23  
24

1           10. Attached as **Exhibit I** is a true and correct copy of Northern Arizona Univer-  
2 sity's information page for Contracting, Purchasing and Risk Management, displaying the  
3 "Contract Definition." It is available as of today at [https://nau.edu/Contracting/Contract-](https://nau.edu/Contracting/Contract-Definition/)  
4 [Definition/](https://nau.edu/Contracting/Contract-Definition/). This page contains a link to "Terms and Conditions" on the right sidebar.

5           11. Attached as **Exhibit J** is a true and correct copy of Northern Arizona Univer-  
6 sity's information page for Contracting, Purchasing and Risk Management, displaying the  
7 "Standard Terms and Conditions." It is available as of today at [https://nau.edu/Contract-](https://nau.edu/Contracting-Purchasing-Services/Terms-Conditions/)  
8 [ing-Purchasing-Services/Terms-Conditions/](https://nau.edu/Contracting-Purchasing-Services/Terms-Conditions/). Paragraph 56 reads: "**Participation in Boy-**  
9 **cott of Israel.** Pursuant to Arizona Revised Statute §§ 35-393 and 35-393.01, Offeror certi-  
10 fies that it is not currently engaged in and agrees, for the duration of the Contract, to not  
11 engage in a Boycott of Israel."

12           12. Attached as **Exhibit K** is a true and correct copy of an email thread between  
13 myself and Ms. Lisa Loo dated March 28, 2018. This thread attached the Arizona Board  
14 of Regents' signatures on Plaintiffs' modified speaker contracts.

15           13. Attached as **Exhibit L** is a true and correct copy of the final speaker contract  
16 for the April 3, 2018 event with Dr. Hatem Bazian.

17           14. Attached as **Exhibit M** is a true and correct copy of the final speaker con-  
18 tract for the April 3, 2018 event with Mr. Taher Herzallah representing American Muslims  
19 for Palestine.

20           15. I verify under penalty of perjury under the laws of the United States that the  
21 foregoing is true and correct.

22 Executed on May 14, 2018 at Washington, D.C.

23 By: /s/ Gadeir I. Abbas  
24 Gadeir I. Abbas

## **Exhibit A**



## SPEAKER/ARTIST/PERFORMER AGREEMENT

This Agreement is entered into as of \_\_\_\_\_, 20\_\_, between the Arizona Board of Regents acting for and on behalf of Arizona State University (ASU) and \_\_\_\_\_<sup>1</sup> (Speaker), or \_\_\_\_\_, a(n) \_\_\_\_\_,<sup>2</sup> as the authorized agent for Speaker. If Speaker is represented by an authorized agent, then references to Speaker herein will also refer to the authorized agent, where appropriate.

1. Engagement; Event. ASU hereby engages Speaker to personally provide the following services, and Speaker agrees to personally provide to ASU the following services (the Presentation) at the following Event (the Event):

Event/Location: \_\_\_\_\_

Dates and times of Event: \_\_\_\_\_

Speaker's Presentation schedule: \_\_\_\_\_

Title of Speaker's Presentation: \_\_\_\_\_

Speaker's hospitality requirements: \_\_\_\_\_

Speaker's technical requirements: \_\_\_\_\_

2. Notice. Any communication or notice required under this Agreement will be in writing and may either be given by personal delivery or sent, in all cases, against receipt, addressed to the following:

If to ASU:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_

Email: \_\_\_\_\_

If to Speaker:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_

Email: \_\_\_\_\_

Notice will be deemed to be received upon actual receipt (or refusal of receipt) by the receiving party.

3. Speaker Warranty. Speaker warrants that at all times during the Event, Speaker will personally provide Speaker's best professional efforts. Speakers' professional credentials are such that Speaker can provide the Presentation in a knowledgeable and professional manner.

4. Payment. ASU will pay Speaker the all-inclusive fee of \$\_\_\_\_\_ upon completion of the Presentation. Speaker will complete a Substitute W-9 Form, which must be signed by the person or entity to whom payment is to be issued. ASU will issue all payment in accordance with the information on the completed and signed Substitute W-9 Form.

<sup>1</sup> If an authorized agent is signing, please be sure to fill in the speaker name as well.

<sup>2</sup> Include full legal name of authorized agent, state of formation, and type of entity (i.e.: ABC, Inc., an Arizona Corporation.)

5. Acceptance of Agreement. Speaker will accept and return this Agreement to ASU no later than \_\_\_\_\_, 20\_\_\_\_. In all events, this Agreement must be fully signed and received at ASU at least one week prior to the Event to allow on-time payment. This Agreement must be fully signed before payment can be processed. Please return a signed copy of this Agreement to ASU at the address set forth in Section 2.
6. Compliance with Law. Speaker will comply with all applicable ASU, City, County, State, and Federal laws, acts, codes, regulations and policies, including all applicable federal immigration laws and regulations that relate to employment.
7. Press Materials. Speaker will timely supply all press/promotion material requested by ASU.
8. Indemnity. Speaker will indemnify, defend, save and hold harmless the State of Arizona, its departments, agencies, boards, commissions, universities, and its and their officials, agents, and employees (collectively, Indemnatee) for, from, and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation, and litigation) for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property to the extent caused, or alleged to be caused, by: (i) the negligent or willful acts or omissions of Speaker, or any of its owners, officers, directors, members, managers, agents, employees, contractors or subcontractors (the Speaker Parties); (ii) a breach of this Agreement; or (iii) failure to comply with any applicable law, rule, or regulation. Speaker will be responsible for primary loss investigation, defense, and judgment costs where this indemnification is applicable.
9. Indemnification and Liability Limitation. Because ASU is a public institution, any indemnification, liability limitation, releases, or hold harmless provisions are limited as required by Arizona law, including Article 9, Sections 5 and 7 of the Arizona Constitution and ARS §§ 35-154 and 41-621. ASU's liability under any claim for indemnification is limited to claims for property damage, personal injury, or death to the extent caused by acts or omissions of ASU.
10. Force Majeure. Neither Speaker nor ASU shall be liable to each other for failure to perform hereunder if failure is caused by civil tumult, strike, epidemic, or any other cause beyond the reasonable control of the parties (Force Majeure). The ingestion of alcohol, opioids, illegal substances, or the like, will not be deemed an event of Force Majeure. If the Event or Presentation is cancelled due to an event of Force Majeure, the parties will make reasonable efforts to reschedule, if feasible.
11. Cancellation. If either party cancels this Agreement or the Presentation, other than due to an event of Force Majeure, the other party will have all remedies afforded by law and in equity. In addition, if ASU cancels the Event or the Presentation, ASU will reimburse Speaker for reasonable expenses incurred in preparation for the Presentation up to the date ASU provides notice of cancellation.
12. Liability; Insurance. Speaker, at its expense, will procure and maintain, for the duration of the Event, a policy of commercial general liability insurance in an amount of not less than \$1,000,000, single limit, against claims for bodily injury, death and property damage occurring in connection with the Event and the Presentation. This insurance must name the Arizona Board of Regents, Arizona State University, and the State of Arizona as additional insureds. Speaker must provide ASU with a certificate evidencing this insurance coverage no later than 10 days prior to the Presentation.

13. Assignment. Speaker may not transfer or assign this Agreement or any of Speaker's rights or obligations hereunder, either directly or indirectly, or by operation of law, without ASU's prior written consent, and any attempt to the contrary will be void.

14. Entire Agreement. This Agreement constitutes the entire agreement and understanding of the parties with respect to its subject matter. No prior or contemporaneous agreement or understanding will be effective.

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

16. Independent Contractor. Speaker is an independent contractor and is not an employee of ASU. Neither Speaker nor any personnel of Speaker will for any purpose be considered employees or agents of ASU. Speaker assumes full responsibility for the actions of Speaker's personnel, and is solely responsible for their supervision, direction and control, payment of salary and expenses (including withholding income taxes and social security), worker's compensation, and disability benefits.

17. Recordings; Use of Name and Likeness. Both parties may record the Presentation for internal records. No recording of the Presentation, either visual or audio, will be made by or on behalf of Speaker for the purposes of profit or significant distribution without prior written approval from ASU. ASU may require an additional payment for the privilege, and may require Speaker to sign a filming/recording agreement. ASU may record the Presentation on video tape, audio tape, film, photograph or any other medium, use Speaker's name, likeness, voice and biographical material in connection with these recordings for purposes within the ASU mission, including education and research, and exhibit or distribute the recording in whole or in part without restrictions or limitation for any educational or promotional purpose that ASU deems appropriate.

18. No Revenue Sharing. Speaker will not participate in any revenues associated with the Presentation or Event. This includes: sponsorship, ticketing, ticketing fees, ASU concessions revenues, and any other revenue streams that may be associated with the Event.

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

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



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

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

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

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

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

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



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

27. Tobacco-Free University. ASU is tobacco-free. For details visit [asu.edu/tobaccofree](http://asu.edu/tobaccofree).

28. Authority. If an individual or entity signs below on behalf of Speaker, such signatory represents and warrants that he/she/it has full and current authority to act and contract on behalf of Speaker and obligate Speaker, and that this Agreement is binding upon and enforceable against Speaker and the undersigned (if not Speaker) in accordance with its terms.

PRINT NAME OF SPEAKER OR  
AGENT OF SPEAKER

ARIZONA BOARD OF REGENTS FOR AND ON  
BEHALF OF ARIZONA STATE UNIVERSITY

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Signature

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Signature

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Signatory Name

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Signatory Name

---

Signatory Title

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Signatory Title

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Date Signed

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Date Signed

## **Exhibit B**

## EXHIBIT A

## ARIZONA STATE UNIVERSITY SUPPLEMENTAL TERMS AND CONDITIONS

**The text in red is for instructional purposes only. Please DELETE it from all contracts**

To the extent any provisions of the foregoing contract with the Arizona Board of Regents, a body corporate, for and on behalf of Arizona State University (ASU) conflict with any of the provisions of this Exhibit, the provisions of this Exhibit will control. References to this Agreement include the foregoing contract and this Exhibit. All provisions of this Agreement that anticipate performance after the termination of this Agreement, and all provisions necessary or appropriate to interpret and enforce such provisions, will survive termination of this Agreement. **Use this paragraph when this is being attached as an Exhibit to a contract.**

- 1. Nondiscrimination.** The parties will comply with all applicable laws, rules, regulations, and executive orders governing equal employment opportunity, immigration, and nondiscrimination, including the Americans with Disabilities Act. **If applicable, the parties will abide by the requirements of 41 CFR §§ 60- 1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability. Federal law requires in all contracts (including the boldface type).**
- 2. Conflict of Interest.** If within 3 years after the execution of this Agreement, Entity hires as an employee or agent any ASU representative who was significantly involved in negotiating, securing, drafting, or creating this Agreement, then ASU may cancel this Agreement as provided in Arizona Revised Statutes (ARS) § 38-511. Notice is also given of ARS §§ 41-2517 and 41-753. **State law requires in all contracts.**
- 3. Arbitration.** The parties agree to arbitrate disputes filed in Arizona Superior Court that are subject to mandatory arbitration pursuant to ARS § 12-133. ARS § 12-1518 requires this provision in all ASU contracts. **State law requires in all contracts.**
- 4. Dispute Resolution.** If a dispute arises under this Agreement, the parties will exhaust all applicable administrative remedies under Arizona Board of Regents Policy 3-809. **Required in procurement contracts.**
- 5. Records.** To the extent required by ARS § 35-214, the non-ASU parties to this Agreement (jointly and severally, Entity) will retain all records relating to this Agreement. Entity will make those records available at all reasonable times for inspection and audit by ASU or the Auditor General of the State of Arizona during the term of this Agreement and for 5 years after the completion of this Agreement. The records will be provided at ASU in Tempe, Arizona, or another location designated by ASU on reasonable notice to Entity. **Required in all contracts. Delivery of records may be electronic.**
- 6. Failure of Legislature to appropriate.** In accordance with ARS § 35-154, if ASU's performance under this Agreement depends on the appropriation of funds by the Arizona Legislature, and if the Legislature fails to appropriate the funds necessary for performance, then ASU may provide written notice of this to Entity and cancel this Agreement without further obligation of ASU. Appropriation is a legislative act and is beyond the control of ASU. **Required in (virtually) all contracts. OGC must approve exceptions.**
- 7. Weapons, Explosives, and Fireworks.** ASU's Weapons, Explosives, and Fireworks Policy prohibits the use, possession, display or storage of any weapon, explosive device or fireworks on all land and buildings owned, leased, or under the control of ASU or its affiliated entities, in all ASU residential facilities (whether managed by ASU or another entity), in all ASU vehicles, and at all ASU or ASU affiliate sponsored events and activities, except as provided in ARS § 12-781, or unless written permission is given by ASU's Police Chief or a designated representative. Entity will notify all persons or entities who are employees, officers, subcontractors, consultants,

agents, guests, invitees or licensees of Entity of this policy, and Entity will enforce this policy against all such persons and entities. **Required when Entity's employees and affiliates may come onto an ASU campus or property.**

**8. Confidentiality.** ASU, as a public institution, is subject to ARS §§ 39-121 to 39-127 regarding public records. Any provision regarding confidentiality is limited to the extent necessary to comply with Arizona law. **Required when contract includes confidentiality language that binds ASU.**

**9. Indemnification and Liability Limitations.** Because ASU is a public institution, any indemnification, liability limitation, releases, or hold harmless provisions are limited as required by Arizona law, including Article 9, Sections 5 and 7 of the Arizona Constitution and ARS §§ 35-154 and 41-621. ASU's liability under any claim for indemnification is limited to claims for property damage, personal injury, or death to the extent caused by acts or omissions of ASU. **Required when ASU is being asked to indemnify or agree to a limitation of liability.**

**10. Indemnification by Entity.** Entity will indemnify, defend, save and hold harmless the State of Arizona, its departments, agencies, boards, commissions, universities, and its and their officials, agents and employees (collectively, Indemnatee) for, from, and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation, and litigation) for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property to the extent caused, or alleged to be caused, by: (i) the negligent or willful acts or omissions of Entity, or any of its owners, officers, directors, members, managers, agents, employees, contractors or subcontractors (the Entity Parties); (ii) a breach of this Agreement; or (iii) failure to comply with any applicable law, rule, or regulation. Entity will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. **Indemnification provisions are required by State Risk, and should not be revised without OGC or Risk Management approval.**

**11. Responsibility.** Each party is responsible for the negligent or willful acts or omissions of its employees and contractors when acting under such party's direction and supervision. ASU recognizes an obligation to pay attorneys' fees or costs only when assessed by a court of competent jurisdiction. Notwithstanding the terms of this Agreement or any other document: (i) other than for employees and contractors acting under ASU's direction and supervision, ASU is not responsible for any actions of any third parties, including its students; and (ii) no person may bind ASU unless they are an authorized signatory in PUR-202. **Use first two sentences in all contracts other than real estate contracts). Use second sentence in all software contracts; it is optional in other contracts.**

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

**13. Privacy; Educational Records.** Student educational records are protected by the U.S. Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g (FERPA). Entity will not require any ASU students or employees to waive any privacy rights (including under FERPA or the European Union's General Data Protection Regulation (GDPR)) as a condition for receipt of any educational services, and any attempt to do so will be void. Entity will comply with FERPA and will not access or make any disclosures of student educational records to third parties without prior notice to and consent from ASU or as otherwise provided by law. If this Agreement contains a scope of work or other provision that requires or permits Entity to access or release any student records, then, for purposes of this Agreement only, ASU designates Entity as a "school official" for ASU under FERPA, as that term is used in FERPA and its implementing regulations. In addition, any access or disclosures of student educational records made by Entity or any Entity Parties must comply with ASU's definition of legitimate educational purpose in SSM 107-01: Release of Student Information. If Entity violates the terms of this section, Entity will immediately provide notice of the violation to ASU. **Entire paragraph required when Entity will have access to student records. If Entity will have no access to student records, only the first two sentences are needed.**

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

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

**16. Tobacco-Free University.** ASU is tobacco-free. For details visit [asu.edu/tobaccofree](http://asu.edu/tobaccofree). **Required when Entity Parties may come onto an ASU campus.**

**17. Intellectual Property Ownership.** All Intellectual Property that Entity or any of the Entity Parties make, conceive, discover, develop or create, either solely or jointly with any other person or persons including ASU, specifically for or at the request of ASU in connection with this Agreement (Contract IP), will be owned by ASU. To the extent any Contract IP is not considered work made for hire for ASU (or if ownership of all rights therein does not otherwise vest exclusively in ASU), Entity hereby irrevocably assigns, and will cause the Entity Parties to so assign, without further consideration, to ASU all right, title and interest in and to all Contract IP, including all copyright rights of ownership. Intellectual Property means all ASU Data, any and all inventions, designs, original works of authorship, formulas, processes, compositions, programs, databases, data, technologies, discoveries, ideas, writings, improvements, procedures, techniques, know-how, and all patent, trademark, service mark, trade secret, copyright and other intellectual property rights (and goodwill) relating to the foregoing. Entity will make full and prompt disclosure of the Contract IP to ASU. Entity will, and will cause the Entity Parties to, as and when requested by ASU, do such acts, and sign such instruments to vest in ASU the entire right, title and interest to the Contract IP, and to enable ASU to prepare, file, and prosecute applications for, and to obtain patents and/or copyrights on, the Contract IP, and, at ASU's expense, to cooperate with ASU in the protection and/or defense of the Contract IP. **Required whenever Entity may create any IP (including written or creative materials) for ASU under the contract.**

**Alternate language if Entity is not creating any Intellectual Property for or at the request of ASU:**

**Intellectual Property Ownership.** Neither Entity nor any Entity Parties will make, conceive, discover, develop or create, either solely or jointly with any other person or persons including ASU, any Intellectual Property specifically for or at the request of ASU in connection with this Agreement (Contract IP). However, to the extent any Contract IP is created, it will be owned by ASU and Entity hereby irrevocably assigns, and will cause all Entity Parties to so assign, without further consideration, to ASU all right, title and interest to all Contract IP. Intellectual Property means any and all ASU Data, inventions, designs, original works of authorship, formulas, processes, compositions, programs, databases, data, technologies, discoveries, ideas, writings, improvements, procedures, techniques, know-how, and all patent, trademark, service mark, trade secret, copyright and other intellectual property rights (and goodwill) relating to the foregoing. Entity will make full and prompt disclosure of the Contract IP to ASU.

**Alternate language if the contract is a real estate lease and ASU is the landlord:**

**Information Technology.** Tenant, at Tenant's cost, will acquire, maintain, and use, only its own information technology services, including a private network, hardware, software, and voice, data and internet access (Technology Services). Tenant's Technology Services will be separate from ASU's Technology Services.

**18. Entity's Intellectual Property Ownership Rights.** Entity will retain ownership of its pre-existing Intellectual

Property, including any that may be incorporated into the Contract IP, provided that Entity informs ASU in writing before incorporating any pre-existing Intellectual Property into any Contract IP. Entity hereby grants to ASU a perpetual, irrevocable, royalty-free, worldwide right and license (with the right to sublicense), to freely use, make, have made, reproduce, disseminate, display, perform, and create derivative works based on such pre-existing Intellectual Property as may be incorporated into the Contract IP or otherwise provided to ASU in the course of performing under this Agreement. **Use when para 17 (not the alternatives) above is included.**

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

ASU Data will be ASU's Intellectual Property and Entity will treat it as ASU's confidential and proprietary information. Entity will not use, access, disclose, or license, or provide to third parties, any ASU Data, except: (i) to fulfill Entity's obligations to ASU hereunder; or (ii) as authorized in writing by ASU. Without limitation, Entity will not use any ASU Data, whether or not aggregated or de-identified, for product development, marketing, profiling, benchmarking, or product demonstrations, without, in each case, ASU's prior written consent. Entity will not, directly or indirectly: (x) attempt to re-identify or de-aggregate de-identified or aggregated information; or (y) transfer de-identified and aggregated information to any third party unless that third party agrees not to attempt re-identification or de-aggregation. For ASU Data to be considered de-identified, all direct and indirect personal identifiers must be removed, including names, ID numbers, dates of birth, demographic information, location information, and school information. Upon request by ASU, Entity will deliver, destroy, and/or make available to ASU, any or all ASU Data.

Notwithstanding the foregoing, if this Agreement allows Entity to provide aggregated and de-identified data to third parties, then Entity may provide such data solely to the extent allowed in this Agreement, and, unless otherwise stated herein, only if such data is aggregated with similar data of others (i.e. is not identified as ASU, ABOR, or Arizona-specific). **First two paragraphs are required when Entity receives, has access to, stores, or analyzes ASU Data. Must use if para 20, Info Sec is used. Add 3rd paragraph only when contract requires or allows Entity to provide aggregated and deidentified data to Entity's customers.**

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

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

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

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

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



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

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

The above language goes in all contracts whenever the Agreement meets at **least one** of these criteria

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

(2) Entity is creating any code for ASU,

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

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

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

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

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

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

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

**21. Background Checks.** Entity will, at Entity's expense, conduct reference checks, and employment, education, SSN trace, National Sex Offender Registry, and criminal history record checks (collectively, Screenings) on those persons employed or contracted by Entity for security or safety-sensitive positions, as defined in [ASU ACD 126](#), or who may have access to sensitive or highly sensitive ASU data, as defined [ASU's Data Handling Standard](#). Entity will conduct all Screenings within 90 days prior to a person commencing work under this Agreement. Entity will exclude from any direct participation in Entity's performance under this Agreement, any unqualified persons. Entity will maintain, as part of the records Entity is required to maintain hereunder, all Screening information and all documentation relating to work performance for each employee or contractor who performs work hereunder. Entity will abide by all applicable laws, rules and regulations, including the Fair Credit Reporting Act, and equal opportunity laws, rules, and regulations. **Required whenever Entity will be handling tasks for which Screenings are required. If Screenings would not be required, recommend using the fourth (highlighted) sentence only. References: ACD 126, ABOR 6-709, ARS 15-1649, and [getprotected.asu.edu/policy/security-standards](http://getprotected.asu.edu/policy/security-standards).**

**22. Payment Card Industry Data Security Standard.** For e-commerce business and/or payment card transactions, Entity will comply with the requirements and terms of the rules of all applicable payment card industry associations or organizations, as amended from time to time (PCI Security Standards), and be solely responsible for security and maintaining confidentiality of payment card transactions processed by means of electronic commerce up to the point of receipt of such transactions by a qualified financial institution.

Entity will, at all times during the term of this Agreement, be in compliance with the then current standard for Payment Card Industry Data Security Standard (PCI DSS), Payment Application Data Security Standard (PA-DSS) for software, and PIN Transaction Security (PCI PTS) for hardware. Entity will provide attestation of compliance to ASU annually by delivering to ASU current copies of the following: (i) Entity's "Attestation of Compliance for

Onsite Assessments – Service Providers;” (ii) an attestation that all ASU locations are being processed and secured in the same manner as those in Entity’s “PCI Report on Compliance;” and (iii) a copy of Entity’s PCI Report on Compliance cover letter. Entity will notify ASU immediately if Entity becomes non-compliant, and of the occurrence of any security incidents (including information disclosure incidents, network intrusions, successful virus attacks, unauthorized access or modifications, and threats and vulnerabilities).

Entity’s services must include the following:

- (a) Entity maintains its own network operating on its own dedicated infrastructure. Entity’s network includes a firewall that (i) includes access control rules that separate Entity’s PCI network from ASU, and (ii) restricts any communication between Entity’s network devices and ASU systems.
- (b) Entity treats the ASU network as an untrusted network and no unencrypted cardholder data traverses or otherwise is stored on ASU’s network, and ASU has no ability to decrypt cardholder data.
- (c) All devices must be SRED (secure reading and exchange of data), EMV (Europay, MasterCard and VISA) and PTS POI compliant. **Use when Entity is processing credit and debit card transactions on behalf of ASU.**

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

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

**25. No Boycott of Israel.** As required by ARS § 35-393.01, Entity certifies it is not currently engaged in a boycott of Israel and will not engage in a boycott of Israel during the term of this Agreement. **Required in contracts to acquire or dispose of services, supplies, information technology, and construction. Not required in contracts with public entities (such as IGAs)**

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

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



as the parties may specify in the same manner:

To ASU:

(Department name)

PO Box \_\_\_\_\_ Tempe, AZ 85287-\_\_\_\_\_

Attn: (use title – no individual names)

With a copy to:

Purchasing and Business Services or appropriate dept.

PO Box 875212

Tempe, AZ 85287-5212

Attn: Chief Procurement Officer or dept. business officer

To Entity:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

With a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

**28. Termination.** ASU may terminate this Agreement with or without cause on 30 days' notice to Entity. If this Agreement is terminated pursuant to this section, ASU will have no further obligations other than payment for services rendered, goods received, and expenses incurred, and Entity will refund to ASU all prepaid amounts for goods or services not delivered or rendered. The term of this Agreement will not exceed 5 years. **Use unless otherwise agreed in the contract. A term longer than 5 years requires approval of CFO or GC (other than real estate leases, whose term is governed by ABOR 7-209).**

**29. Leased Employees.** Entity will determine and inform ASU if any leased employees are retired members of the Arizona State Retirement System prior to the leased employee performing any work under this Agreement. **Required when Entity is providing temporary staff.**

**30. Foreign Corrupt Practices Act/UK Bribery Act/ Local Anti-corruption Law Compliance.** Entity warrants that it is familiar with the U.S. laws prohibiting corruption and bribery under the U.S. Foreign Corrupt Practices Act and the United Kingdom laws prohibiting corruption and bribery under the UK Bribery Act. In connection with Entity's work under this Agreement, Entity will not offer or provide money or anything of value to any governmental official or employee or any candidate for political office in order to influence their actions or decisions, to obtain or retain business arrangements, or to secure favorable treatment in violation of the Foreign Corrupt Practices Act, the UK Bribery Act, or any other local anti-corruption law, either directly or indirectly. Any breach of the U.S. Foreign Corrupt Practices Act, the UK Bribery Act, or other local anti-corruption law, will be a material breach of this Agreement. **Required when Entity is a foreign person or entity, or when the contract calls for services to be performed outside the U.S.**

**31. Export Controls.** Interactions between U.S. nationals and non-U.S. nationals may be subject to U.S. laws and regulations controlling the transfer or sharing of information or technical data, computer software, laboratory prototypes and other commodities (Technology), as defined and restricted by the U.S. Export Administration Regulations, U.S. International Traffic in Arms Regulations, and through the sanctions and embargoes established through the Office of Foreign Assets Control (collectively, the Export Control Laws). None of the work undertaken pursuant to this Agreement will require either party to take or fail to take any action that would cause a violation of any of the Export Control Laws. If any work to be undertaken pursuant to this Agreement requires, in ASU's sole judgment and discretion, a license or authorization from any agency or authority of the U.S. government and/or any written assurances that the party receiving any Technology will not re-export, transfer, or otherwise share such Technology to or with certain other foreign nationals or destinations without the prior approval of the U.S. government, no such work will be required unless and until the appropriate license or written assurance is obtained. The parties will cooperate to facilitate compliance with applicable requirements of the Export Control Laws. **Required when Entity is a foreign person or entity.**

**32. Assignment.** Entity may not transfer or assign this Agreement or any of Entity's rights or obligations

hereunder, either directly or indirectly, or by operation of law, without ASU's prior written consent, and any attempt to the contrary will be void. Use if assignment is not addressed, or to replace any provision that allows Entity to assign for any reason without ASU consent.

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

**34. Data Protection.** Entity will ensure that all services undertaken pursuant to this Agreement are performed in compliance with applicable privacy and data protection laws, rules, and regulations. If Entity will serve as a Processor of ASU Data that includes Personal Data of Data Subjects who reside in the European Union, Entity will cooperate with ASU to comply with the EU General Data Protection Regulation (GDPR) with respect to such Personal Data and Data Subjects. This includes ensuring that all Data Subjects have signed appropriate Consents, and signing and complying with all documents and agreements reasonably requested by ASU, including any data processing agreements. All capitalized terms in this paragraph not otherwise defined in this Agreement are defined in the GDPR. Use first sentence when Entity may collect, store, transmit, or have access to Personal Data of people who are resident outside of the U.S. Use entire paragraph if the people may be resident in the EU.

**35. Academic Freedom and Accreditation.** ASU must comply with the policies, standards, and requirements of ABOR and ASU's accrediting bodies. ASU will maintain ultimate authority over all curriculum. ASU may veto or otherwise not follow or enforce any terms, requirements, or decisions contrary to the policies, standards, and requirements of ABOR and any accrediting entities. None of ASU's obligations in the Agreement will be construed to limit academic freedom. Use when Entity may be developing courseware, classes, or course content. Use last sentence when ASU is required to state that online content is not obscene or defamatory.

**36. Essence of Time.** Time is of the essence in the performance of this Agreement. Use in all real estate and construction contracts. Optional in other contracts.

THE ARIZONA BOARD OF REGENTS,  
a body corporate, for and on behalf of  
ARIZONA STATE UNIVERSITY

ENTITY:

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date Signed: \_\_\_\_\_

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date Signed: \_\_\_\_\_

## EXHIBIT A

### Insurance Requirements

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

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

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

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

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

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

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

**2. Automobile Liability.** Bodily Injury and Property Damage for any owned, hired, and/or non-owned vehicles used in the performance of this Agreement. If Entity is a vehicle transportation company, a combined single limit of \$1,000,000. If the scope of work for this Agreement includes driving in connection with the services rendered under this Agreement, then coverage will be \$100,000 per person, \$300,000 per accident, and \$50,000 property damage. **Required when Entity will be driving on ASU campus on ASU business.**

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

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

c. Policy will contain a severability of interest provision.

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

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

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

4. Technology/Network Errors and Omissions Insurance. If para. 20 Info Security, is not used, and the Agreement does not otherwise address technology, then this may be replaced with para. 5 below, i applicable.

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

a. This insurance will cover Entity's liability for acts, errors and omissions arising out of Entity's operations or services, including loss arising from unauthorized access, or use that results in identity theft or fraud.

b. If the liability insurance required by this Agreement is written on a claims-made basis, Entity warrants that any retroactive date under the policy will precede the effective date of this Agreement, and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of 2 years beginning at the time work under this Agreement is completed.

c. Policy will cover professional misconduct for those positions defined in the scope of work of this Agreement.

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

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

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

b. Policy will cover professional misconduct for those positions defined in the scope of work of this Agreement.

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

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

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

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

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

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

## **Exhibit C**



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

**THIS AGREEMENT** is made between the **Arizona Board of Regents**, a body corporate, for and on behalf of **Arizona State University (ASU)** and \_\_\_\_\_, a \_\_\_\_\_<sup>1</sup> (Vendor), effective as of \_\_\_\_\_, 20\_\_ (the Effective Date).

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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



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

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

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

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

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

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

To ASU:

(Department name)

PO Box \_\_\_\_\_ Tempe, AZ 85287-\_\_\_\_\_

Attn: (use title – no individual names)

To Vendor:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

With a copy to:

Purchasing and Business Services or appropriate dept.

PO Box 875212

Tempe, AZ 85287-5212

Attn: Chief Procurement Officer or dept. business officer

With a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**33. Tobacco-Free University.** ASU is tobacco-free. For details visit [asu.edu/tobaccofree](http://asu.edu/tobaccofree).

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

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

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

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

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

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

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

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

**Vendor:**

By: \_\_\_\_\_

By: \_\_\_\_\_

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

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

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date Signed: \_\_\_\_\_

Date Signed: \_\_\_\_\_

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

**EXHIBIT A – SERVICES AND DELIVERABLES**

**EXHIBIT B – CONSIDERATION**

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

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



**EXHIBIT C – INFORMATION SECURITY**

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

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

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

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

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

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

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

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

- (1) ASU is purchasing or leasing software, or processing a software renewal,
- (2) Vendor is creating any code for ASU,
- (3) Vendor receives, stores, or analyzes ASU Data (including if the data is not online), or
- (4) Vendor is hosting, or managing by infrastructure outside of ASU, including in the cloud, ASU Data. ALSO the following language must be included when this Agreement is for Item(s) 1-4 above as indicated.

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

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

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

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

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



**EXHIBIT D – INSURANCE REQUIREMENTS**

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

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

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

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

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

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

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

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

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

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

c. Policy will contain a severability of interest provision.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **Exhibit D**

[AZ BUYWAYS ▾](#)[CONTRACTING ▾](#)[PCARD ▾](#)[POSTAL ▾](#)[PRINTING ▾](#)[PURCHASING ▾](#)[RECEIVING ▾](#)[SURPLUS ▾](#)[Home](#) / [Contracting FAQs](#) /

## Contracting FAQs

[SHOW ALL ANSWERS](#)

What standard contract forms are available through the Contracting Office?

What are the standard contract language requirements?

The following is a list of standard contract language requirements which may be added, depending on its applicability, or Contracting may be required to incorporate such language into its contracts/agreements because of Arizona state law.

- Contracting Party - the contracting party for the University is the Arizona Board of Regents on behalf of the University of Arizona.
- Interest Rate - 10% simple per annum is the maximum rate allowed by Arizona law.
- Law to Govern - as a state agency, the University cannot agree to be bound by another state's or another country's law; Arizona law must govern.
- Indemnification - it is illegal for an Arizona state agency to indemnify or hold another party harmless from liability (Arizona Attorney General's Opinion No. 67-36-L).
- Insurance - as an Arizona state agency, the University participates in the Arizona State Risk Management self-insurance program as provided under A.R.S. Section 41-621. We do not additionally insure other parties.
- Confidentiality - the University can agree to hold confidential material provided by another party (provided such material is marked confidential) for a period of three (3) years following termination of the Agreement. All fully executed University contracts/agreements are public record and cannot be held confidential.
- Penalty - the University cannot agree to pay penalties for early cancellation or for any other reasons (A.R.S. Section 35-154).
- Attorneys' Fees - the Arizona Legislature does not allocate funding for payment of another party's attorneys' fees; we can agree to pay all "court-awarded" attorneys' fees.
- Unions - as an Arizona state agency, the University is not permitted to contract with or be bound by union rules, regulations, or jurisdiction.
- Right to Terminate - the University needs the option to cancel a contract prior to its terms, usually by giving the other party thirty (30) days' prior written notice.
- Limitation of Actions - as an Arizona state agency, the University is exempt from the Statute of Limitations.
- Perpetuity - the University cannot enter into perpetual contracts.
- Non-refundable Deposits - the University cannot agree to pay a non-refundable deposit. A deposit can be used to fulfill payment obligations for which the University is owing for goods or services received.
- Software Infringement - the University cannot agree to incur software infringement liability of software provide by another party.
- Audit - if the contract/agreement is for the furnishing of goods and/or services, within the meaning of A.R.S. Section 35-214, all books, accounts, reports and records relating to the contract/agreement shall be subject to inspection and audit by the University for five years after completion of the Agreement.
- The following clauses are to be incorporated into all contracts: a) Nondiscrimination; b) Arbitration; c) Conflict of Interest; d) State Obligation; and e) Audit; f) No Boycott of Israel.

What is the normal contract processing time line?

What are the requirements for executing a Master Agreement for Hotel Services with the University?

Where can I find information on the Catering Policy and who is an approved Catering Vendor?



## **Exhibit E**

(<http://www.arizona.edu>)

# UA Financial Policies (/)

Home (/) / Financial Services Manual (/fsm) / 9.00 Expenditure Policy and Procedures (/fsm/900)  
/ 9.12 Independent Contractor Services /

## 9.12 Independent Contractor Services

[View \(/fsm/900/912\)](/fsm/900/912)

[Revisions \(/node/32/revisions\)](/node/32/revisions)

**Last Updated:** Tuesday, November 22, 2016 - 11:33 am

**Purpose:** To provide guidelines for distinguishing between "employee" and "independent contractor" status and safeguarding the University and its employees from potential liability related to incorrect classification. **Note:** This policy does not apply to reimbursements to employees or individuals for recruiting expenses. Refer to **9.10, Requisitions/Reimbursements (/fsm/900/910)**

**Policy** Financial Management

**Owner:**

**Background:** The Internal Revenue Code refers to three basic payment types :**scholarship/fellowship**, **independent contractor** and **employee**. Scholarship recipients are not expected to provide a service whereas employees and independent contractors are expected to provide a service. The Internal Revenue Service presumes that all individuals who provide a service are employees unless there is evidence to support the classification of the individual as an independent contractor. Therefore, if a University department engages an individual as an independent contractor, the department must supply the necessary evidence to support this position.

**Independent Contractor Form:** Determining independent contractor status is driven by facts and circumstances. The facts and circumstances that make one individual an independent contractor may differ from those that make another individual an independent contractor. There are literally volumes of court cases related to this topic. These cases were used as a conceptual framework for the Internal Revenue Service to develop a list of the most common and significant independent contractor characteristics. The Financial Services Office has summarized and simplified the IRS list of characteristics on the **Independent Contractor Form** (UA ICON form). This form is not required when contracting with a **business entity** that has a valid Employer Identification Number. This identification number must be provided on the REQS. **See definition of Employer Identification Number.**

**Compliance:** Failure to comply with the policies outlined in this section may result in penalties for violation of State and Federal laws and/or University policies such as:

- State Worker's Compensation Laws;
- Federal laws pertaining to employment, for example, I-9;
- Internal Revenue Code regarding payroll taxes; for example, Social Security, Medicare, federal withholding obligations;
- Internal Revenue Code regarding qualification of pension plans;
- State Unemployment Insurance;
- University policies associated with hiring employees; for example, Classified Staff Personnel Policy Manual, UHAP.

**Related Manuals:**

- Purchasing Policies - **Policy 4.5 "Requests for Quotations" (RFQ)/Proposal (RFP)** and **Policy 1.4 "Conflict of Interest"**
- Classified Staff Human Resources Policy Manual - **Policy 413.0 "Conflict of Interest"**
- University Handbook for Appointed Personnel (UHAP) - **Policy 2.06.08 "Conflict of Interest"**

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**Policies | Arranging for Independent Contractor Services Prior to the Engagement How to Complete the UA ICON Form | Requesting Payment with a Disbursement Voucher How to Request Reimbursement of Expenses | Reporting Payment for Services Independent Contractor Payment Summary Chart |**

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## Definitions:



1. **Employee:** The University controls **both how** and **what** the individual must do in exchange for remuneration.
2. **Independent Contractor:** The University controls **only what** the individual must do in exchange for remuneration.
3. **Scholarship/fellowship:** Payments that are philanthropic in nature. Such payments do not require the recipient to provide a service in exchange for funds.
4. **Business Entity:** Corporations, Partnerships, Limited Liability Companies, Governmental Agencies, and Trusts.
5. **Employer Identification Number (EIN):** All "business entities" must have an employer identification number. This is a unique nine digit number assigned by the Internal Revenue Service (IRS) to a business in the "business entity's" name. In Arizona, an EIN often begins with the numbers "86." The normal format of an employer identification number is XX-XXXXXXX. An example of an EIN is 86-1234567. An employer identification number is similar to a social security number in that it is used by the IRS to identify a particular taxpayer. It is different than a social security number in its format, social security numbers are formatted XXX-XX-XXXX. Another difference is that an employer identification number is used to identify a "business entity" whereas a social security number is used to identify an individual.
6. **Guest Speakers:** Professionals usually engaged by departments to speak on academic and research topics to a specific audience. Examples: Visiting professionals or specialists, and seminar presenters. Speakers generally receive reimbursement of expenses and/or a nominal sum as payment for their services. This category does not include entertainers as defined below.
7. **Entertainers:** Persons engaged to perform, for example, musicians, actors, comedians or other performing artists. Professional speakers may be included in this category but are differentiated from guest speakers in that they generally perform for a broad or general audience and are often engaged by student organizations, cultural resource centers, or UAPresents as opposed to an academic or research department.
8. **Visiting Experts:** These individuals are not current or **former University employees** but will serve in an advisory or consulting capacity with a University employee (for example, an individual working "with" a University employee in a "collaboration between equals" type arrangement) on a specific project. Visiting experts also include academic program reviewers. An academic program reviewer is selected based upon his or her stature in a particular field and is expected to review programs in his or her field of expertise for quality in relation to program mission.
9. **Conflict of Interest:** A conflict of interest exists when a personal influence might bear upon or appear to bear upon a decision made by a University employee in his or her capacity as a public employee. Any employee of the University, or relative of an employee, who has a substantial interest in any contract, sale, purchase, or service, including consulting, involving the University shall (a) make this fact known to the University Director of Procurement and (b) refrain from participating in any manner in such contract, sale or purchase. Further definition and examples of conflicts of interest are provided in the **Purchasing Policies Manual, section 1.4**, the **University Handbook for Appointed Personnel, section 2.06.08**, and the **Classified Staff Personnel Policy Manual, section 413.0**.
10. **Subject Pay:** Payment to an individual for voluntary participation as a subject in a research project.

## Policies

11. **Nonresident Aliens:** Payments to nonresident aliens are governed by **section 9.16, Payments to Nonresident Aliens (/fsm/900/916)**, which contains detailed information about payments allowed and documentation required. Refer to section 9.16 **before** a nonresident alien is hired to perform any service. Some visa types do not allow payments to nonresident aliens as independent contractors.
12. **Independent Contractor Classification:** It is the department's responsibility to assure that appropriate evidence has been gathered to support the position that the University has engaged an independent contractor. If the department cannot provide sufficient evidence to support the classification of an individual as an independent contractor, the individual must be employed in accordance with the Human Resources Organization policies. . The department should contact Tax Compliance if it needs assistance in making the independent contractor determination.
13. **Individuals cannot pay independent contractors with personal funds and then request reimbursement from the University.** The University will not reimburse anyone who pays an independent contractor with his/her own funds. All requests for payments to independent contractors must be submitted in accordance with this policy and all payments must be made directly from the University to the independent contractor.
14. **Former University Employees.** A former University of Arizona employee rehired as a consultant will rarely meet the IRS's criteria for independent contractors, especially if the former employee is rehired during the same calendar year in which he/she terminated employment at the University. A department that engages a former employee as a consultant will almost always be required to use the employment process and make payments through payroll. The department should contact Tax Compliance before any work is performed if it needs assistance in determining whether or not a former employee may be treated as an independent contractor.
15. **Employee Classification:** Due to the nature of the university's business the following individuals will always be classified as employees:
  - a. Anyone who teaches a course from which students may receive academic credit.
  - b. Individuals performing trade type duties (for example, clerical, janitorial, grounds keeping services, farm attendants, laboratory technicians). However, when the university engages a temporary agency to provide these trades type services (for example, K-temp), the agency will be considered an independent contractor.
16. **"Business Entities"** will always be classified as independent contractors **IF** they provide the University with a valid **Employer Identification Number (EIN)**. The EIN must be provided on the REQS . When engaging a "business entity," checks issued by Accounts Payable will be paid to the order of the business entity not an individual.
17. **Arrangement prior to work:** In most circumstances, arrangements to engage an independent contractor must be made with a Requisition **prior** to commencement of the work (see **"Arranging for Independent Contractor Services Prior to the Engagement"**). When a Requisition is required, a Purchase Order will be issued. In specific **limited circumstances**, a Disbursement Voucher is allowable. See **"Requesting Payment with a Disbursement Voucher."**

18. **Sponsored Projects:** If the independent contractor is to be paid from a sponsored project grant or contract account (3-000000 through 4-999990), prior written approval from the sponsor is required when the contract or grant specifically requires prior approval.
19. **Restrictions** apply to hiring certain persons as independent contractors, as follows:
  - a. If an **employee** of one department is hired by another department to perform additional duties, complete a Supplemental Compensation Form to request the additional pay.
  - b. Normally, **students** should be hired as employees in accordance with the Human Resources Organization policies, not as independent contractors. However, if appropriate to engage a student as an independent contractor, the student cannot be paid from Federal Work Study funds due to Federal Regulations.
  - c. If a **nonresident alien** is being considered, review **section 9.16 (/fsm/900/916)** carefully since specific policies apply.
  - d. **Federal employees** cannot be engaged as independent contractors on federally-sponsored contracts or grants.
  - e. **If conflict of interest is involved**, specific competitive bid procedures are required prior to the independent contractor being engaged. Contact Purchasing for additional information.
20. **Bidding Process:** When an individual's or a business entity's fees plus expenses will be:
  - a. **Equal to or less than \$10,000** for a single engagement or project, the bidding process is not required. The department selects the independent contractor and provides Purchasing with a statement outlining how and why the particular provider was chosen.
  - b. **Greater than \$10,000 but no more than \$50,000** for a single engagement or project, a competitive selection process is required. If approval is obtained from Purchasing, the department can be delegated the authority to conduct this competitive selection process. Contact Purchasing for an information packet before starting the selection process. The department should solicit at least three (3) written responses from individuals or business entities.
  - c. **Greater than \$50,000** for a single engagement or project, Purchasing **must** solicit proposals and advertise the requested services.

### **Arranging for Independent Contractor Services prior to the Engagement**

21. The department clearly defines what needs to be done.
22. The department determines the total cost for providing the services, including reimbursable expenses.
23. **If the total cost will be equal to or less than \$10,000 for a single engagement or project:**
  - a. The department sends a UA ICON form to the individual identified as a potential independent contractor. The properly completed UA ICON form is sent as an attachment to the REQS (see "**How to Complete UA ICON form**"). The UA ICON form is not required for a business entity with a valid **Employer Identification Number (EIN)**. You must include the EIN on the REQS.
  - b. If the department or independent contractor desires a written contract documenting the arrangements, forward the contract to the Contracting Office for approval prior to the start of services. The University's contract form is preferred and is available from the Contracting Office. Using the University's contract will result in a faster turnaround time. In the absence of other contracts, the Purchase Order will serve as the contractual agreement with the selected provider.

c. To initiate a Purchase Order, prepare a REQS itemizing the following information:

- i. Description and scope of work to be performed. (**see Note for information on Certificates of Insurance**)
- ii. Date work is to commence and be completed.
- iii. Description of contract price (how and at what rate is the service provided to be paid, for example, hourly, daily, weekly, not to exceed a specified amount, or other restrictions).
- iv. Specific persons or professional classifications of who are to perform the work.
- v. The rates to be charged for persons or professional classifications performing the work.
- vi. Descriptions and amounts of any other cost included (see **"How to Request Reimbursement of Expenses"**).
- vii. Method and schedule of payment.

**NOTE:** Certificates of Insurance may be required depending on whether the work to be performed creates special risk for the University, for example, preparing drawings and specifications for construction, medical services, transportation services, etc. Certificates of Workers' Compensation Insurance will be required if the Independent Contractor has more than one employee (themselves). Sole proprietors are required to either provide evidence of Workers' Compensation Insurance, or sign a Sole Proprietor Form waiving their rights of recovery for injury that happens in the course of university work. Contact **Risk Management** for assistance.

**24. If the total cost will be greater than \$10,000 but no more than \$50,000 for a single project or engagement (see #26. if sole source):**

- a. The department sends a description and scope of the work to be performed and an information packet which contains the "Agreement for Outside Professional Services" and insurance requirements obtained from Purchasing to the entities solicited. If the entity solicited is an **individual**, the department **must also send a UA ICON form** along with the proposal response. **The UA ICON form is not required for business entities with a valid EIN. The EIN must be included on the REQS.**
- b. Send the completed Agreement (two (2) originals), certificates of insurance and proposal responses to Purchasing with the REQS (Requisition) as an attachment. For individuals, also include a properly completed UA ICON form as an attachment to the REQS (see **"How to Complete UA ICON form"**).
- c. The department shall include a statement outlining why the particular entity (individual or business) was chosen from those entities solicited.
- d. The Purchase Order and the signed Agreement will be the contract with the selected entity.
- e. To initiate a Purchase Order, prepare a REQS itemizing the following information:
  - i. Description and scope of work to be performed. (**see Note for information on Certificates of Insurance**)
  - ii. Date work is to commence and be completed.
  - iii. Description of contract price (how and at what rate is the service provided to be paid, for example, hourly, daily, weekly, not to exceed a specified amount, or other restrictions).
  - iv. Specific persons or professional classifications of who are to perform the work.
  - v. The rates to be charged for persons or professional classifications performing the work.

vi. Descriptions and amounts of any other cost included (see **"How to Request Reimbursement of Expenses"**).

vii. Method and schedule of payment.

**25. If the total cost will be greater than \$50,000 for a single engagement or project (see #26 if sole source)**

a. **Prepare a REQS** itemizing the following information:

i. Description and scope of the work to be performed.

ii. Date work is to commence and be completed

iii. Recommended individual's and/or business entity's to include in the solicitation.

b. Purchasing in conjunction with the requesting department, will prepare a Request for Proposal (RFP) and advertise the requirements in a newspaper of general circulation. Selection of the independent contractor must be based on the evaluation criteria stated in the proposal.

**26. If the total cost will be greater than \$10,000 for a single engagement or project AND the department believes that a sole source\* situation exists** with the selected independent contractor.

a. The department should contact Purchasing and provide written documentation to fully justify and support a sole source determination.

b. If Purchasing does not concur with the request for sole source, the competitive selection procedures detailed in either (b) or (c) above must be followed. If Purchasing does concur with the sole source request as a waiver for competitive bidding, the department will send a signed "Agreement For Outside Professional Services" (two [2] originals), certificates of insurance and written proposal by the selected individual or business entity and a properly completed UA ICON form (when applicable - See **"How to Complete UA ICON form"**), as a REQS (Requisition) attachment. The Purchase Order and signed Agreement will be the contract with the selected individual or business entity.

**\* The ABOR Procurement Code states:** *"A contract may be awarded for a material, service or construction item without competition if the procurement officer determines in writing that there is only one source for the required material, service or construction item. Sole source procurement shall be avoided except when no reasonable alternative source exists. A written determination of the basis for the sole source procurement shall be included in the contract file."*

c. To initiate a Purchase Order, prepare a REQS itemizing the following information:

i. Description and scope of work to be performed. (see **Note for information on Certificates of Insurance**)

ii. Date work is to commence and be completed.

iii. Description of contract price (how and at what rate is the service provided to be paid, for example, hourly, daily, weekly, not to exceed a specified amount, or other restrictions).

iv. Specific persons or professional classifications of who are to perform the work.

v. The rates to be charged for persons or professional classifications performing the work.

vi. Descriptions and amounts of any other cost included (see **"How to Request Reimbursement of Expenses"**).

vii. Method and schedule of payment.

d. The department sends the UA ICON form to the individual selected.

## How to Complete the UA ICON form

27. The department sends a copy of the UA ICON form to the individual that will be performing services.
- The individual (potential independent contractor) completes the UA ICON form, signs it, and returns it to the department.
  - The department reviews the UA ICON form for completeness and accuracy. The Form is complete when all questions on the Form have been answered. The Form is accurate if the UA employee most familiar with the potential independent contractor reviews the Form and believes that its content is most likely the truth.
  - Based upon the information provided on the UA ICON form and any other relevant information available, the department determines if the individual meets the independent contractor criteria.
28. If the independent contractor criteria are met:
- The departmental University employee most familiar with the independent contractor signs the UA ICON form to indicate concurrence as to the Form's accuracy (Part IV signature number 1). This signature is required for payment.
  - The departmental employee responsible for requesting funding either through the REQS or Disbursement Voucher process is a second signer on the Form (Part IV signature number 2). The second signature indicates that the Form is complete and that the individual meets the independent contractor criteria. This signature is required for payment.
  - The third signature in Part IV identified as "College/Division" is for a higher level of authorization if desired. It is not required for payment.
  - The department sends a **copy** of the UA ICON form with all required signatures to the independent contractor, and sends or faxes the original to Purchasing with the REQS (Requisition) as an attachment. The original form or fax will be maintained in Purchasing. If a fax is sent to Purchasing, the department is responsible for maintaining the original and making it available upon request.
  - When payment is made via a Disbursement Voucher (DV), the original signed UA ICON form is required to be sent with the DV Cover sheet, along with an invoice or any further supporting documentation to substantiate the payment

**NOTE:** Tax Compliance signature is not required for processing of the UA ICON form. Departments may, however, request assistance from the Tax Compliance Office.

29. If the independent contractor criteria are **not** met, the department should consider hiring the individual as an employee through the Human Resources Organization. Alternatively, the department may select another individual and start this process over to determine if the newly selected individual meets the independent contractor criteria.

## Requesting Payment with a Disbursement Voucher ▼

**NOTE:** The Requisition must be used to make arrangements with an independent contractor prior to the engagement unless one of the circumstances numbered 30 through 41 below apply. Falling under one of these circumstances does not mean that the individual engaged meets the independent contractor criteria.



The following circumstances are simply situations under which the University will allow payment through the Disbursement Voucher process. It is the department's responsibility to review each case and assess whether or not the individual being engaged meets the independent contractor criteria, no matter what the form of payment (Requisition or Disbursement Voucher). If the department needs assistance in determining the status of an individual as an employee or independent contractor, the department should contact Tax Compliance.

30. **Entertainers:** When paying an entertainer and:

- a. **Payments will be <= \$1,000:** A Performance Arrangement must be completed and signed by the authorized departmental signer and the entertainer prior to the engagement. The Contracting Officer does not need to approve Performance Arrangements. **Performance Arrangements** are available on the **Procurement and Contracting Services** website. An ICON form is not required.
- b. **Payments will be > \$1,000:** A Performance Contract must be completed, signed by the Entertainer and forwarded to the Contracting Office for approval prior to the engagement. **Performance Contracts** are available on the **Procurement and Contracting Services** website. An ICON form is not required. **NOTE:** If an Entertainer prefers to use his or her own contract, it must be approved by the Contracting Office prior to the engagement. Please allow two weeks additional processing time.

31. **Cooperating (Mentor) Teachers:** Attach the original Cooperating Mentor Teacher form signed by the Cooperating Teacher. This form must list the teacher's home address and social security number. An ICON form is not required.

32. **Officials for NCAA sponsored events:** Attach a copy of the NCAA's letter or form listing the designated officials for the event. An ICON form is not required.

33. **Subject Pay:** Provide a brief description of the program the subject is enrolled in, including the dates of service. The individuals name, home address and social security number must be entered on the Disbursement Voucher. **Exception:**

- a. If subject payments will be \$50 or less from all University of Arizona sources for the calendar year, social security numbers and home addresses are not required.
- b. If the research project is a confidential study, it is not necessary to identify the human subjects by name or SSN. However, an NIH Certificate of Confidentiality or other substantiating document must be provided along with the Disbursement Voucher, and the total payment to any individual participating in a confidential study must be less than \$600 in a calendar year. The principal investigator should maintain the disbursement record on file and make it available upon request.

If payment to nonresident alien human subjects does not fall in the above exception, **policy 9.16, Payment to Nonresident Aliens (/fsm/900/916)** will apply. Employees receiving subject pay will receive a 1099 form at the end of the calendar year if the payment received in the calendar year is \$600 or more. An ICON form is not required for subject pay.

34. **Scholarships/fellowships:** Refer to **section 13.00, Introduction to Methods of Student Payments (/fsm/1300/1310)**. An ICON form is not required.

35. **Guest Speakers and Visiting Experts** who are expected to receive fees not including expenses of \$600 or less for the calendar year, **and** who are expected to perform services for 3 days or less during that calendar year will not be required to complete the ICON form IF the department attaches a brochure/flyer



providing the details of the speech to the Disbursement Voucher. **NOTE:** To qualify as a "guest speaker" a fee cannot be charged to attend the speech. AS AN ALTERNATIVE TO SUBMITTING A BROCHURE/FLYER, the department head may submit a signed letter which includes the following:

1. Name of the guest speaker
2. Topic discussed by the speaker
3. Group addressed by the speaker
4. Date and place of the speech,
5. A statement that no fee was charged to attend the speech,
6. Amount the speaker is to be paid.

36. **Guest Speakers and Visiting Experts that do not qualify under item 31 listed above**, who receive less than \$10,000 per calendar year in total (fees plus expenses), **and** whose engagement is no more than fourteen days in duration may use the Disbursement Voucher process rather than the Requisition process. Attach the original, properly completed ICON form to the Disbursement Voucher, see "**How to Complete UA ICON Form.**" If reimbursing expenses, see "**How to Request Reimbursement of Expenses.**"

37. **Conference speakers.** Speakers at conferences hosted by University of Arizona departments may be routinely treated as independent contractors and paid using the Disbursement Voucher process under the following conditions:

1. The speaker receives an honorarium payment of \$600 or less.
2. The speaker gives a presentation, lecture, and/or workshop, not to exceed a total of 3 hours during the conference. (A speaker may, in addition to the above, serve as emcee or perform other insubstantial duties during a conference.)
3. The conference includes presentations by several speakers.
4. The conference is not an instructional course of a type typically offered by the university, Extended University, or any department within the university.
5. The conference takes place off campus.
6. The conference is not primarily intended for UA students, faculty, and staff (i.e., conference attendees include a majority of non-UA people and the conference is publicized outside the University).

A copy of the conference program with listings of individual sessions and speakers must be attached to the Disbursement Voucher. An ICON form is required.

38. **Royalty and Permission Fees:** "Royalty" (sometimes called "permission fee") commonly refers to a payment made to the owner of property for permitting another to use that property; royalties often are connected with a specific, temporary or one-time right to use intangible property. Royalties include (but are not limited to) payments for the production or reproduction of literary, dramatic, musical, or artistic works, as well as payments for the use of inventions, patents, copyrighted material, etc. An ICON form is not required. Attach one of the following to the Disbursement Voucher:

1. contract
2. letter of agreement
3. invoice
4. statement of distribution

39. **Agnese Haury Instructors:** Certified interpreters hired as instructors for the Agnese Haury Summer Institute may use the Disbursement Voucher process. The Disbursement Voucher must include a statement confirming that all services performed by the individual are solely in the capacity of Agnese Haury Institute instructor. No ICON form is required.
40. **Manuscript Reviewers who are expected to receive \$200 or less** during the calendar year may use the Disbursement Voucher process rather than the Requisition process. Attach a properly completed ICON form to the Disbursement Voucher, see **"How to Complete UA ICON Form."** If reimbursing expenses, see **"How to Request Reimbursement of Expenses."**
41. **Reimbursement of expenses only - No Fee:** Submit the documentation requested under **"How to Request Reimbursement of Expenses."**

## How to Request Reimbursement of Expenses

42. The University is allowed to reimburse independent contractors for reasonable expenses. Reasonable expenses are those ordinary and necessary expenses related to the performance of the services, such as transportation, lodging and meal expenses. Personal expenses such as dry cleaning, personal telephone calls, entertainment, alcoholic beverages and other expenses not related to the performance of the contract or specifically disallowed by University policy should be identified and excluded from the total expenses to be reimbursed. Expenses may be paid using one of the following methods or some combination of these. **NOTE:** The independent contractor is not required to sign the Disbursement Voucher for expense only reimbursement.
- a. The independent contractor may pay his own expenses, with no reimbursement by the University.
  - b. The independent contractor may be reimbursed for expenses. When providing original itemized receipts, identify each expense as business or personal and include an adding machine tape of the business expenses with the receipts.
    - i. Meals may be reimbursed based on actual costs, supported by original itemized receipts, or on a per diem basis, not to exceed the low cost city per diem established for University employees on travel status (**see section 14.13 (/fsm/1400/1413)**).
    - ii. Lodging and commercial travel may only be reimbursed at actual cost; original itemized receipts must be provided.
    - iii. Mileage may be reimbursed at the rate established in **section 14.15 (/fsm/1400/1415)**.
  - c. The expenses may be paid by the University directly to a third party such as an airline or a hotel. The hotels and independent contractors should be informed that only the cost of lodging, related sales tax and other approved allowable expenses will be paid by the University. Payments to third parties may be made in one of two ways.
    - i. **In advance:** The University can prepay airfare if the ticket is only for the independent contractor's travel to and from the University, and the ticket is written so that it is refundable only to the University of Arizona. To request payment in advance prepare a REQS (Requisition).
    - ii. **Afterwards:** Expenses to third parties may be submitted on a Disbursement Voucher after completing the travel. If the Disbursement Voucher is used, prepare separate Disbursement Vouchers for each third party and for the independent contractor. Attach original itemized invoices for all expenses to be paid.

- d. The independent contractor may be paid a specified amount to cover expenses. If a payment is made to the independent contractor to cover expenses, but the expenses are not supported by original itemized receipts, this amount will be reported to the Internal Revenue Service as part of the total payment to the outside professional.
43. Unallowable expenses are the responsibility of the independent contractor. If inappropriate expenses are charged to a third party vendor, departments are responsible for arranging for the independent contractor to pay the vendor before an invoice is sent to Accounts Payable. The invoice must list only the amount due from the University. If this is not the case, the department should request a corrected invoice from the vendor.
44. Compensation and/or expense reimbursement may be disbursed only after completion of the service as agreed, except as specified by written agreement (for example, progress payments).
45. Upon completion of the services, the business entity or individual must submit an invoice to the Accounts Payable Office. The independent contractor should reference the PO number on the invoice(s) and mail to The University of Arizona Accounts Payable, 1303 E University, Box 5, Tucson, AZ 85719-0521 or via fax (520) 626-1243 or email **[invoices@fso.arizona.edu](mailto:invoices@fso.arizona.edu)** (**<mailto:invoices@fso.arizona.edu>**)
46. On receipt of the invoice, Accounts Payable will process the payment according to the Purchase Order type and terms outlined in the PO. After the check is produced it will be mailed directly to the payee.
- Exceptions for departmental pick-up of checks:**
- The payee must be an individual not a business entity and
  - The check is to be given to the individual by the department head or delegate at the completion of services and
  - The cost of services, fees plus expenses, is less than \$10,000.
47. All payments to nonresident aliens for independent contractor fees or reimbursements of expenses or payments made on behalf of nonresident aliens must meet the criteria established in this policy and the additional criteria established in **9.16, Payments to Nonresident Aliens (/fsm/900/916)**.

## Reporting Payment for Services

48. The University will issue forms 1099 or 1042S (for nonresident alien) to all independent contractors at the end of each year if required by IRS regulations. The 1099 or 1042S form will indicate the amount of reportable fees paid to the independent contractor during the calendar year.
49. If the independent contractor received reimbursement for business related expenses supported by original itemized receipts, these expenses will not be included in the 1099. However, if the expenses were not supported by original itemized receipts, the total amount paid to the independent contractor will be reported on the 1099.

## Independent Contractor Payment Summary Chart

INDEPENDENT CONTRACTOR	AMOUNT/DURATION	DOCUMENT	ATTACHMENT	ICON REQUIRED
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<b>INDEPENDENT CONTRACTOR</b>	<b>AMOUNT/DURATION</b>	<b>DOCUMENT</b>	<b>ATTACHMENT</b>	<b>ICON REQUIRED</b>
<b>Expense Reimbursement Only</b>		DV	Original itemized Receipts	No
<b>Guest Speakers &amp; Visiting Experts</b>	<b>&lt; = \$600 and &lt; 3 days for calendar year</b>	DV	Brochure/flyer	No
	<b>&lt; \$10,000 and &lt; 14 days for calendar year</b>	DV	<b>ICON form ▼</b>	Yes
	<b>&gt;= \$10,000 and/or &gt; 14 days for calendar year</b>	REQS	<b>ICON form ▼</b>	Yes
<b>Conference Speakers &lt;= \$600/&lt;= 3 hours</b>		DV	A copy of the conference program with listings of individual sessions and speakers.	No
<b>Entertainer</b>	<b>&lt;= \$1,000</b>	DV	Performance Arrangement	No
	<b>&gt; \$1,000</b>	DV	Performance Contract	No
<b>Cooperating (Mentor) Teachers</b>		DV	Cooperating Mentor Teacher form	No
<b>NCAA Officials</b>		DV	The NCAA's letter or form	No
<b>Subject Pay</b>		DV	Provide a brief description of the program	No
<b>Royalty and Permission Fees</b>		DV	Contract, letter of agreement, invoice OR statement of distribution	No
<b>Agnese Haury Instructors</b>		DV	Include a statement confirming that all services performed by the individual are solely in the capacity of Agnese Haury Institute instructor.	No

INDEPENDENT CONTRACTOR	AMOUNT/DURATION	DOCUMENT	ATTACHMENT	ICON REQUIRED
Manuscript Reviewers	<= \$200 for calendar year	DV	ICON form ▼	Yes
	> \$200 the calendar year	REQS	ICON form ▼	Yes
Services other than those listed above provided by entities with an EIN (Employer Identification Number)		REQS	Reference EIN in REQs notepad	No
Services other than those listed above provided by entities WITHOUT an EIN		REQS	ICON Form ▼	Yes

#### 9.14 RELOCATION POLICY FOR EMPLOYEES › (/FSM/900/914)



Financial Services Office

(<http://www.fso.arizona.edu>)

888 N. Euclid Ave. Rm 502, Tucson, AZ | Phone: (520) 621-3220 | Fax: (520) 621-7078

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## **Exhibit F**

THE UNIVERSITY OF ARIZONA

FINANCIAL SERVICES OFFICE  
Procurement &  
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## Contracting FAQs

[SHOW ALL ANSWERS](#)

What standard contract forms are available through the Contracting Office?

The following is a list of forms available through our office. Click on each type of form or contact Contracting at (520) 626-3919 to obtain a fax copy of the agreement, or if you have any other questions or concerns. Please read the instructions carefully (if available) for each type of form.

- [101 Loan of Equipment](#)
- [101A Loan of Equipment](#) - Insurance required
- [101B Loan of Employee-Owned Equipment](#) - The equipment must remain in the care, custody, and control of the department
- [103 Use of Equipment for Non-University Purposes](#)
- [108 Performance Contract Over \\$1,000](#) - Contracting signature required - [Instructions](#)
- [109 Performance Arrangement Under \\$1,000](#) - Department signature required - [Instructions](#)
- [112 Loan of Art Agreement](#)
- [113 Master Rental Agreement](#) - for the temporary use of facilities by the University of Arizona
- [125 Master Hotel Agreement](#)
- [127 Agreement for the Rental of Equipment](#)
- [128 Master Agreement for Catering Services](#) - Insurance required - [Instructions](#)

NOTE: These forms can be used by your department, however they need to be sent to Contracting for signature. Keep in mind that some forms may have insurance requirements or may require you to obtain signatures from additional individuals prior to approval.

What are the standard contract language requirements?

What is the normal contract processing time line?

What are the requirements for executing a Master Agreement for Hotel Services with the University?

Where can I find information on the Catering Policy and who is an approved Catering Vendor?

FINANCIAL SERVICES OFFICE  
Procurement &  
Contracting Services[Office Information](#)[Contact](#)[Staff Directory](#) ▼

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[Admin Login](#)



## **Exhibit G**

Form #108

**PERFORMANCE CONTRACT FOR ENTERTAINERS AT UNIVERSITY EVENTS**  
(Use for compensation > \$1,000)

This Performance Contract made between The Arizona Board of Regents on behalf of The University of Arizona (hereinafter called University) and

\_\_\_\_\_ (hereinafter called Performer) for payment of \$\_\_\_\_\_ for

performance on the following date(s): \_\_\_\_\_ from (starting time): \_\_\_\_\_ to \_\_\_\_\_

(ending time). The place of performance will be \_\_\_\_\_.

Performer & Invoice Information – *Make Checks Payable to:* \_\_\_\_\_

Mailing Address: \_\_\_\_\_

SSN/Tax ID # \_\_\_\_\_

City/State: \_\_\_\_\_

Phone # \_\_\_\_\_

Zip Code: \_\_\_\_\_

Email: \_\_\_\_\_

1. **VOLUME** The University will have complete discretionary authority over the volume of said performance. Failure to comply with the volume controls will result in cancellation of the performance after two warnings.
2. **PAYMENT** If this contract is signed and returned to the University no less than two weeks before the performance date, payment will be made by University Check immediately after the performance. If this contract is returned less than two weeks before the performance date, a University Check will be mailed 10 working days after the performance.

Is the Performer a US Citizen? ☐ Yes ☐ No

Performer is hereby notified that the State of Arizona will issue an Internal Revenue Service Form 1099 from the information on this Performance contract.

3. **CANCELLATION** The performer agrees to neither consume nor possess alcohol or any illegal substance at the place of performance. Any violation of the terms of this section will result in forfeiture of payment of said performance.

Appropriate language, attire, demeanor and behavior of the Performer will be commensurate with state laws governing the normal utilization of state and public property. The University has the authority to cancel the performance or any portion thereof if the Performer fails to comply with the terms of this section after being issued one warning. In the event that a performance, or any portion thereof, is canceled under the provision of this section, the University reserves the right to withhold partial or total payment at its discretion. The University also reserves the right to withhold total payment if the Performer arrives incapable of performing on a professional level.

4. Performer agrees to assume responsibility for either injury and/or property damage, which result from the performance of Performer. Performer holds the University harmless from such injury or property damage.
5. The parties shall comply with all applicable state and federal statutes and regulations governing Equal Employment Opportunity, Non-Discrimination, and Immigration.
6. This contract is subject to cancellation pursuant to the provisions of Arizona Revised Statute § 38-511 regarding Conflict of Interest.
7. The Performer agrees to keep all books, accounts, reports, files and other records relating to this Contract for five (5) years after completion of the contract. In addition, the Performer agrees that such books, accounts, reports, files and other records shall be subject to audit pursuant to A.R.S. § 35-214.
8. If performer is an individual, is Performer a University of Arizona student with 7 units or more? ☐ Yes ☐ No
9. As required by ARS §§ 35-393 to 35-393.01, Performer certifies it is not currently engaged in a boycott of Israel and will not engage in a boycott of Israel during the term of this contract.

ARIZONA BOARD OF REGENTS ON BEHALF OF  
THE UNIVERSITY OF ARIZONA

PERFORMER

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print

\_\_\_\_\_  
Print

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

Form #108

RIDER TO PERFORMANCE ARRANGEMENT

Name Performer: \_\_\_\_\_

Performance date(s): From: \_\_\_\_\_ To: \_\_\_\_\_

Place: \_\_\_\_\_

SPECIAL PROVISIONS

ARIZONA BOARD OF REGENTS ON BEHALF OF  
THE UNIVERSITY OF ARIZONA

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print

\_\_\_\_\_  
Date

PERFORMER

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print

\_\_\_\_\_  
Date

## **Exhibit H**

**Form #109 9/2/04**  
Revised: 8/01/16

**PERFORMANCE ARRANGEMENT FOR ENTERTAINERS AT UNIVERSITY EVENTS**  
(Use for compensation < \$1,000)

This Performance Arrangement made between The Arizona Board of Regents on behalf of The University of Arizona (hereinafter called University) and \_\_\_\_\_ (hereinafter called Performer) for payment of \$\_\_\_\_\_ for performance on the following date(s):\_\_\_\_\_ from (starting time):\_\_\_\_\_ to \_\_\_\_\_ (ending time). The place of the performance will be \_\_\_\_\_.

Performer & Invoice Information – *Make Check(s) Payable to:* \_\_\_\_\_

Mailing Address: \_\_\_\_\_ SSN/Tax ID # \_\_\_\_\_

City/State: \_\_\_\_\_ Phone # \_\_\_\_\_

Zip Code: \_\_\_\_\_ Email: \_\_\_\_\_

1. **VOLUME** The University will have complete discretionary authority over the volume of said performance. Failure to comply with the volume controls will result in cancellation of the performance after two warnings.
2. **PAYMENT** If this arrangement is signed and returned to the University no less than two weeks before the performance date, payment will be made by University Check immediately after the performance. If this arrangement is returned less than two weeks before the performance date, a University Check will be mailed 10 working days after the performance.

Performer is hereby notified that the State of Arizona will issue an Internal Revenue Service Form 1099 from the information on this Performance Arrangement.

3. **CANCELLATION** The performer agrees to neither consume nor possess alcohol or any illegal substance at the place of performance. Any violation of the terms of this section will result in forfeiture of payment of said performance.

Appropriate language, attire, demeanor and behavior of the Performer will be commensurate with state laws governing the normal utilization of state and public property. The University has the authority to cancel the performance or any portion thereof if the Performer fails to comply with the terms of this section after being issued one warning. In the event that a performance, or any portion thereof, is canceled under the provision of this section, the University reserves the right to withhold partial or total payment at its discretion. The University also reserves the right to withhold total payment if the Performer arrives incapable of performing on a professional level.

4. Performer agrees to assume responsibility for either injury and/or property damage, which result from the performance of Performer. Performer holds the University harmless from such injury or property damage.
5. The parties shall comply with all applicable state and federal statutes and regulations governing Equal Employment Opportunity, Non-Discrimination, and Immigration.
6. This arrangement is subject to cancellation pursuant to the provisions of Arizona Revised Statute § 38-511 regarding Conflict of Interest.
7. The Performer agrees to keep all books, accounts, reports, files and other records relating to this Contract for five (5) years after completion of the contract. In addition, the Performer agrees that such books, accounts, reports, files and other records shall be subject to audit pursuant to A.R.S. § 35-214.
8. This arrangement is subject to cancellation pursuant to the provisions of Arizona Revised Statute § 38-511 regarding Conflict of Interest.
9. As required by ARS §§ 35-393 to 35-393.01, Performer certifies it is not currently engaged in a boycott of Israel and will not engage in a boycott of Israel during the term of this Contract.
10. If performer is an individual, is Performer a University of Arizona student with 7 units or more? Yes ☐ No ☐

THE UNIVERSITY OF ARIZONA

PERFORMER

\_\_\_\_\_  
Signature (Department Head or Designee)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

## **Exhibit I**

## CONTRACTING, PURCHASING AND RISK MANAGEMENT CONTRACTS

NAU > Contracting and Purchasing Services > Contracting > Contract Definition

### CONTRACT DEFINITION

A contract is created when there is a mutual exchange of promises upon reasonably understandable terms and conditions. A contract does not have to be reduced to writing in order to be enforceable; however, as used in this contracting website, the term contract is intended to mean a written form of communication. It is important to note that many types of documents can constitute a contract, including invoices, memoranda and quotes.

At the University there are two types of contracts that are sent to Contracting and Purchasing Services for signature, standard NAU contracts and non-standard NAU contracts. Typical standard NAU contracts are contracts for facility use, consulting and performers as well as contracts that are prepared and issued as a result of a competitive solicitation issued through Contracting and Purchasing Services. These contracts have all the terms and conditions required for compliance with state regulations. Non-standard NAU contracts are contracts that come from a vendor that NAU is required to sign in order for performance to occur. These contracts vary in scope and complexity. Common non-standard NAU contracts are for software, equipment rental, hotel accommodations, and advertising agreements. These contracts typically lack provisions required by the state and include provisions that need to be removed in order to be in compliance with state regulations.

#### ADDITIONAL RESOURCES

- [CPS Homepage](#)
- [Contracting Signature Request \(CSR\) Form](#)
- [Policies and Procedures](#)
- [Terms and Conditions](#)

NORTHERN  
ARIZONA  
UNIVERSITY



- ▶ [HOME](#)
- ▶ [BACKGROUND](#)
- ▶ [CONTRACT DEFINITION](#)
- ▶ [CONTRACT SIGNATURE AUTHORITY](#)
- ▶ [CONTRACT ROUTING](#)
- ▶ [CONTRACT RESPONSIBILITY](#)
- ▶ [MASTER CONTRACTS](#)
- ▶ [POLICY](#)
- ▶ [STAFF](#)

Contracting,  
Purchasing and Risk  
Management

NAU-Contracts@nau.edu  
928-523-4527

[More Contact Information](#)

▶ VISIT ATHLETICS SITE



#### ACADEMIC RESOURCES

Colleges and Schools  
Campus Locations  
NAU Online  
Student Advising  
Tutoring  
Library  
Registrar

#### CAMPUS RESOURCES

Maps  
Parking Services  
Counseling Services  
Campus Health Services  
Bookstore  
Events Calendar  
News  
Careers  
Central Ticket Office

#### STUDENT SERVICES

Financing Your Education  
Living on Campus  
Dining  
Paying Your Bill  
Campus Safety  
Military and Veterans  
Disability Resources  
Student Consumer Info

#### NAU COMMUNITY

Future Students  
Current Students  
Parents  
Alumni  
Faculty/Staff

**NAU ALERT!** Sign up for NAU ALERT! [f](#) [t](#) [i](#) [p](#) [o](#) [n](#) [t](#) [a](#) [c](#) [k](#) [i](#) [n](#) [g](#) [s](#) [o](#) [c](#) [i](#) [a](#) [l](#) [m](#) [e](#) [d](#) [i](#) [a](#)

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## **Exhibit J**



- ▶ HOME
- ▶ ACCOUNTS PAYABLE
- ▶ CAMPUS SHIPPING AND RECEIVING
- ▶ CAMPUS SUPPLY
- ▶ CONTRACTS
- ▶ RISK MANAGEMENT
- ▶ PROPERTY ADMINISTRATION
- ▶ PROPERTY SURPLUS
- ▶ PURCHASING

### Contracting, Purchasing and Risk Management

928-523-4557  
Fax: 928-523-1343

[More Contact Information](#)

## CONTRACTING, PURCHASING AND RISK MANAGEMENT

NAU > [Contracting and Purchasing Services](#) > [Terms-Conditions](#)

### STANDARD TERMS AND CONDITIONS

These Terms and Conditions may be updated from time to time without notice.

1. **Remedies and Applicable Law.** This Contract shall be governed by and construed in accordance with the laws of the State of Arizona. The University and Offeror shall have all remedies afforded by said law.

2. **Public Records.** The parties acknowledge that Northern Arizona University is a public entity subject to the provisions of the Arizona Public Records Laws, A.R.S. §§ 39-121 et. seq. In the event that a public records request is received by Northern Arizona University requesting records described as confidential, which Northern Arizona University determines must be disclosed, Northern Arizona University shall notify the other party prior to disclosure.

3. **Interpretation-Parol Evidence.** This writing shall be intended by the parties as a final expression of their Contract and shall be intended also as a complete and exclusive statement of the terms of their Contract. No course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any term used in this Contract. Acceptance or acquiescence in a course of performance rendered under this Contract shall 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 for objection. Whenever a term defined by the Uniform Commercial Code is used in this Contract, the definition contained in the Code is to control.

4. **Dispute Resolution.** Except as otherwise provided herein, all Contract claims and controversies arising under this Contract shall be resolved pursuant to Arizona Board of Regents procurement procedures, Section 3-809, in particular Section 3-809C.

5. **Equal Opportunity Clause.** Offeror and any subcontractor(s) shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that Offeror and any subcontractor(s) take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.

6. **Non-Discrimination.** During the performance of this Contract, the Offeror agrees not to discriminate against any employee or applicant for employment because of race, color, sex, religion, or national origin, or because he or she has a disability, or because he or she is a qualified protected veteran. The aforesaid provision shall include, but not be limited to, the following: employment, upgrading, 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 parties agree to comply with Arizona Executive Order 99-4, prohibiting discrimination in employment by government Contractors, to the extent applicable to this Contract.

7. **Family Education Rights and Privacy Act.** To the extent Offeror will have access to student educational records, this paragraph will apply. Student educational records are protected by the federal Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g. Offeror will comply with the Family Education Rights and Privacy Act and will not access or make any disclosures of the University's student educational records to third parties without prior notice to and consent from the University, or as otherwise provided by law.

8. **Health Insurance Portability and Accountability Act.** Offeror shall abide by all laws and regulations that protect the privacy of healthcare information to which Offeror obtains access under this Contract. Offeror and the University acknowledge that certain portions of the Administrative Simplification section of the Health Insurance Portability and Accountability Act of 1996, as codified at 42 U.S.C. § 1320d through d-8, and the federal privacy regulations as contained in 45 CFR Part 164 may apply to Offeror and the University, and their relationships and operation under this Contract. If necessary, Offeror and the University will enter into a standard Business Associate Agreement, and any other required Health Insurance Portability Accountability Act agreements. To the extent the terms thereof relate to Offeror's performance under this Contract, the provisions of such Business Associate Agreement shall control.

9. **Americans with Disabilities Act and Rehabilitation Act.** Offeror will comply with all applicable provisions of the Americans with Disabilities Act, the Rehabilitation Act, and all applicable federal regulations.

All electronic and information technology and products and services to be used by University faculty/staff, students, program participants, or other University constituencies must be compliant with the Americans with Disabilities Act as amended and the Rehabilitation Act. Compliance means that a disabled person can acquire the same information, engage in the same interactions, and enjoy the same services as a nondisabled person, in an equally effective and integrated manner, with substantially equivalent ease of use.

9.1. **Electronic and Information Technology.** Any acquisition considered electronic and information technology "EIT" as defined by the Access Board at 36 CFR 1194.4 and in the FAR at 2.101 must comply with Section 508 (36 CFR Part 1194) and requires the submission of a completed Voluntary Product Accessibility Template "VPAT" so that the University may ascertain conformance. Offers without a completed VPAT may be disqualified from competition.

9.1.1. EIT is information technology "IT" and any equipment or interconnected system or subsystem of equipment that is used in the creation, conversion, or duplication of data or information. EIT includes, but is not limited to:

9.1.1.1. telecommunication products, such as telephones;

9.1.1.2. information kiosks and transaction

#### RESOURCES

- [Bid Boards](#)
- [Department Forms](#)
- [Policies and Procedures](#)
- [Terms and Conditions](#)
- [Training](#)

machines;  
 9.1.1.3. World Wide Web sites;  
 9.1.1.4. information kiosks and transaction machines;  
 9.1.1.5. multimedia (including videotapes); and  
 9.1.1.6. office equipment, such as copiers and fax machines.

9.1.2. The University reserves the right to perform real-world testing of a product or service to validate Offeror's claims regarding Section 508 conformance. To facilitate testing Offeror will, upon request, provide the University with access to the product being considered for purchase for a period of at least thirty (30) calendar days.

9.2. **Services and Products.** An accessible service or product is one that can be used by as many people as possible, taking into account their physical, cognitive, emotional, and sensory differences.

9.2.1. Services provided include, but are not limited to:

- 9.2.1.1. education and training;
- 9.2.1.2. cultural and athletic events;
- 9.2.1.3. vehicle rentals;
- 9.2.1.4. event space and lodging; and
- 9.2.1.5. parking and transportation.

9.2.2. Products include, but are not limited to:

- 9.2.2.1. instructional materials;
- 9.2.2.2. office equipment;
- 9.2.2.3. office and classroom furniture; and
- 9.2.2.4. kiosks.

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

11. **Labor Disputes.** Offeror shall give prompt notice to the University of any actual or potential labor dispute which delays or may delay performance of this Contract.

12. **Force Majeure.** Neither party shall be held responsible for any losses resulting if the fulfillment of any terms or provisions of this Contract are delayed or prevented by any cause not within the control of the party whose performance is interfered with, and which by the exercise of reasonable diligence, said party is unable to prevent.

13. **No Waiver.** No waiver by the University of any breach of the provisions of this Contract by the Offeror shall in any way be construed to be a waiver of any future breach or bar the University's right to insist on strict performance of the provisions of the Contract.

14. **Modifications.** This Contract shall be modified or rescinded only by a writing signed by both parties or their duly authorized agents.

15. **Assignment-Delegation.** No right or interest in this Contract shall be assigned or delegation of any obligation made by Offeror without the written permission of the University. Any attempted assignment or delegation by Offeror shall be wholly void and totally ineffective for all purposes unless made in conformity with this paragraph.

16. **Assignment of Anti-Trust Overcharge Claims.** The parties recognize that in actual economic practice overcharges resulting from anti-trust violations are in fact borne by the ultimate purchaser; therefore, Offeror hereby assigns to the Arizona Board of Regents any and all claims for such overcharges.

17. **Cancellation for Lack of Funding.** This Contract may be canceled without any further obligation on the part of the Arizona Board of Regents and Northern Arizona University in the event that sufficient appropriated funding is unavailable to assure full performance of the terms. The Offeror shall be notified in writing of such non-appropriation at the earliest opportunity.

18. **Cancellation of State Contract.** In accordance with A.R.S. §38-511, this Contract may be canceled without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting, or creating the Contract on behalf of the University shall, at anytime while the Contract or any extension of the Contract shall be in effect, be an employee of any other party to the Contract in any capacity or a consultant to any other party of the Contract with respect to the subject matter of the Contract.

19. **Cancellation for Conflict of Interest.** The parties agree that this Contract may be canceled for conflict of interest in accordance with A.R.S. §38-511.

20. **Termination.** The University may by written notice, stating the extent and effective date, terminate this Contract for convenience in whole or in part, at any time. The University shall pay the Offeror as full compensation for performance until such termination: (1) the unit or pro rata Contract price for the delivered and accepted portion; and (2) a reasonable amount, not otherwise recoverable from other sources by the Offeror as approved by the University, with respect to the undelivered or unacceptable portion of this Contract, provided compensation hereunder shall in no event exceed the total Contract price.



21. **Termination for Default.** In the event that the Offeror shall fail to maintain or keep in compliance with the conditions of this Contract, the University may notify the Offeror in writing of such failure and demand that the same be remedied within ten (10) days. Should the Offeror fail to remedy the same within said period, the University shall then have the right to terminate this Contract.

22. **Insolvency.** The University shall have the right to terminate this Contract at any time in the event the Offeror files a petition in bankruptcy, or is adjudicated bankrupt, or if a petition in bankruptcy is filed against the Offeror and not discharged within thirty (30) days; or if the Offeror becomes insolvent or makes an assignment for the benefit of its creditors or an arrangement pursuant to any bankruptcy law; or if a receiver is appointed for the Offeror or its business.

23. **Anti-Kickback.** In compliance with FAR 52.203-7, the University has in place and follows procedures designed to prevent and detect violations of the Anti-Kickback Act of 1986 in its operation and direct business relationships.

24. **Gratuities.** The University may, by written notice to the Offeror, cancel this Contract if it is found by the University that gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Offeror, or any agent or representative of the Offeror, to any officer or employee of the State of Arizona with a view toward securing a Contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing of such Contract. In the event this Contract is canceled by the University pursuant to this provision, the University shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by Offeror in providing such gratuities.

25. **Byrd Anti-Lobbying Amendment (31 U.S.C. 1352).** Offerors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining and Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

26. **Inspection and Audit.** All books, accounts, reports, files, and other records relating to this Contract shall be subject at all reasonable times to inspection and audit by the Arizona Board of Regents, Northern Arizona University, or the Auditor General of the State of Arizona, or their agents for five (5) years after completion of this Contract. Such records shall be produced at Northern Arizona University, or such other location as designated by Northern Arizona University, upon reasonable notice to the contracting party.

27. **Insurance Requirements.** Without limiting any liabilities or any other obligations of Offeror, Offeror shall provide and maintain the minimum insurance coverage listed below unless otherwise agreed to in writing. Coverage shall be provided with forms and insurers acceptable to the University, until all obligations under the Contract shall be satisfied. An acceptable insurance company shall be authorized to conduct business in the State of Arizona and shall be rated at least A-, VII by A.M. Best, Inc. If applicable, Worker's Compensation insurance coverage for all employees which meets Arizona statutory benefits; including Employer's Liability with minimum limits of \$500,000 each accident, \$500,000 each employee/disease, and \$1,000,000 policy limits/disease. The University shall not require an additional insured endorsement, however, the policy shall include an endorsement for All State coverage for the State of Arizona.

If designated as a Sole Proprietor with no employees, the State of Arizona (ARS 23-901, ARS 23-961a) requires submittal of a written Sole Proprietor Waiver. The waiver document is Form #spw/1 and can found at [http://www.azrisk.state.az.us/userfiles/file/insurance/Sole%20Proprietor%20Form%20Rev\\_11-01-2012.pdf](http://www.azrisk.state.az.us/userfiles/file/insurance/Sole%20Proprietor%20Form%20Rev_11-01-2012.pdf)

Comprehensive General Liability insurance with a minimum combined single limit (CSL) each occurrence of ONE MILLION DOLLARS (\$1,000,000) and TWO MILLION DOLLARS (\$2,000,000) general aggregate. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for Contractual and employee acts), blank Contractual liability, products, and completed operations, this coverage shall extend for year one past acceptance, cancellation, or termination of the services or work defined in the Contract; Fire Legal Liability; Liquor Liability (if applicable).

Comprehensive Automobile Liability insurance with a combined single limit (CSL) for bodily injury, death, or property damage of not less than ONE MILLION DOLLARS (\$1,000,000) with respect to "any auto" or Offeror's "scheduled, owned, hired, or non-owned vehicles," assigned to or used in performance of the Services.

If applicable, Professional Liability with minimum limits of ONE MILLION DOLLARS (\$1,000,000) each claim (or each wrongful act), and THREE MILLION DOLLARS (\$3,000,000) aggregate with a retroactive liability date (if applicable to claims-made coverage) the same as the effective date of the Contract. The policy shall cover professional misconduct or lack of ordinary skill for those positions defined in the Scope of Work of the Contract and and, at the discretion of the State of Arizona, the Arizona Board of Regents, and Northern Arizona University, shall include one of the following types of Professional Liability policies: Directors or Officers, Errors and Omissions, Medical Malpractice, Druggists Professional, Architects/Engineers Professional, Lawyers Professional, Teachers Professional, Accountants Professional, and Other (specify professions from Scope of Work). The policy shall contain an Extended Claim Reporting Provision of not less than one year following termination of the policy.

Waiver of Subrogation: Policy shall contain a waiver of subrogation against the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor. The waiver of subrogation applies to Commercial General Liability, Commercial Auto Liability, Professional Liability, and Workers' Compensation.

If applicable, Builder's Risk coverage in an amount that represents the project's estimated completed value.

The policies required herein shall be endorsed to include the State of Arizona, the Arizona Board of Regents, and Northern Arizona University as additional insured.

The policies required herein shall stipulate that the insurance afforded Offeror shall be primary insurance and that any insurance carried by the State of Arizona, the Arizona Board of Regents, and Northern Arizona University, shall be excess and not contributory insurance to that provided by the named insured.

Coverage afforded under these policies shall not be canceled, terminated, or materially altered until thirty (30) days prior written notice has been given to the University.

A certificate of insurance acceptable to the University shall be issued to the University as evidence that policies providing the required coverage's, conditions, and limits are in full force and effect. An acceptable certificate shall include statements indicating compliance with the requirements listed above, a statement describing the Offeror's activity/property/Contract with Northern Arizona University, shall be countersigned by an authorized representative of the issuing insurance company, and list Northern Arizona University as the certificate holder.

Offeror shall provide the University with an acceptable Certificate of Insurance prior to the commencement of providing the goods/services defined in the Contract.

Failure on the part of Offeror to meet these requirements shall constitute a material breach upon which the State of Arizona, the Arizona Board of Regents, and the University may immediately terminate the Contract, or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, and all monies so paid by the State of Arizona, the Arizona Board of Regents, and the University shall be repaid by Offeror to the University upon demand, or the State of Arizona, the Arizona Board of Regents, and the University may offset the cost of the premiums against any monies due to Offeror.

Costs for coverage's broader than those required or for limits in excess of those required shall not be charged to the State of Arizona, the Arizona Board of Regents, and Northern Arizona University.

The University reserves the right to request and receive certified copies of any or all of the above policies and/or endorsements within ten (10) calendar days of Contract signature.

The Offeror and its insurers providing the required coverage's shall waive all rights of recovery against the State of Arizona, the Arizona Board of Regents, and the University, their agents, officials, and employees.

The Certificate of Insurance shall be mailed to:

Northern Arizona University  
Purchasing Services  
RE:  
PO Box 4124  
Flagstaff, AZ 86011

**28. Asbestos Notification and Confirmation.** All buildings on the campus of Northern Arizona University have been tested by a certified testing agency to determine the presence of asbestos containing building materials (ACBM's) and presumed asbestos containing materials (PACM's). The test confirms the presence of ACBM's in several campus buildings. The test results are documented and on file with the University's Environmental Health and Safety Department and shall be available for review by contacting Gerald Bacon, Asbestos Program Coordinator, at 928-523-6435. Renovation/Construction/Removal and/or Installation services that may impact/disturb asbestos containing building materials (ACBM's) or presumed asbestos containing materials (PACM's) shall require Offeror to complete, sign, and submit to the University Form FSP13: Contractor Notification and Confirmation for Asbestos Containing Building Materials. No work shall commence prior to Offeror receiving an Asbestos Survey Results and Work Authorization with appropriate University signatures.

**29. Package Goods.** Offeror shall package goods in accordance with good commercial practice. Each shipping container shall be clearly and permanently marked as follows: (a) Offeror's name and address; (b) University's name, address and purchase order number; (c) Container number and total number of containers, e.g., box 1 of 4 boxes; and (d) The number of the container bearing the packing slip. Offeror shall bear cost of packaging unless otherwise provided.

**30. Shipment Under Reservation Prohibited.** Offeror shall not be authorized to ship the goods under reservation and no tender of a bill of lading shall operate as a tender of the goods.

**31. Liens.** All goods delivered and labor performed under this Contract shall be free of all liens and, if the University requests, a formal release of all liens shall be delivered to the University.

**32. No Replacement of Defective Tender.** Every tender of goods shall fully comply with all provisions of this Contract as to time of delivery, quantity, quality, and the like. If a tender is made which does not fully conform, this shall constitute a breach and Offeror shall not have the right to substitute a conforming tender.

**33. Title and Risk of Loss.** The title and risk of loss of the goods shall not pass to the University until the University actually receives the goods at the point(s) of delivery. Prices shall be F.O.B. Destination. Offeror shall retain title and control of all goods until they are delivered, received and the Contract of coverage has been completed. All risk of transportation and all related charges shall be the responsibility of the Offeror. The Offeror shall file all claims for visible and concealed damage. The University shall notify the Offeror promptly of any damaged goods and shall assist the Offeror in arranging for inspection. Notice of rejection may be made to the Offeror at any time within one month after delivery has been made. When supported by a written statement from the University, the Offeror shall not dispute its claims of damage.

**34. Right of Inspection.** The University shall have the right to inspect the goods at delivery before accepting them.



35. **Warranties.** In addition to any implied warranties, Offeror warrants that the goods furnished hereunder conform to the specifications, drawings, and description listed herein, and to the sample or samples furnished by the Offeror, if any. In the event of a conflict between the specifications, drawings, and description, the specifications shall govern.

36. **Sales and Use Tax.** The Offeror shall comply with and require all of his subcontractors to comply with all the provisions of the applicable state and sales excise tax law and compensation use tax law and all amendments to same. The Offeror further agrees to indemnify and save harmless the University, of and from any and all claims and demands made against it by virtue of the failure of the Offeror or any subcontractor to comply with the provisions of any or all said laws in amendments. The University is not exempt from state sales excise tax and compensation use tax.

37. **Furnish and Install.** The items in this Contract shall be provided on an Offeror furnish and install basis. Offeror shall have complete responsibility for the items or products until they are in place and working. Any special installation preparation and requirements shall be submitted to the University. All transportation and coordination arrangements shall be the responsibility of the Offeror. Delivery of products shall be coordinated so that products shall be delivered direct to the installation site. This shall minimize the risk of loss and/or damage and shall avoid double handling.

38. **Changes.** Within the limits allowed by law, Offeror agrees that the University may order additional services, or make changes by altering, adding to, or deducting from the proposed services, the Contract sum being adjusted accordingly, and Offeror shall enter into a modification of the Contract to reflect said changes.

39. **Installment Payment Contract.** The University is precluded from entering into an Installment Contract unless such Contract can be canceled for non-allocation of funds at the end of any fiscal year, at no penalty to the University. If funds shall not be allocated for this Contract for periodic payment in any future annual fiscal period, following the University's formal request for funds, the University shall not be obligated to pay the net remainder of agreed to consecutive periodic payments remaining unpaid beyond the end of the then current fiscal year. The University agrees to notify the Offeror of such non-allocation at the earliest possible time. No penalty shall accrue to the University in the event this provision shall be exercised. This provision shall not be construed so as to permit the University to terminate this Contract in order to acquire similar goods and/or services from another party.

40. **Price Adjustment.** Price changes shall only be considered at the end of one Contract period and the beginning of another. Price change requests shall be supported by evidence of increased costs to the Offeror. The University shall not approve price increases that shall merely increase the gross profitability of the Offeror at the expense of the University. Price change requests shall be a factor in the Contract extension review process. The University shall determine whether the requested price increase or an alternate option shall be in the best interest of the University.

41. **Fixed Escalation Clause.** Offeror shall certify a fixed maximum percentage of escalation of costs of goods and/or services for a period of five (5) years following expiration of warranty. Cost shall not exceed five (5) % per year or Consumer Price Index (CPI), whichever is less.

42. **Invoices.** Invoices covering each delivery shall be mailed to Accounts Payable once a month. Invoices shall be for all items delivered within the month. The intent shall be to receive one (1) monthly billing. All invoices shall reference the purchase order number and the Contract.

43. **Payment.** Payment shall be subject to the provisions of Title 35 of Arizona Revised Statutes relating to time and manner of submission of claims. The University's obligation shall be payable only and solely from funds appropriated for the purpose of the Contract.

44. **Debarment and Suspension.** Recipients shall fully comply with the requirements stipulated in Subpart C of 45 CFR 620, entitled "Responsibilities of Participants Regarding Transactions". The recipient is responsible for ensuring that any lower tier covered transaction, as described in Subpart B of 45 CFR 620, entitled "Covered Transactions", includes a term or condition requiring compliance with Subpart C. The recipient also is responsible for further requiring the inclusion of a similar term or condition in any subsequent lower tier covered transaction. The recipient acknowledges that failing to disclose the information required under 45 CFR 620.335 may result in the termination of the award, or pursuance of other available remedies, including suspension and debarment. Recipients may access the Excluded Parties List System at <https://www.sam.gov>.

45. **Rights to Inventions Made Under a Contract or Agreement.** Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

46. **Personnel.** Employees of the Offeror assigned to the project and identified by name in the Contract shall remain dedicated to this project. Personnel changes shall be permitted only with prior notification and approval of the University.

47. **Independent Contractor.** It shall be understood that Offeror shall operate as an Independent Contractor, not as an employee or agent of the University.

48. **Service Marks and Trademarks.** For purposes of this provision, the phrase "NAU Mark" means any trade name, trademark, service mark, logo, domain name, and any other distinctive brand feature owned or used by the University. Offeror agrees to comply with the University's trademark licensing program

concerning any use or proposed use by Offeror of any of NAU Mark on goods, in relation to services, and in connection with advertisements or promotion of Offeror or its business. Except as expressly authorized in this Agreement, Offeror is not permitted to use any NAU Mark without prior written approval of the University. Prior to any use of an NAU Mark by Offeror or its affiliates or successors or assigns, Offeror will comply with NAU's Licensing Policy <http://nau.edu/licensing>.

**49. Advertising/Publishing.** Offeror shall not advertise or publish, without the University's prior consent, the fact that the University had entered into this Contract, except to the extent necessary to comply with proper request for information provided by appropriate statutes.

**50. Legal Workers.** Pursuant to ARS §41-4401 the University is prohibited after September 30, 2008 from awarding a Contract to any Offeror who fails, or whose subcontractors fail, to comply with ARS § 23-214-A. Offeror warrants that it complies fully with all federal immigration laws and regulations that relate to its employees, that it shall verify, through the U.S. Department of Homeland Security's E-Verify program, the employment eligibility of each employee hired after December 31, 2007, and that it shall require its subcontractors and sub-subcontractors to provide the same warranties to the Offeror. Offeror acknowledges that a breach of this warranty by Offeror or by any subcontractor or sub-subcontractor under this Contract shall be deemed a material breach of this Contract, and is grounds for penalties, including termination of this Contract, by the University. The University retains the right to inspect the records of any Offeror, subcontractor and sub-subcontractor employee who performs work under this Contract, and to conduct random verification of the employment records of the Offeror and any subcontractor and sub-subcontractor who works on this Contract, to ensure that the Offeror and each subcontractor and sub-subcontractor is complying with the warranties set forth above. The portion of this provision dealing with the Offeror's warranty is not applicable where the Offeror is a governmental entity nor is the Offeror required to pass this provision through to subcontractors and sub-subcontractors who are governmental entities.

**51. Data Ownership.** Northern Arizona University will own, or retain all of its rights in, all data and information that Northern Arizona University provides to Offeror, as well as all data managed by Offeror on behalf of Northern Arizona University, including all output, reports, analyses, and other materials relating to or generated by the services, even if generated by Offeror, as well as all data collected, extracted, or received through Northern Arizona University's or Offeror's use of the services or deliverables (collectively, the "Northern Arizona University Data"). The Northern Arizona University Data shall be considered Northern Arizona University's confidential information. Offeror shall not use, access, disclose, or license or provide to third parties, any Northern Arizona University Data, or any materials derived therefrom, except, in each case, as authorized in writing by Northern Arizona University. Without limiting the generality of the foregoing, Offeror may not use any Northern Arizona University Data, whether or not aggregated or de-identified, for product development, marketing, profiling, benchmarking, or product demonstrations, without, in each case, Northern Arizona University's prior written consent.

**52. Non-Disclosure and Trade Secrets.** Offeror may receive (or has received) from the University and otherwise be exposed to confidential and proprietary information relating to the University's business practices, strategies and technologies, NAU Data as well as confidential information to the University necessary to perform the services and/or provide the deliverables (collectively, NAU Confidential Information). The University's confidential information may include, but not limited to, confidential and proprietary information supplied to the Offeror with the legend "NAU Confidential and Proprietary" or other designations of confidentiality. As between the Offeror and the University, the NAU Confidential Information is the sole, exclusive, and valuable property of the University. Accordingly, Offeror will not reproduce or otherwise use any of the NAU Confidential Information except in the performance of the Services or the provision of the Deliverables and will not disclose any of the NAU Confidential Information in any form to any third party, either during or after the Term, except with the University's prior written consent. Upon termination of the Contract, Offeror will cease using and will return to the University, all originals and all copies of the NAU Confidential Information, in all forms and media, in Offeror's possession or under Offeror's control. In addition, Offeror will not disclose or otherwise make available to the University any confidential information of the Offeror or received by contractor from any third party. Offeror will have no obligation to maintain as confidential any NAU Confidential Information (other than NAU Data) that Offeror can show: (i) was already lawfully in the possession of or known by Offeror before receipt from the University; (ii) is or becomes generally known in the industry through no violation of the contract or any other agreement between the parties; (iii) is lawfully received by the Offeror from a third party without restriction on disclosure or use; (iv) is required to be disclosed by court order following notice to the University sufficient to allow the University to contest such order; or (v) is approved in writing by the University for release or other use by Offeror.

**53. Payment Card Industry Data Security Standard.** For e-commerce business and/or credit card transactions, Offeror agrees to be bound by the requirements and terms of the Rules of all applicable Card Associations, as amended from time to time and be solely responsible for security and maintaining confidentiality of Card transactions processed by means of electronic commerce up to the point of receipt of such transactions by Bank. Offeror is required to be in compliance with the current or successor standard for Payment Card Industry Data Security Standard "PCI DSS", Payment Application Data Security Standard "PA DSS" for software and PIN Transaction Security "PCI PTS" for hardware and provide attestation of compliance annually. The technical solution must include the following:

53.1. Offeror maintains their own network operating on their own dedicated infrastructure. Offeror's network includes a firewall that includes access control rules that separate Offeror's PCI network from the University and restricts any communication between Offeror's network devices and the University systems.  
53.2. Offeror treats the University network as an untrusted network and encrypts all cardholder data traversing the University network using industry standard encryption algorithms.  
53.3. A system where the University has no ability to decrypt cardholder data.  
53.4. Devices must be Secure Reading and Exchange of Data "SRED" and PTS 3.x compliant. Europay, MasterCard and Visa "EMV" compliance is required by October 1, 2015.

**54. Weapons.** The University prohibits the use, possession, display, or storage of any weapon, explosive device, or fireworks on all land and buildings owned, leased, or under the control of the University or its affiliated or related entities, in all University residential facilities (whether managed by the University or another entity), in all University vehicles and at all University or University-



affiliates sponsored events and activities, except as provided in §12-781 of the Arizona Revised Statutes or unless written permission is given by the NAU Police Department. Notification by Offerors to all persons or entities who are employees of Offeror or agents of Offeror is required. Offeror agrees to enforce the licenses of Offeror "Offeror Parties" of this policy is a condition and requirement of the Contract. Offeror further agrees to enforce this contractual requirement against all Offeror Parties.

55. **Tobacco Free.** The University recognizes that tobacco use is a public health hazard and is dedicated to providing a healthy, comfortable and productive living, learning and working environment. Beginning July 1, 2016 the use of all tobacco products, including those not approved by the FDA for cessation is prohibited on university property, facilities, grounds, parking structures, university-owned vehicles and structures owned or leased by the University. This includes, but is not limited to, the use of cigarettes, e-cigarettes, hookah, e-hookah, chew, dip, snuff, cigars, pipes, vaporizers, etc. For additional information, go to <http://nau.edu/Tobacco-Free/Policy/>.

56. **Participation in Boycott of Israel.** Pursuant to Arizona Revised Statute §§ 35-393 and 35-393.01, Offeror certifies that it is not currently engaged in and agrees, for the duration of the Contract, to not engage in a Boycott of Israel.

57. **Essence of Time.** Time shall be of the essence as to matters contemplated by this Agreement.

## GOVERNMENT SUBCONTRACT PROVISIONS

If this order is a subcontract under a U.S. government prime contract, the clauses contained in the following paragraphs of the Federal Procurement Regulations (FPR) or the Armed Services Procurement Regulations (ASPR) are incorporated herein by reference. For the purpose of this Purchase Order in the following clauses, the terms "Government" and "Contracting Officer" shall mean Buyer; the term "Contract" shall mean this order and the term "Contractor" shall mean Seller. Each regulation contains criteria for determining applicability of the regulation to a particular contract.

### Provisions Under Government Contract

For purchases funded with Federal Government Contract funds, the following provisions of the Federal Acquisition Regulations (FAR) apply as applicable.

#### FAR CIT. TITLE

52.202-1 Definitions 52.202-3 Gratuities  
52.203-5 Covenant Against Contingent Fees  
52.203-6 Restrictions on Subcontractor Sales to the Government (over \$100,000, except for commercial terms)  
52.203-7 Anti-Kickback Procedures (over \$100,000, except for commercial items)  
52.203-12 Limitation on Payments to Influence Certain Federal Transactions  
52.209-6 Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended or Proposed for Debarment  
52.211-15 Defense Priority and Allocation Requirements  
52.212-13 Stop Work Order, Alternate I  
52.214-27 Price Reduction For Defective Cost or Pricing Data  
52.215-1 Examination of Records by Comptroller General  
52.215-2 Audit-Negotiation and Records Negotiation  
52.215-12 Subcontractor Cost or Pricing Data (over \$650,000, except for commercial items)  
52.215-13 Subcontractor Cost or Pricing Data - Modifications  
52.215-14 Integrity of Unit Prices (over \$100,000 except for construction and commercial items)  
52.217-1 Limitation of Price and Contractors Obligations  
52.219-8 Utilization of Small Business Concerns  
52.219-9 Small Business Subcontracting Plan (over \$550,000)  
52.222-1 Notice to the Government of Labor Disputes  
52.222-4 Contract Work Hours and Safety Standards Act Overtime Compensation  
52.222-6 Davis-Bacon Act  
52.222-20 Walsh Healey Public Contracts Act  
52.222-21 Prohibition of Segregated Facilities  
52.222-25 Affirmative Action Compliance  
52.222-26 Equal Opportunity  
52.222-35 Affirmative Action for Special Disabled Veterans, Veterans of the Vietnam Era and other Eligible Veterans (over \$25,000)  
52.222-36 Affirmative Action for Workers with Disabilities (over \$10,000)  
52.222-37 Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era and other Eligible Veterans (over \$25,000)  
52.222-39 Notification of Employee Rights Concerning Payment of Union Dues or Fees (over \$100,000)  
52.222-41 Service Contract Act of 1965, as Amended  
52.222-50 Combating Trafficking in Persons (services only)  
52.223-3 Hazardous Material Identification and Material Safety Data  
52.223-6 Drug-Free Workplace  
52.225-1 Buy American Act - Supplies  
52.225-13 Restrictions on Certain Foreign Purchases  
52.227-1 Authorization and Consent (Alt I in all R&D) (over \$100,000)  
52.227-2 Notice and Assistance Regarding Patent and Copyright Infringement (over \$100,000)  
52.227-3 Patent Indemnity  
52.227-11 Patent Rights - Retention by the Contractor (Short Form) (except for Commercial Items)  
52.227-12 Patent Rights - Retention by the Contractor (Long Form) (except for Commercial Items)  
52.227-13 Patent Rights - Acquisition by the Government (except for Commercial Items)  
52.227-14 Rights in Data - General  
52.233-1 Disputes  
52.242-1 Notice of Intent to Disallow Costs  
52.242-15 Stop-work order  
52.243-1 Changes - Fixed Price (43.205 (a) (1) Alts may apply)  
52.243-2 Changes - Cost Reimbursement (43.205 (b) (1) Alts may apply)  
52.244-2 Subcontracts  
52.244-5 Competition in Subcontracting  
52.244-6 Subcontracts for Commercial Items  
52.245-2 Government Property - FFP  
52.245-5 Government Property - Cost (Alt I for nonprofit)  
52.246-15 Certificate of Conformance

52.247-63 Preference for U.S. Flag Air Carriers  
 52.247-64 Preference for U.S. Flag Commercial Vessels  
 52.249-2 Termination for the Convenience of the Government (Federal and  
 52.249-5 Termination for the Convenience of the Government (Educational and  
 Other Nonprofit Institutions)  
 52.249-14 Excusable Delays  
 52.252-2 Clauses Incorporated by Reference

#### DFAR CIT. TITLE

252.203-7001 Prohibition on Persons convicted of Fraud or Other Defense  
 Contracted-Related Felonies  
 252.222-7000 Restrictions on Employment of Personnel  
 252.225-7000 Buy American Act and Balance of Payments program  
 252.227-7013 Rights in Technical Data and Computer Software  
 252.227-7016 Rights in Bid or Proposal Information  
 252.227-7018 Rights in Noncommercial Technical Data and Computer Software  
 252.227-7019 Validation of Asserted Restrictions - Computer Software  
 252.227-7037 Validation Technical Data  
 252.243-7001 Pricing of Contract Modifications  
 252.244-7000 Subcontracts for Commercial Items and Commercial Components

[VISIT ATHLETICS SITE](#)



#### NAU COMMUNITY

Future Students  
 Current Students  
 Parents  
 Alumni  
 Faculty/Staff

#### STUDENT SERVICES

Financing Your Education  
 Living on Campus  
 Dining  
 Paying Your Bill  
 Campus Safety  
 Military and Veterans  
 Disability Resources  
 Student Consumer Info

#### CAMPUS RESOURCES

Maps  
 Parking Services  
 Counseling Services  
 Campus Health Services  
 Bookstore  
 Events Calendar  
 News  
 Careers  
 Central Ticket Office

#### ACADEMIC RESOURCES

Colleges and Schools  
 Campus Locations  
 NAU Online  
 Student Advising  
 Tutoring  
 Library  
 Registrar



Sign up for NAU ALERT

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## **Exhibit K**

## Gadeir Abbas

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**From:** Lisa Loo <lisaloo@asu.edu>  
**Sent:** Wednesday, March 28, 2018 2:55 PM  
**To:** Gadeir Abbas; Ensign, Drew; Carolyn Homer; Lena F. Masri, Esq.; raees@kellywarnerlaw.com  
**Cc:** Nancy Tribbensee; Jose Cardenas (General Counsel); Roysden, Beau; Skinner, OH  
**Subject:** RE: Speakers' Agreements Executed  
**Attachments:** Fully Executed Speaker Agreement - Taher Herzallah.pdf; Fully Executed Speaker Agreement - Hatem Bazian.pdf

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

Thanks Gadeir.

We had the proper authority for ASU sign the speaker's agreements. Your PDFs only contained pages 1 and 4 of the agreements so I've attached a complete set of both speakers' agreements, including pages 2 and 3.

We look forward to the April 3<sup>rd</sup> event.

Thanks,  
Lisa

---

**From:** Gadeir Abbas [mailto:gAbbas@cair.com]  
**Sent:** Monday, March 26, 2018 8:16 PM  
**To:** Ensign, Drew <Drew.Ensign@azag.gov>; Carolyn Homer <CHomer@cair.com>; Lena F. Masri, Esq. <lmasri@cair.com>; raees@kellywarnerlaw.com  
**Cc:** Nancy Tribbensee <Nancy.Tribbensee@azregents.edu>; Jose Cardenas (General Counsel) <jcardenas@asu.edu>; Lisa Loo <lisaloo@asu.edu>; Roysden, Beau <Beau.Roysden@azag.gov>; Skinner, OH <O.H.Skinner@azag.gov>; Gadeir Abbas <gAbbas@cair.com>  
**Subject:** Speakers' Agreements Executed

All,

Please find Hatem's and AMP's executed speaker agreements attached to this email.

Regards,

Gadeir Abbas, Esq.  
**Senior Litigation Attorney**

  
**Council on American-Islamic Relations**  
453 New Jersey Ave, SE  
Washington, DC 20003  
Tel: 202.742.6420 Fax: 202.488.0833

Dir: 202.640.4935 Cell: 720.251.0425

[www.cair.com](http://www.cair.com)

Licensed to practice in VA, not in DC.  
Practice limited to federal matters.

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---

**From:** Gadeir Abbas

**Sent:** Wednesday, March 21, 2018 12:40 PM

**To:** 'Ensign, Drew' <[Drew.Ensign@azag.gov](mailto:Drew.Ensign@azag.gov)>; Carolyn Homer <[cHomer@cair.com](mailto:cHomer@cair.com)>; Lena F. Masri, Esq. <[lmagri@cair.com](mailto:lmagri@cair.com)>; [raees@kellywarnerlaw.com](mailto:raees@kellywarnerlaw.com)

**Cc:** 'Nancy Tribbensee' <[Nancy.Tribbensee@azregents.edu](mailto:Nancy.Tribbensee@azregents.edu)>; 'Jose Cardenas (General Counsel)' <[jcardenas@asu.edu](mailto:jcardenas@asu.edu)>; 'Lisa Loo' <[lisaloo@asu.edu](mailto:lisaloo@asu.edu)>; Roysden, Beau <[Beau.Roysden@azag.gov](mailto:Beau.Roysden@azag.gov)>; Skinner, OH <[O.H.Skinner@azag.gov](mailto:O.H.Skinner@azag.gov)>

**Subject:** RE: AMP v. ASU Proposed Briefing Schedule

Thanks Drew. You have our consent to file.

Gadeir Abbas, Esq.  
**Senior Litigation Attorney**



Licensed to practice in VA, not in DC.  
Practice limited to federal matters.

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---

**From:** Ensign, Drew [<mailto:Drew.Ensign@azag.gov>]

**Sent:** Wednesday, March 21, 2018 11:47 AM

**To:** Gadeir Abbas <[gAbbas@cair.com](mailto:gAbbas@cair.com)>; Carolyn Homer <[cHomer@cair.com](mailto:cHomer@cair.com)>; Lena F. Masri, Esq. <[lmagri@cair.com](mailto:lmagri@cair.com)>; [raees@kellywarnerlaw.com](mailto:raees@kellywarnerlaw.com)

**Cc:** 'Nancy Tribbensee' <[Nancy.Tribbensee@azregents.edu](mailto:Nancy.Tribbensee@azregents.edu)>; 'Jose Cardenas (General Counsel)' <[jcardenas@asu.edu](mailto:jcardenas@asu.edu)>;

'Lisa Loo' <[lisaloo@asu.edu](mailto:lisaloo@asu.edu)>; Roysden, Beau <[Beau.Roysden@azag.gov](mailto:Beau.Roysden@azag.gov)>; Skinner, OH <[O.H.Skinner@azag.gov](mailto:O.H.Skinner@azag.gov)>

**Subject:** RE: AMP v. ASU Proposed Briefing Schedule

Thanks, Gadeir. Those dates work for us. Here is a proposed joint motion and proposed order that would implement that. Please let us know if you have any edits or questions, and if we have your consent to file. Because our briefs would otherwise be due Monday, we would like to get this on file today. (We also appreciate the heads up on the potential summary judgment motion.)

Drew

---

**From:** Gadeir Abbas [<mailto:gAbbas@cair.com>]

**Sent:** Wednesday, March 21, 2018 7:06 AM

**To:** Ensign, Drew; Carolyn Homer; Lena F. Masri, Esq.; [raees@kellywarnerlaw.com](mailto:raees@kellywarnerlaw.com)

**Cc:** 'Nancy Tribbensee'; 'Jose Cardenas (General Counsel)'; 'Lisa Loo'; Roysden, Beau; Skinner, OH

**Subject:** Re: AMP v. ASU Proposed Briefing Schedule

Hi Drew,

April 10th for your due date works. 30 days for our response works (though we are likely to file early). Could we do 24 days from when we file our response for your reply?

We're also flagging the possibility that we'll file for summary judgment. We're not ready to make that call now, but I wanted to let you know that we're contemplating it.

Regards,

Gadeir Abbas, Esq.

**Senior Litigation Attorney**



453 New Jersey Ave, SE

Washington, DC 20003

Tel: 202.742.6420 Fax: 202.488.0833

Dir: 202.640.4935 Cell: 720.251.0425

[www.cair.com](http://www.cair.com)

**From:** Ensign, Drew <[Drew.Ensign@azag.gov](mailto:Drew.Ensign@azag.gov)>  
**Sent:** Monday, March 19, 2018 4:48:41 PM  
**To:** Gadeir Abbas; Carolyn Homer; Lena F. Masri, Esq.; [raees@kellywarnerlaw.com](mailto:raees@kellywarnerlaw.com)  
**Cc:** 'Nancy Tribbensee'; 'Jose Cardenas (General Counsel)'; 'Lisa Loo'; Roysden, Beau; Skinner, OH  
**Subject:** RE: AMP v. ASU Proposed Briefing Schedule

Thanks, Gadeir. Sounds good and hope you feel better.

Drew

---

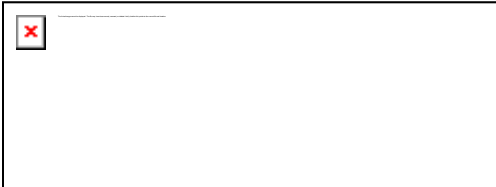
**From:** Gadeir Abbas [<mailto:gAbbas@cair.com>]  
**Sent:** Monday, March 19, 2018 2:27 PM  
**To:** Ensign, Drew; Carolyn Homer; Lena F. Masri, Esq.; [raees@kellywarnerlaw.com](mailto:raees@kellywarnerlaw.com)  
**Cc:** 'Nancy Tribbensee'; 'Jose Cardenas (General Counsel)'; 'Lisa Loo'; Roysden, Beau; Skinner, OH  
**Subject:** Re: AMP v. ASU Proposed Briefing Schedule

Hi Drew,

The 4/10 date works, but we will get back to you tomorrow on the other dates. I'm out sick today, so it'll take me just a bit more time to figure what response due date works best for us. But of course, we're happy to accommodate and your reply time frame sounds just fine.

Regards,

Gadeir Abbas, Esq.  
**Senior Litigation Attorney**



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Washington, DC 20003  
Tel: 202.742.6420 Fax: 202.488.0833  
Dir: 202.640.4935 Cell: 720.251.0425  
[www.cair.com](http://www.cair.com)

---

**From:** Ensign, Drew <[Drew.Ensign@azag.gov](mailto:Drew.Ensign@azag.gov)>  
**Sent:** Monday, March 19, 2018 1:29 PM  
**To:** Carolyn Homer; Gadeir Abbas; Lena F. Masri, Esq.; [raees@kellywarnerlaw.com](mailto:raees@kellywarnerlaw.com)



**Cc:** 'Nancy Tribbensee'; 'Jose Cardenas (General Counsel)'; 'Lisa Loo'; Roysden, Beau; Skinner, OH

**Subject:** AMP v. ASU Proposed Briefing Schedule

Hi Gadeir, Lena, and Carolyn,

We wanted to touch base about possible briefing schedules for this case. We had originally proposed April 6 as our deadline for motions to dismiss, although Beau and I are now likely to be in all-day meetings in DC then. We would therefore propose having April 10 as the deadline for Defendants' motions to dismiss.

We intend to raise one or more arguments involving subject matter jurisdiction, so you would ordinarily have 30 days to respond. *See* LRCiv 12.1(b); 56.1(d). We would be happy to extend that time the time for your responses, however. Any extension up to 30 days would definitely be fine with us, and we could likely agree to a longer extension if desired if there are good reasons for it. (Conversely, if you would like to shorten that period, that is fine with us as well.)

Defendants' reply briefs would ordinarily be due 15 days after your responses. LRCiv 12.1(b); 56.1(d). We would like to request a modest extension of that time to between 24-28 days (3½ to 4 weeks), depending on what date/day of the week the replies would be due.

Please let us know if this general structure works for you, and if so, what date you would like your responses to be due. We think it would make sense to include all of the dates in a joint motion to the Court so that the Court can resolve all briefing-related matters in one order. Along those lines, we are happy to draft a joint motion along those lines if these dates work for you.

Please also let us know if it would be helpful to set up a call to discuss the briefing schedule.

Sincerely,  
Drew

Drew C. Ensign  
Senior Litigation Counsel



---

Office of the Attorney General  
Government Accountability & Special Litigation  
2005 N. Central Ave., Phoenix, AZ 85004  
Direct: 602-542-5200 | Fax: 602-542-4377  
[Drew.Ensign@azag.gov](mailto:Drew.Ensign@azag.gov)

CONFIDENTIALITY NOTICE: This e-mail message, including any attachments, is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message.

## **Exhibit L**



## SPEAKER/ARTIST/PERFORMER AGREEMENT

This Agreement is entered into as of March 23, 2018, between the Arizona Board of Regents acting for and on behalf of Arizona State University (ASU) and HATEM BAZIAN (Speaker), or \_\_\_\_\_, a \_\_\_\_\_, <sup>2</sup> as the authorized agent for Speaker. If Speaker is represented by an authorized agent, then references to Speaker herein will also refer to the authorized agent, where appropriate.

1. **Engagement; Event.** ASU hereby engages Speaker to personally provide the following services, and Speaker agrees to personally provide to ASU the following services (the Presentation) at the following Event (the Event):

Event/Location: Pima Auditorium, Memorial Union

Dates and times of Event: April 3rd

Speaker's Presentation schedule: 6-7:30

Title of Speaker's Presentation: BDS & the Pursuit of Justice in Palestine

Speaker's hospitality requirements: Hotel, Flight

Speaker's technical requirements: Projector / Screen

2. **Notice.** Any communication or notice required under this Agreement will be in writing and may either be given by personal delivery or sent, in all cases, against receipt, addressed to the following:

If to ASU:

2934 E. Mahogany Pl, Chandler, AZ 85249

PO Box 870512

Tempe, AZ 85287-0512

Attn: Zain Siddiqi Dean of Students

Email: deanofstudents@asu.edu  
zainsiddiqi@gmail.com

If to Speaker:

6404 Seven Corners Pl #N  
FALLS CHURCH, VA 22044

Attn: HATEM BAZIAN

Email: hbazian@zaytuna.edu

Notice will be deemed to be received upon actual receipt (or refusal of receipt) by the receiving party.

3. **Speaker Warranty.** Speaker warrants that at all times during the Event, Speaker will personally provide Speaker's best professional efforts. Speakers' professional credentials are such that Speaker can provide the Presentation in a knowledgeable and professional manner.

4. **Payment.** ASU will pay Speaker the all-inclusive fee of \$ 0 upon completion of the Presentation. Speaker will complete a Substitute W-9 Form, which must be signed by the person or entity to whom payment is to be issued. ASU will issue all payment in accordance with the information on the completed and signed Substitute W-9 Form.

5. **Acceptance of Agreement.** Speaker will accept and return this Agreement to ASU no later than 03/26, 2018. In all events, this Agreement must be fully signed and received at ASU at least one week prior to the Event to allow on-time payment. This Agreement must be fully signed before payment can be processed. Please return a signed copy of this Agreement to ASU at the address set forth in Section 2.

<sup>1</sup> If an authorized agent is signing, please be sure to fill in the speaker name as well.

<sup>2</sup> Include full legal name of authorized agent, state of formation, and type of entity (i.e., ABC, Inc., an Arizona Corporation).

6. Press Materials. Speaker will timely supply all press/promotion material requested by ASU.
7. Indemnity. Speaker will indemnify, defend, save and hold ASU harmless for, from, and against, any all claims, demands, suits, costs and damages (including reasonable attorneys' fees) that ASU may incur by reason of any: (a) actual or alleged infringement or violation of any copyright, or other proprietary right by Speaker; (b) claim for damages arising from Speaker's Presentation; or (c) any of Speaker's costs and liabilities arising out of the Presentation or Event, including without limitation: travel and meal expenses; union dues; taxes; agents' commissions or other expenses or obligations; damages to Speaker's equipment or materials; compensation to third parties engaged by Speaker; compensation for lost or stolen equipment or materials; workers compensation or other insurance; and any expenses not preapproved by ASU in writing.
8. Indemnification and Liability Limitation. Because ASU is a public institution, any indemnification, liability limitation, releases, or hold harmless provisions are limited as required by Arizona law, including Article 9, Sections 5 and 7 of the Arizona Constitution and Arizona Revised Statutes (ARS) §§ 35-154 and 41-621. ASU's liability under any claim for indemnification is limited to claims for property damage, personal injury, or death to the extent caused by acts or omissions of ASU.
9. Force Majeure. Neither Speaker nor ASU shall be liable to each other for failure to perform hereunder if failure is caused by civil tumult, strike, epidemic, or any other cause beyond the reasonable control of the parties (Force Majeure). The ingestion of alcohol, opioids, illegal substances, or the like, will not be deemed an event of Force Majeure. If the Event or Presentation is cancelled due to an event of Force Majeure, the parties will make reasonable efforts to reschedule, if feasible.
10. Cancellation. If either party cancels this Agreement or the Presentation, other than due to an event of Force Majeure the other party will have all remedies afforded by law and in equity. In addition, if ASU cancels the Event or the Presentation, ASU will reimburse Speaker for reasonable expenses incurred in preparation for the Presentation up to the date ASU provides notice of cancellation.
11. Liability; Insurance. Speaker, at its expense, will procure and maintain, for the duration of the Event, a policy of commercial general liability insurance in an amount of not less than \$1,000,000, single limit, against claims for bodily injury, death and property damage occurring in connection with the Event and the Presentation. This insurance must name the Arizona Board of Regents, Arizona State University, and the State of Arizona as additional insureds. Speaker must provide ASU with a certificate evidencing this insurance coverage no later than 10 days prior to the Presentation.
12. No Assignment. Neither party may assign any rights or obligations under this Agreement without the prior written consent of the other party.
13. Entire Agreement. This Agreement constitutes the entire agreement and understanding of the parties with respect to its subject matter. No prior or contemporaneous agreement or understanding will be effective.
14. Governing Law and Venue. This Agreement will be governed by the laws of the State of Arizona. ASU's obligations are subject to the regulations/policies of the Arizona Board of Regents. Any proceeding arising out of or relating to this Agreement will be conducted in Maricopa County, Arizona. Speaker consents to such jurisdiction, and waives objection to venue or convenience of forum.
15. Independent Contractor. Speaker is an independent contractor and is not an employee of ASU. Neither Speaker nor any personnel of Speaker will for any purpose be considered employees or agents of ASU. Speaker assumes full responsibility for the actions of Speaker's personnel, and is solely responsible for their

supervision, direction and control, payment of salary and expenses (including withholding income taxes and social security), worker's compensation, and disability benefits.

16. Recordings; Use of Name and Likeness. Both parties may record the Presentation for internal records. No recording of the Presentation, either visual or audio, will be made by or on behalf of Speaker for the purposes of profit or significant distribution without prior written approval from ASU. ASU may require an additional payment for the privilege, and may require Speaker to sign a filming/recording agreement. ASU may record the Presentation on video tape, audio tape, film, photograph or any other medium, use Speaker's name, likeness, voice and biographical material in connection with these recordings for purposes within the ASU mission, including education and research, and exhibit or distribute the recording in whole or in part without restrictions or limitation for any educational or promotional purpose that ASU deems appropriate.

17. No Revenue Sharing. Speaker will not participate in any revenues associated with the Presentation or Event. This includes: sponsorship, ticketing, ticketing fees, ASU concessions revenues, and any other revenue streams that may be associated with the Event.

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

19. Conflicts of Interest. If within 3 years after the execution of this Agreement, Speaker hires as an employee or agent any ASU representative who was significantly involved in negotiating, securing, drafting, or creating this Agreement, then ASU may cancel this Agreement as provided in ARS § 38-511. Notice is also given of ARS §§ 41-2517 and 41-753.

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

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

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

23. Weapons, Explosives, and Fireworks. ASU prohibits the use, possession, display or storage of any weapon, explosive device or fireworks on all land and buildings owned, leased, or under the control of ASU or its affiliated entities, in all ASU residential facilities (whether managed by ASU or another entity), in all ASU



vehicles, and at all ASU or ASU affiliate sponsored events and activities, except as provided in ARS § 12-781, or unless written permission is given by ASU's Police Chief or a designated representative. Speaker will notify all persons or entities who are employees, officers, subcontractors, consultants, agents, guests, invitees or licensees of Speaker of this policy, and Speaker will enforce this policy against all such persons and entities. ASU's policy is at [asu.edu/aad/manuals/pdp/pdp201-05.html](http://asu.edu/aad/manuals/pdp/pdp201-05.html).

**24. Privacy; Educational Records.** Student educational records are protected by the U.S. Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g (FERPA). Speaker will not require any ASU students or employees to waive any privacy rights (including under FERPA or the European Union's General Data Protection Regulation (GDPR)) as a condition for receipt of any educational services, and any attempt to do so will be void. Speaker will comply with FERPA and will not access or make any disclosures of student educational records to third parties without prior notice to and consent from ASU or as otherwise provided by law. If this Agreement requires or permits Speaker to access or release any student records, then, for purposes of this Agreement only, ASU designates Speaker as a "school official" for ASU under FERPA, as defined in FERPA and its implementing regulations. In addition, any access or disclosures of student educational records by Speaker or any Speaker Parties must comply with ASU's definition of legitimate educational purpose. If Speaker violates this section, Speaker will immediately notify ASU.

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

**26. Tobacco-Free University.** ASU is tobacco-free. For details visit [asu.edu/tobaccofree](http://asu.edu/tobaccofree).

**27. Authority.** If an individual or entity signs below on behalf of Speaker, such signatory represents and warrants that he/she/it has full and current authority to act and contract on behalf of Speaker and obligate Speaker, and that this Agreement is binding upon and enforceable against Speaker and the undersigned (if not Speaker) in accordance with its terms.

PRINT NAME OF SPEAKER OR  
AGENT OF SPEAKER

Hatem Bazian

Signature

HATEM BAZIAN

Signatory Name

Professor and Chairman of AMP

Signatory Title

03/23/18

Date Signed

ARIZONA BOARD OF REGENTS FOR AND ON  
BEHALF OF ARIZONA STATE UNIVERSITY

Zain Siddiqi Nicole Taylor

Signature

Zain Siddiqi

Nicole Taylor

Signatory Name Deputy VP/Dean of Students  
Vice President of the Muslim Students Association

Signatory Title

3/26/2018

Date Signed

3/28/18

## **Exhibit M**





## SPEAKER/ARTIST/PERFORMER AGREEMENT

This Agreement is entered into as of March 23<sup>rd</sup>, 2018, between the Arizona Board of Regents acting for and on behalf of Arizona State University (ASU) and American Muslims for Palestine (AMP), or Taher Herzallah, a employee of AMP, <sup>2</sup> as the authorized agent for Speaker. If Speaker is represented by an authorized agent, then references to Speaker herein will also refer to the authorized agent, where appropriate.

1. **Engagement; Event.** ASU hereby engages Speaker to personally provide the following services, and Speaker agrees to personally provide to ASU the following services (the Presentation) at the following Event (the Event):

Event/Location: Pima Auditorium

Dates and times of ~~Event~~: April 3<sup>rd</sup> 2018

Speaker's Presentation schedule: 6-7:30

Title of Speaker's Presentation: BDS and the pursuit of Justice in Palestine

Speaker's hospitality requirements: Hotel, flight

Speaker's technical requirements: projector to display presentation

2. **Notice.** Any communication or notice required under this Agreement will be in writing and may either be given by personal delivery or sent, in all cases, against receipt, addressed to the following:

If to ASU:

ATTN: Zain Siddiqi PO BOX 870612

2934 E Mahogany Pl Tempe AZ

Chandler, AZ 85249

Attn: Zain Siddiqi Dean of Students

Email: zainsiddiqi@gmail.com asuedu

If to Speaker:

ATTN: Taher Herzallah

6404 Seven Corners Pl #N

Falls Church, VA 22044

Attn: Taher Herzallah

Email: taher@ampalastine.org

Notice will be deemed to be received upon actual receipt (or refusal of receipt) by the receiving party.

3. **Speaker Warranty.** Speaker warrants that at all times during the Event, Speaker will personally provide Speaker's best professional efforts. Speakers' professional credentials are such that Speaker can provide the Presentation in a knowledgeable and professional manner.

4. **Payment.** ASU will pay Speaker the all-inclusive fee of \$ 0 upon completion of the Presentation. Speaker will complete a Substitute W-9 Form, which must be signed by the person or entity to whom payment is to be issued. ASU will issue all payment in accordance with the information on the completed and signed Substitute W-9 Form.

5. **Acceptance of Agreement.** Speaker will accept and return this Agreement to ASU no later than 03/26, 2018. In all events, this Agreement must be fully signed and received at ASU at least one week prior to the Event to allow on-time payment. This Agreement must be fully signed before payment can be processed. Please return a signed copy of this Agreement to ASU at the address set forth in Section 2.

<sup>1</sup> If an authorized agent is signing, please be sure to fill in the speaker name as well.  
<sup>2</sup> Include full legal name of authorized agent, state of formation, and type of entity (i.e., ABC, Inc., an Arizona Corporation.)

6. Press Materials. Speaker will timely supply all press/promotion material requested by ASU.
7. Indemnity. Speaker will indemnify, defend, save and hold ASU harmless for, from, and against, any all claims, demands, suits, costs and damages (including reasonable attorneys' fees) that ASU may incur by reason of any: (a) actual or alleged infringement or violation of any copyright, or other proprietary right by Speaker; (b) claim for damages arising from Speaker's Presentation; or (c) any of Speaker's costs and liabilities arising out of the Presentation or Event, including without limitation: travel and meal expenses; union dues; taxes; agents' commissions or other expenses or obligations; damages to Speaker's equipment or materials; compensation to third parties engaged by Speaker; compensation for lost or stolen equipment or materials; workers compensation or other insurance; and any expenses not preapproved by ASU in writing.
8. Indemnification and Liability Limitation. Because ASU is a public institution, any indemnification, liability limitation, releases, or hold harmless provisions are limited as required by Arizona law, including Article 9, Sections 5 and 7 of the Arizona Constitution and Arizona Revised Statutes (ARS) §§ 35-154 and 41-621. ASU's liability under any claim for indemnification is limited to claims for property damage, personal injury, or death to the extent caused by acts or omissions of ASU.
9. Force Majeure. Neither Speaker nor ASU shall be liable to each other for failure to perform hereunder if failure is caused by civil tumult, strike, epidemic, or any other cause beyond the reasonable control of the parties (Force Majeure). The ingestion of alcohol, opioids, illegal substances, or the like, will not be deemed an event of Force Majeure. If the Event or Presentation is cancelled due to an event of Force Majeure, the parties will make reasonable efforts to reschedule, if feasible.
10. Cancellation. If either party cancels this Agreement or the Presentation, other than due to an event of Force Majeure the other party will have all remedies afforded by law and in equity. In addition, if ASU cancels the Event or the Presentation, ASU will reimburse Speaker for reasonable expenses incurred in preparation for the Presentation up to the date ASU provides notice of cancellation.
11. Liability; Insurance. Speaker, at its expense, will procure and maintain, for the duration of the Event, a policy of commercial general liability insurance in an amount of not less than \$1,000,000, single limit, against claims for bodily injury, death and property damage occurring in connection with the Event and the Presentation. This insurance must name the Arizona Board of Regents, Arizona State University, and the State of Arizona as additional insureds. Speaker must provide ASU with a certificate evidencing this insurance coverage no later than 10 days prior to the Presentation.
12. No Assignment. Neither party may assign any rights or obligations under this Agreement without the prior written consent of the other party.
13. Entire Agreement. This Agreement constitutes the entire agreement and understanding of the parties with respect to its subject matter. No prior or contemporaneous agreement or understanding will be effective.
14. Governing Law and Venue. This Agreement will be governed by the laws of the State of Arizona. ASU's obligations are subject to the regulations/policies of the Arizona Board of Regents. Any proceeding arising out of or relating to this Agreement will be conducted in Maricopa County, Arizona. Speaker consents to such jurisdiction, and waives objection to venue or convenience of forum.
15. Independent Contractor. Speaker is an independent contractor and is not an employee of ASU. Neither Speaker nor any personnel of Speaker will for any purpose be considered employees or agents of ASU. Speaker assumes full responsibility for the actions of Speaker's personnel, and is solely responsible for their

supervision, direction and control, payment of salary and expenses (including withholding income taxes and social security), worker's compensation, and disability benefits.

16. Recordings; Use of Name and Likeness. Both parties may record the Presentation for internal records. No recording of the Presentation, either visual or audio, will be made by or on behalf of Speaker for the purposes of profit or significant distribution without prior written approval from ASU. ASU may require an additional payment for the privilege, and may require Speaker to sign a filming/recording agreement. ASU may record the Presentation on video tape, audio tape, film, photograph or any other medium, use Speaker's name, likeness, voice and biographical material in connection with these recordings for purposes within the ASU mission, including education and research, and exhibit or distribute the recording in whole or in part without restrictions or limitation for any educational or promotional purpose that ASU deems appropriate.

17. No Revenue Sharing. Speaker will not participate in any revenues associated with the Presentation or Event. This includes: sponsorship, ticketing, ticketing fees, ASU concessions revenues, and any other revenue streams that may be associated with the Event.

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

19. Conflicts of Interest. If within 3 years after the execution of this Agreement, Speaker hires as an employee or agent any ASU representative who was significantly involved in negotiating, securing, drafting, or creating this Agreement, then ASU may cancel this Agreement as provided in ARS § 38-511. Notice is also given of ARS §§ 41-2517 and 41-753.

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

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

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

23. Weapons, Explosives, and Fireworks. ASU prohibits the use, possession, display or storage of any weapon, explosive device or fireworks on all land and buildings owned, leased, or under the control of ASU or its affiliated entities, in all ASU residential facilities (whether managed by ASU or another entity), in all ASU



vehicles, and at all ASU or ASU affiliate sponsored events and activities, except as provided in ARS § 12-781, or unless written permission is given by ASU's Police Chief or a designated representative. Speaker will notify all persons or entities who are employees, officers, subcontractors, consultants, agents, guests, invitees or licensees of Speaker of this policy, and Speaker will enforce this policy against all such persons and entities. ASU's policy is at [asu.edu/aad/manuals/pdp/pdp201-05.html](http://asu.edu/aad/manuals/pdp/pdp201-05.html).


**24. Privacy, Educational Records.** Student educational records are protected by the U.S. Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g (FERPA). Speaker will not require any ASU students or employees to waive any privacy rights (including under FERPA or the European Union's General Data Protection Regulation (GDPR)) as a condition for receipt of any educational services, and any attempt to do so will be void. Speaker will comply with FERPA and will not access or make any disclosures of student educational records to third parties without prior notice to and consent from ASU or as otherwise provided by law. If this Agreement requires or permits Speaker to access or release any student records, then, for purposes of this Agreement only, ASU designates Speaker as a "school official" for ASU under FERPA, as defined in FERPA and its implementing regulations. In addition, any access or disclosures of student educational records by Speaker or any Speaker Parties must comply with ASU's definition of legitimate educational purpose. If Speaker violates this section, Speaker will immediately notify ASU.

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

**26. Tobacco-Free University.** ASU is tobacco-free. For details visit [asu.edu/tobaccofree](http://asu.edu/tobaccofree).

**27. Authority.** If an individual or entity signs below on behalf of Speaker, such signatory represents and warrants that he/she/it has full and current authority to act and contract on behalf of Speaker and obligate Speaker, and that this Agreement is binding upon and enforceable against Speaker and the undersigned (if not Speaker) in accordance with its terms.

PRINT NAME OF SPEAKER OR  
AGENT OF SPEAKER

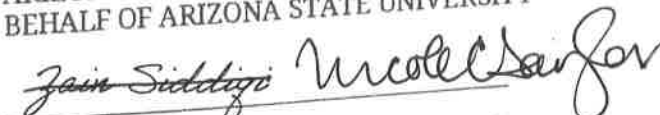
  
Signature

Taher Herzallah  
Signatory Name

Assoc. Director of Outreach  
Signatory Title

3/23/18  
Date Signed

ARIZONA BOARD OF REGENTS FOR AND ON  
BEHALF OF ARIZONA STATE UNIVERSITY

  
Signature

Zain Siddiqi  
Signatory Name Nicole Taylor  
Deputy VP/Dean of Students  
Vice President of Muslim Students Association

3/26/2018  
Signatory Title

3/20/18  
Date Signed

**CAIR LEGAL DEFENSE FUND**

Lena F. Masri (D.C. Bar # 1000019) (*pro hac vice*)

Email: [lmagri@cair.com](mailto:lmagri@cair.com)

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**KELLY / WARNER, PLLC**

8283 N. Hayden Road, Suite 229

Scottsdale, Arizona 85258

Raesabbas Mohamed, Esq. (AZ Bar # 027418)

Email: [raees@kellywarnerlaw.com](mailto:raees@kellywarnerlaw.com)

Phone: (480) 331-9397

Fax: (866) 961-4984

*Attorneys for Plaintiffs*

*\* Licensed in VA, not in D.C.*

*Practice limited to federal matters*

**UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA  
PHOENIX DIVISION**

American Muslims for Palestine, and  
Dr. Hatem Bazian

Plaintiffs,

vs.

Arizona Board of Regents on behalf of  
Arizona State University, and  
Mark Brnovich, in his official capacity  
as Attorney General of Arizona

Defendants.

Case No. CV-18-670-PHX-JJT

**Second Declaration of Taher  
Herzallah on behalf of American  
Muslims for Palestine, in support of  
Plaintiffs' Opposition to Defendants'  
Motion to Dismiss**

**DECLARATION OF TAHER HERZALLAH**

1  
2 1. I am Taher Herzallah, the Associate Director of Outreach &  
3 Community Organizing for American Muslims for Palestine (“AMP”). I previously  
4 submitted a declaration in support of Plaintiffs’ Motion for a Preliminary Injunction  
5 *See* Dkt. 9-2. I have personal knowledge of the facts set out in this Second  
6 Declaration. If called upon as a witness I would competently testify as to the  
7 matters stated herein.

8 2. On April 3, 2018, the Muslim Students Association of Arizona State  
9 University (“MSA”) held an event on the Boycott, Divestment and Sanctions  
10 Movement at Arizona State University. I spoke at the event on behalf of American  
11 Muslims for Palestine. Dr. Hatem Bazian, the founder and chair of American  
12 Muslims for Palestine, also spoke. The event was a success. Holding campus  
13 events like this is core to the educational and advocacy mission of American  
14 Muslims for Palestine.

15 3. Due to the success of the event, the MSA has invited myself and Dr.  
16 Bazian to come back to campus next academic year. A true and correct copy of the  
17 May 8, 2018 invitation we received is attached as **Exhibit A**. We have not yet set a  
18 date for next year’s event, but we are working with the new MSA student board to  
19 find a mutually agreeable one.

20 4. As I detailed in my First Declaration, my job as the Associate Director  
21 of Outreach & Community Organizing means acting as a liaison between AMP and  
22 communication and student associations across the United States. Due to the  
23 success of the April 3, 2018 event at ASU, we are exploring opportunities for AMP  
24

1 to participate in other advocacy events within Arizona. This has included  
2 preliminary discussions about whether Dr. Bazian and myself could combine next  
3 year's trip with a visit to the University of Arizona.

4 5. I remain concerned that Arizona Revised Statutes § 35-393.01 will  
5 operate to block American Muslims for Palestine's advocacy efforts in the state of  
6 Arizona. For example, I am aware that the Arizona Board of Regents currently has  
7 a "No Boycott of Israel" clause for speaker contracts at the University of Arizona. I  
8 have reviewed these contracts on the University of Arizona's "Contracting FAQs"  
9 website, [https://pacs.arizona.edu/contracting\\_faqs](https://pacs.arizona.edu/contracting_faqs).

10 6. I verify under penalty of perjury under the laws of the United States  
11 that the foregoing is true and correct.

12 Executed on May 14, 2018 at Falls Church, Virginia.

13  
14 By: 

Taher Herzallah



## **Exhibit A**



Taher Herzallah <taher@ampalestine.org>

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## Event

**MSA ASU** <msaasu@gmail.com>

Tue, May 8, 2018 at 3:17 PM

To: Hatem Bazian <hatemb@berkeley.edu>, Taher Herzallah <taher@ampalestine.org>

JazakAllahu khairan for coming again Dr. Hatem and Taher. We were so happy to have had you. We were thinking of maybe next year we could have a follow up event? The board is currently in transition so they would have to finalize dates but a second event is something definitely wanted.