

**ACA UNIFORM TERMS AND CONDITIONS**

**1. Definition of Terms**

As used in this Solicitation and any resulting Contract, the terms listed below are defined as follows:

- 1.1. "ACA" means the Arizona Commerce Authority.
- 1.2. "ACA Fiscal Year" means the period beginning with July 1 and ending June 30.
- 1.3. "Attachment" means any item a Solicitation requires an Offeror to submit as part of an Offer.
- 1.4. "Contract" has the meaning set forth in the preamble on the first page of this Contract.
- 1.5. "Contract Amendment" means a written document signed by the Parties that is issued for the purpose of making changes in the Contract.
- 1.6. "Contractor" has the meaning set forth in the preamble on the first page of this Contract.
- 1.7. "Days" means calendar days unless otherwise specified.
- 1.8. "Exhibit" means any item labeled as an Exhibit in the Solicitation or placed in the Exhibits section of the Solicitation.
- 1.9. "Gratuity" means a payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.
- 1.10. "Materials" means all property, including equipment, supplies, printing, insurance and leases of property but does not include land, a permanent interest in land or real property or leasing space.
- 1.11. "Offer" means an offer to provide the goods and/or services specified in a Solicitation, such as a bid, proposal or quotation.
- 1.12. "Offeror" means the Contractor.
- 1.13. "Services" means the furnishing of labor, time or effort by a contractor or subcontractor which does not involve the delivery of a specific end product other than required reports and performance but does not include employment agreements or collective bargaining agreements.
- 1.14. "Solicitation" means an Invitation for Bids ("IFB"), a Request for Proposals ("RFP"), or a Request for Quotations ("RFQ").
- 1.15. "Solicitation Amendment" means a written document that is signed by the ACA and issued for the purpose of making changes to the Solicitation.
- 1.16. "Subcontract" means any Contract, express or implied, between the Contractor and another party or between a subcontractor and another party delegating or assigning, in whole or in part, the making or furnishing of any material or any service required for the performance of the Contract.

**2. Contract Interpretation**

- 2.1. Arizona Law. This Agreement shall be deemed to be made under, shall be construed in accordance with, and shall be governed by the internal, substantive laws of the State of Arizona (without reference to conflict of law principles). (Please note: The ACA is exempt from Title 41, Chapter 23 of the Arizona Revised Statutes (the Procurement Code)).
- 2.2. Implied Contract Terms. Each provision of law and any terms required by law to be in this Contract are a part of this Contract as if fully stated in it.
- 2.3. Contract Order of Precedence. In the event of a conflict between the terms of the various Contract sections and documents, the sections and documents shall prevail in the following order;
  - 2.3.1. The "Agreement" section commencing on the first page of this document.
  - 2.3.2. Special Terms and Conditions;
  - 2.3.3. Price Sheet;

- 2.3.4. Statement or Scope of Work;
  - 2.3.5. Uniform Terms and Conditions;
  - 2.3.6. Solicitation; and
  - 2.3.7. Proposal.
- 2.4. Relationship of Parties. The Contractor under this Contract is an independent Contractor. Neither party to this Contract shall be deemed to be the employee or agent of the other party to the Contract.
- 2.5. Severability. The provisions of this Contract are severable. Any term or condition deemed illegal or invalid shall not affect any other term or condition of the Contract.
- 2.6. No Parole Evidence. This Contract is intended by the Parties as a final and complete expression of their agreement. No course of prior dealings between the Parties and no usage of the trade shall supplement or explain any terms used in this document and no other understanding either oral or in writing shall be binding.
- 2.7. No Waiver. Either party's failure to insist on strict performance of any term or condition of the Contract shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.

### **3. Contract Administration and Operation**

- 3.1. Records. Under A.R.S. § 35-214 and § 35-215, the Contractor shall retain and shall contractually require each subcontractor to retain all data and other "records" relating to the acquisition and performance of the Contract for a period of five years after the completion of the Contract. All records shall be subject to inspection and audit by the ACA at reasonable times. Upon request, the Contractor shall produce a legible copy of any or all such records.
- 3.2. Non-Discrimination. The Contractor shall comply with ACA Executive Order No. 2009-09 and all other applicable Federal and ACA laws, rules and regulations, including the Americans with Disabilities Act.
- 3.3. Audit. Pursuant to ARS § 35-214, at any time during the term of this Contract and five (5) years thereafter, the Contractor's or any subcontractor's books and records shall be subject to audit by the ACA and, where applicable, the Federal Government, to the extent that the books and records relate to the performance of the Contract or Subcontract.
- 3.4. Facilities Inspection and Materials Testing. The Contractor agrees to permit access to its facilities, subcontractor facilities and the Contractor's processes or services, at reasonable times for inspection of the facilities or materials covered under this Contract. The ACA shall also have the right to test, at its own cost, the materials to be supplied under this Contract. Neither inspection of the Contractor's facilities nor materials testing shall constitute final acceptance of the materials or services. If the ACA determines non-compliance of the materials, the Contractor shall be responsible for the payment of all costs incurred by the ACA for testing and inspection.
- 3.5. Notices. Notices to the Contractor required by this Contract shall be made by the ACA to the person designated in the Contract to receive notices or, if no one is designated to receive notices, the person named as the primary contact. Unless otherwise stated in the Contract, notices to the ACA required by the Contract shall be made by the Contractor to the ACA's Procurement Manager. An authorized ACA signer and an authorized Contractor representative may change their respective person to whom notice shall be given by written notice to the other and an amendment to the Contract shall not be necessary.
- 3.6. Advertising, Publishing and Promotion of Contract. The Contractor shall not use, advertise or promote information for commercial benefit concerning this Contract without the prior written approval of the ACA.
- 3.7. Property of the ACA. Any materials, including reports, computer programs and other deliverables, created under this Contract are the sole property of the ACA. The Contractor is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. The Contractor shall not use or release these materials without the prior written consent of the ACA.
- 3.8. Ownership of Intellectual Property. Any and all intellectual property, including but not limited to copyright, invention, trademark, trade name, service mark, and/or trade secrets created or conceived pursuant to or as a result of this contract and any related subcontract ("Intellectual Property"), shall be work made for hire and the ACA shall be considered the creator of such Intellectual Property. The agency, department, division, board or commission of the ACA of Arizona

requesting the issuance of this contract shall own (for and on behalf of the ACA) the entire right, title and interest to the Intellectual Property throughout the world. Contractor shall notify the ACA, within thirty (30) days, of the creation of any Intellectual Property by it or its subcontractor(s). Contractor, on behalf of itself and any subcontractor(s), agrees to execute any and all document(s) necessary to assure ownership of the Intellectual Property vests in the ACA and shall take no affirmative actions that might have the effect of vesting all or part of the Intellectual Property in any entity other than the ACA. The Intellectual Property shall not be disclosed by contractor or its subcontractor(s) to any entity not the ACA without the express written authorization of the agency, department, division, board or commission of the ACA of Arizona requesting the issuance of this contract.

- 3.9. Federal Immigration and Nationality Act. To the extent applicable, the contractor shall comply with all federal, state and local immigration laws and regulations relating to the immigration status of their employees during the term of the contract. Further, the contractor shall flow down this requirement to all subcontractors utilized during the term of the contract. The ACA shall retain the right to perform random audits of contractor and subcontractor records or to inspect papers of any employee thereof to ensure compliance. Should the ACA determine that the contractor and/or any subcontractors be found noncompliant, the ACA may pursue all remedies allowed by law, including, but not limited to; suspension of work, termination of the contract for default and suspension and/or debarment of the contractor.
- 3.10 E-Verify Requirements. To the extent applicable, in accordance with A.R.S. § 41-4401, Contractor warrants compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with Section A.R.S. § 23-214, Subsection A.

#### 4. Costs and Payments

- 4.1. Payments. Payments shall comply with the requirements of A.R.S. Titles 35 and 41, Net 30 days. Upon receipt and acceptance of goods or services, the Contractor shall submit a complete and accurate invoice for payment from the ACA within thirty (30) days.
- 4.2. Delivery. Unless stated otherwise in the Contract, all prices shall be F.O.B. Destination and shall include all freight delivery and unloading at the destination.
- 4.3. Applicable Taxes.
- 4.3.1. Payment of Taxes. The Contractor shall be responsible for paying all applicable taxes.
- 4.3.2. State and Local Transaction Privilege Taxes. The ACA is subject to all applicable state and local transaction privilege taxes. Transaction privilege taxes apply to the sale and are the responsibility of the seller to remit. Failure to collect such taxes from the buyer does not relieve the seller from its obligation to remit taxes.
- 4.3.3. Tax Indemnification. Contractor and all subcontractors shall pay all Federal, state and local taxes applicable to its operation and any persons employed by the Contractor. Contractor shall and require all subcontractors to hold the ACA harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under Federal, and/or state and local laws and regulations and any other costs including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.
- 4.3.4. ACA Substitute W-9 and Vendor Authorization Form (or I.R.S. Form W-8BEN). In order to receive payment, the Contractor shall have a current ACA Substitute W-9 and Vendor Authorization Form (I.R.S. Form W-8BEN for foreign Contractors) on file with the ACA
- 4.4. Availability of Funds for the Next ACA fiscal year. Funds may not presently be available for performance under this Contract beyond the current state fiscal year. No legal liability on the part of the ACA for any payment may arise under this Contract beyond the current state fiscal year until funds are made available for performance of this Contract.
- 4.5 Availability of Funds for the current ACA fiscal year. Should the Arizona State Legislature enter back into session and reduce the appropriations or for any reason and these goods or services are not funded, the ACA may take any of the following actions:
- 4.5.1. Accept a decrease in price and/or decrease in the scope of work offered by the Contractor;
- 4.5.2. Cancel the Contract; or
- 4.5.3 Cancel the contract and re-solicit the requirements.

## 5. Contract Changes

- 5.1. Amendments. The Contract may be modified only through a written Contract Amendment signed by the Parties. Changes to the Contract, including without limitation the addition of work or materials, the revision of payment terms, or the substitution of work or materials, purported to be made by a person who is not specifically authorized by the ACA to execute the Contract Amendment shall be void and without effect, and the Contractor shall not be entitled to any claim under this Contract based on those changes.
- 5.2. Subcontracts. The Contractor shall not enter into any Subcontract under this Contract for the performance of this contract without the advance written approval of the ACA. The Contractor shall clearly list any proposed subcontractors and the subcontractor's proposed responsibilities. The Subcontract shall incorporate by reference the terms and conditions of this Contract.
- 5.3. Assignment and Delegation. The Contractor shall not assign any right nor delegate any duty under this Contract without the prior written approval of the ACA. The ACA shall not unreasonably withhold approval.

## 6. Risk and Liability

- 6.1. Risk of Loss. The Contractor shall bear all loss of conforming material covered under this Contract until received by authorized personnel at the location designated in the purchase order or Contract. Mere receipt does not constitute final acceptance. The risk of loss for nonconforming materials shall remain with the Contractor regardless of receipt.
- 6.2. Indemnification.
  - 6.2.1. Contractor/Vendor Indemnification (Not Public Agency). The Parties agree that the ACA, the State of Arizona, its departments, agencies, boards, commissions, universities, officers, officials, agents and employees shall be indemnified and held harmless by the contractor for the vicarious liability of the ACA as a result of entering into this contract. However, the Parties further agree that the ACA, the State of Arizona, its departments, agencies, boards, commissions, universities, officers, officials, agents and employees shall be responsible for its own negligence. Each party to this contract is responsible for its own negligence.
  - 6.2.2. Public Agency Language Only. Each party (as 'indemnitor') agrees to indemnify, defend, and hold harmless the other party (as 'indemnitee') from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as 'claims') arising out of bodily injury of any person (including death) or property damage but only to the extent that such claims which result in vicarious/derivative liability to the indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the indemnitor, its officers, officials, agents, employees, or volunteers.
- 6.3. Indemnification - Patent and Copyright. The Contractor shall indemnify and hold harmless the ACA against any liability, including costs and expenses, for infringement of any patent, trademark or copyright arising out of Contract performance or use by the ACA of materials furnished or work performed under this Contract. The ACA shall reasonably notify the Contractor of any claim for which it may be liable under this paragraph. If the contractor is insured pursuant to A.R.S. § 41-621 and § 35-154, this section shall not apply.
- 6.4. Force Majeure.
  - 6.4.1. Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes acts of God; acts of the public enemy; war; riots; strikes; mobilization; labor disputes; civil disorders; fire; flood; lockouts; injunctions- intervention-acts; or failures or refusals to act by government authority; and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence.
  - 6.4.2. Force majeure shall not include the following occurrences:
    - 6.4.2.1. Late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, or an oversold condition of the market;

- 6.4.2.2. Late performance by a subcontractor unless the delay arises out of a force majeure occurrence in accordance with this force majeure term and condition; or
- 6.4.2.3. Inability of either the Contractor or any subcontractor to acquire or maintain any required insurance, bonds, licenses or permits.
- 6.4.3. If either party is delayed at any time in the progress of the work by force majeure, the delayed party shall notify the other party in writing of such delay, as soon as is practicable and no later than the following working day, of the commencement thereof and shall specify the causes of such delay in such notice. Such notice shall be delivered or mailed certified-return receipt and shall make a specific reference to this article, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by Contract Amendment for a period of time equal to the time that results or effects of such delay prevent the delayed party from performing in accordance with this Contract.
- 6.4.4. Any delay or failure in performance by either party hereto shall not constitute default hereunder or give rise to any claim for damages or loss of anticipated profits if, and to the extent that such delay or failure is caused by force majeure.
- 6.5. Third Party Antitrust Violations. The Contractor assigns to the ACA any claim for overcharges resulting from antitrust violations to the extent that those violations concern materials or services supplied by third parties to the Contractor, toward fulfillment of this Contract.

## 7. Warranties

- 7.1. Liens. The Contractor warrants that the materials supplied under this Contract are free of liens and shall remain free of liens.
- 7.2. Quality. Unless otherwise modified elsewhere in these terms and conditions, the Contractor warrants that, for one year after acceptance by the ACA of the materials, they shall be:
  - 7.2.1. Of a quality to pass without objection in the trade under the Contract description;
  - 7.2.2. Fit for the intended purposes for which the materials are used;
  - 7.2.3. Within the variations permitted by the Contract and are of even kind, quantity, and quality within each unit and among all units;
  - 7.2.4. Adequately contained, packaged and marked as the Contract may require; and
  - 7.2.5. Conform to the written promises or affirmations of fact made by the Contractor.
- 7.3. Fitness. The Contractor warrants that any material supplied to the ACA shall fully conform to all requirements of the Contract and all representations of the Contractor and shall be fit for all purposes and uses required by the Contract.
- 7.4. Inspection/Testing. The warranties set forth in subparagraphs 7.1 through 7.3 of this paragraph are not affected by inspection or testing of or payment for the materials by the ACA.
- 7.5. Compliance with Applicable Laws. The materials and services supplied under this Contract shall comply with all applicable Federal, state and local laws, and the Contractor shall maintain all applicable license and permit requirements.
- 7.6. Survival of Rights and Obligations after Contract Expiration or Termination.
  - 7.6.1. Contractor's Representations and Warranties. All representations and warranties made by the Contractor under this Contract shall survive the expiration or termination hereof. In addition, the Parties hereto acknowledge that pursuant to A.R.S. § 12-510, except as provided in A.R.S. § 12-529, the ACA is not subject to or barred by any limitations of actions prescribed in A.R.S., Title 12, Chapter 5.
  - 7.6.2. Purchase Orders. The Contractor shall, in accordance with all terms and conditions of the Contract, fully perform and shall be obligated to comply with all purchase orders received by the Contractor prior to the expiration or termination hereof, unless otherwise directed in writing by the ACA, including, without limitation, all purchase orders received prior to but not fully performed and satisfied at the expiration or termination of this Contract.

Contractor to stop all or any part, of the work called for by this Contract for period(s) of days indicated by the ACA after the order is delivered to the Contractor. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage.

## 8. The ACA's Remedies in the Event of Default

- 8.1. Right to Assurance. If the ACA in good faith has reason to believe that the Contractor does not intend to or is unable to perform or continue performing under this Contract, the ACA may demand in writing that the Contractor give a written assurance of intent to perform. Failure by the Contractor to provide written assurance within the number of Days specified in the demand may, at the ACA's option, be the basis for terminating the Contract under the Uniform Terms and Conditions or other rights and remedies available by law or provided by the contract.
- 8.2. Stop Work Order.
  - 8.2.1. The ACA may, at any time, by written order to the Contractor, require the Contractor to stop all or any part, of the work called for by this Contract for period(s) of days indicated by the State after the order is delivered to the Contractor. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage.
  - 8.2.2. If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the Contractor shall resume work. The ACA shall make an equitable adjustment in the delivery schedule or Contract price, or both, and the Contract shall be amended in writing accordingly.
- 8.3. Non-exclusive Remedies. The rights and the remedies of the ACA under this Contract are not exclusive.
- 8.4. Nonconforming Tender. Materials or services supplied under this Contract shall fully comply with the Contract. The delivery of materials or services or a portion of the materials or services that do not fully comply constitutes a breach of contract. On delivery of nonconforming materials or services, the ACA may terminate the Contract for default under applicable termination clauses in the Contract, exercise any of its rights and remedies under the Uniform Commercial Code or pursue any other right or remedy available to it.
- 8.5. Right of Offset. The ACA shall be entitled to offset against any sums due the Contractor, any expenses or costs incurred by the ACA, or damages assessed by the ACA concerning the Contractor's non-conforming performance or failure to perform the Contract, including expenses, costs and damages described in the Uniform Terms and Conditions.

## 9. Contract Termination

- 9.1. Cancellation for Conflict of Interest. Pursuant to A.R.S. § 38-511, the ACA may cancel this Contract within three (3) years after Contract execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of the ACA is or becomes at any time while the Contract or an extension of the Contract is in effect an employee of or a consultant to any other party to this Contract with respect to the subject matter of the Contract. The cancellation shall be effective when the Contractor receives written notice of the cancellation unless the notice specifies a later time. If the Contractor is a political subdivision of the ACA, it may also cancel this Contract as provided in A.R.S. § 38-511.
- 9.2. Gratuities. The ACA may, by written notice, terminate this Contract, in whole or in part, if the ACA determines that employment or a Gratuity was offered or made by the Contractor or a representative of the Contractor to any officer or employee of the ACA for the purpose of influencing the outcome of the procurement or securing the Contract, an amendment to the Contract, or favorable treatment concerning the Contract, including the making of any determination or decision about contract performance. The ACA, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three times the value of the Gratuity offered by the Contractor.
- 9.3. Suspension or Debarment. The ACA may, by written notice to the Contractor, immediately terminate this Contract if the ACA determines that the Contractor has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body. Submittal of an offer or execution of a contract shall attest that the

contractor is not currently suspended or debarred. If the contractor becomes suspended or debarred, the contractor shall immediately notify the ACA.

- 9.4. Termination for Convenience. The ACA reserves the right to terminate the Contract, in whole or in part at any time when in the best interest of the ACA, without penalty or recourse. Upon receipt of the written notice, the Contractor shall stop all work, as directed in the notice, notify all subcontractors of the effective date of the termination and minimize all further costs to the ACA. In the event of termination under this paragraph, all documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the ACA upon demand. The Contractor shall be entitled to receive just and equitable compensation for work in progress, completed work and materials accepted before the effective date of the termination. The cost principles and procedures provided in A.A.C. R2-7-701 shall apply.
- 9.5. Termination for Default.
- 9.5.1. In addition to the rights reserved in the contract, the ACA may terminate the Contract in whole or in part due to the failure of the Contractor to comply with any term or condition of the Contract, to acquire and maintain all required insurance policies, bonds, licenses and permits, or to make satisfactory progress in performing the Contract. The ACA shall provide written notice of the termination and the reasons for it to the Contractor.
- 9.5.2. Upon termination under this paragraph, all goods, materials, documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the ACA on demand.
- 9.5.3. The ACA may, upon termination of this Contract, procure, on terms and in the manner that it deems appropriate, materials or services to replace those under this Contract. The Contractor shall be liable to the ACA for any excess costs incurred by the ACA in procuring materials or services in substitution for those due from the Contractor.
- 9.6. Continuation of Performance through Termination. The Contractor shall continue to perform, in accordance with the requirements of the Contract, up to the date of termination, as directed in the termination notice.

## **10. Contract Claims, Arbitration, Venue, Attorneys Fees**

- 10.1. A claimant shall file a contract claim with the ACA within 180 days after the claim arises. The claim shall include the following:
- 10.1.1. The name, address, and telephone number of the claimant;
- 10.1.2. The signature of the claimant or claimant's representative;
- 10.1.3. Identification of the purchasing agency and the solicitation or contract number;
- 10.1.4. A detailed statement of the legal and factual grounds of the claim including copies of the relevant documents; and
- 10.1.5. The form and dollar amount of the relief requested.
- 10.2. The ACA has the authority to settle and resolve contract claims, except that the agency chief procurement officer shall receive prior written approval of the state procurement administrator for the settlement or resolution of a claim in excess of the amount prescribed in A.R.S. § 41-2535.
- 10.3. If a claim cannot be resolved under section 10.2, above, the ACA shall, upon a written request by the claimant for a final decision, issue a written decision no more than 60 days after the request is filed. Before issuing a final decision, the ACA shall review the facts pertinent to the claim and secure any necessary assistance from legal, fiscal, and other advisors.
- 10.4. The ACA shall furnish the decision to the claimant, by certified mail, return receipt requested, or by any other method that provides evidence of receipt, with a copy to the state procurement administrator. The decision shall include:
- 10.4.1. A description of the claim;
- 10.4.2. A reference to the pertinent contract provision;
- 10.4.3. A statement of the factual areas of agreement or disagreement;
- 10.1.4. A statement of the agency chief procurement officer's decision, with supporting rationale;

- 10.1.5. A paragraph which substantially states: "This is the final decision of the ACA. This decision may be appealed pursuant to Title 41, Chapter 6, Article 10 of the Arizona Revised Statutes and Arizona administrative rules adopted thereunder. If you appeal, you must file a written notice of appeal containing the information required in section 10.7 within thirty (30) days from the date you receive this decision."
- 10.5. If the ACA fails to issue a decision within sixty (60) days after the request is filed, the claimant may proceed as if the agency chief procurement officer had issued an adverse decision.
- 10.6. The claimant may appeal the final decision of the ACA pursuant to Title 41, Chapter 6, Article 10 of the Arizona Revised Statutes and Arizona administrative rules adopted thereunder within 30 days of the ACA's decision. The claimant shall also file a copy of the appeal with the ACA.
- 10.7. The claimant shall file the appeal in writing and shall include the following:
  - 10.7.1. A copy of the decision of the ACA;
  - 10.7.2. A statement of the factual areas of agreement or disagreement; and
  - 10.7.3. The precise factual or legal error in the decision of the agency chief procurement officer from which an appeal is taken.
- 10.8. The ACA shall file a complete report on the appeal with the Office of Administrative Hearings within 14 days from the date the appeal is filed, providing a copy to the claimant at that time by certified mail, return receipt requested, or by any other method that provides evidence of receipt. The report shall include a copy of the claim, a copy of the ACA's decision, if applicable, and any other documents that are relevant to the claim.
- 10.9. Arbitration. After exhausting applicable administrative review, the Parties agree to resolve all disputes arising out of or relating to this contract through binding arbitration, to the extent required by A.R.S. § 12-1518, except as may be required by other applicable statutes (Title 41).
- 10.10. Venue. After exhausting applicable administrative review and arbitration, and if arbitration is not required, any action brought to interpret, enforce or construe any provision of this Agreement shall be commenced and maintained solely and exclusively in the Superior Court of the State of Arizona in and for the County of Maricopa (or, as may be appropriate, in the Justice Courts of Maricopa County, Arizona, or in the United States District Court for the District of Arizona). Parties irrevocably consent to sole and exclusive jurisdiction and venue in such courts for such purposes and waive all rights to seek transfer or removal of any action commenced under or in connection with this Agreement.
- 10.11. Attorney Fees. In the event of a breach by any Party of any provision of this Agreement and commencement of a subsequent legal action in an appropriate forum, or in the event of an action seeking a declaration of the rights or liabilities of the Parties, the prevailing Party in any such dispute shall be entitled to reimbursement of its reasonable attorney's fees and court costs, including, but not limited to, its costs of expert witnesses, transportation, lodging and meal costs of the parties and witnesses, costs of transcript preparation and other reasonable and necessary direct and incidental costs of such dispute.