



July 26, 2012

REQUEST FOR PROPOSAL

Campus Metabolism and Energy Dashboard Development and Marketing Rights

RFP NO. 021301

DUE: 3:00 P.M., MST, 09/04/12

Time and Date of Pre-Proposal Conference	2:00 P.M., MST, 08/20/12
Deadline for Inquiries	3:00 P.M., MST, 08/27/12
Time and Date Set for Closing	3:00 P.M., MST, 09/04/12

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SECTION I – REQUEST FOR PROPOSAL

RFP 021301

Arizona State University is requesting sealed proposals from qualified firms or individuals for **Campus Metabolism and Energy Dashboard Development and Marketing Rights.**

Proposals are to be addressed and delivered to the receptionist area, first floor, University Services Building, Purchasing and Business Services, Arizona State University, 1551 S. Rural Road, (located on the east side of Rural Road between Apache Road & Broadway Road) Tempe, Arizona 85281 **on or before 3:00 P.M., MST, 09/04/12** at which time a representative of Purchasing and Business Services will announce publicly the names of those firms or individuals submitting proposals. **No proposals will be accepted after this time.** No other public disclosure will be made until after award of the contract.

Arizona State University's Overnight Delivery (FedEx, Airborne, and UPS) address is:

Purchasing and Business Services
University Services Building
Arizona State University
1551 S. Rural Rd
Tempe, AZ 85281

Arizona State University's U.S. Postal Service Mail address is:

Purchasing and Business Services
Arizona State University
P.O. Box 875212
Tempe, AZ 85287-5212

ARIZONA STATE UNIVERSITY

Stacie Malekooti

Stacie Malekooti
Senior Buyer

SM/ah

SECTION II – PURPOSE OF THE RFP

1. **INTENT**

Arizona State University (ASU) invites proposals from qualified persons and business entities for the opportunity to license rights to Campus Metabolism (CM), a university developed software application, front end User Interface and Energy Dashboard for the purpose of development, modification, enhancement, maintenance, marketing, and distribution. ASU will retain the rights to use the software under a no cost license and maintenance agreement as it is developed, maintain all ownership and copyrights to the application with the CM trademark sub-licensed, and shall work in conjunction with the successful contractor on application development.

It is not ASU's intent to transfer title of CM, provide backend code or stored procedures of the existing back end Energy Information System (EIS). However, ASU reserves the right to enter into negotiations with the successful contractor for use and license of the EIS backend.

2. **BACKGROUND INFORMATION**

Arizona State University is creating a new model for American higher education, an unprecedented combination of academic excellence, entrepreneurial energy, and broad access. This New American University is a single, unified institution comprising four differentiated campuses positively affecting the economic, social, cultural, and environmental health of the communities it serves. Its research is inspired by real world application, blurring the boundaries that traditionally separate academic disciplines. ASU serves more than 64,000 students in metropolitan Phoenix, Arizona, the nation's fifth largest city. ASU champions intellectual and cultural diversity, and welcomes students from all fifty states and more than one hundred nations across the globe.

For more information about Arizona State University, visit our web site at <http://www.asu.edu>.

3. **ASU's SUSTAINABILITY PROGRAM**

Arizona State University (ASU) is taking action to discover new pathways for a thriving economic system, a healthy ecosphere, and a more just society. Our intention is to conduct our day-to-day operations in ways that help maximize the university's positive impacts and provide optimal living, working, and learning environments, while minimizing ASU's negative impact on the planet.

ASU is moving quickly to achieve four overarching sustainability goals: 1) Carbon Neutrality, 2) Zero Solid/Water Waste, 3) Active Engagement and 4) Principled Practice.

4. **ABOUT CAMPUS METABOLISM**

Campus Metabolism (CM) is an Arizona State University (ASU) public website that displays real time energy information of buildings on the Tempe Campus. Campus Metabolism is used to monitor more than 25 buildings including most residence halls. It shares the same database backend as the Energy Information System (EIS) within Facilities Maintenance. Campus Metabolism currently monitors only the building on the Tempe Campus but is designed to interface with current and extended installation energy systems.

Campus Metabolism serves two purposes; it provides real time and historical utility data for higher energy management functions and continuously informs facility and installation personnel on how actions affect energy utilization and operational costs

There currently exist two iterations of CM. The original instance can be viewed at <http://cm.asu.edu> and the recent enhancement at <http://cm.asu.edu/cm2/>.

Campus Metabolism is ASUs portal to sustainability efforts undertaken and achieved at the university. The CM front end User Interface and Energy Dashboard displays energy data accumulated in the Energy Information System backend server.

5. **TERM OF CONTRACT**

The initial term will be for 2 years with the possibility of 3 successive 1 year renewals, for a total term not to exceed five (5) years. The contract will be available for use by other University departments during this term.

SECTION III – PRE-PROPOSAL CONFERENCE

No pre-proposal conference will be held.

A pre-proposal conference will be held at 2:00pm, August 20, 2012 in the University Services Building (USB), 1551 South Rural Road, Tempe, AZ 85297 (located on the east side of Rural between Broadway Ave and Apache Boulevard), Second Floor Conference Room 2105.

The purpose of this conference will be to clarify the contents of this Request for Proposal in order to prevent any misunderstanding of the University's intention and desires, and/or to give prospective suppliers an opportunity to review the site of the work. Any doubt as to the requirements of this Request for Proposal, or any apparent omission or discrepancy should be presented to the University representative at this conference. The University representative will then determine the appropriate action. If necessary, the University representative will issue a written amendment to the Request for Proposal. Oral statements or instructions shall not constitute an amendment to this Request for Proposal.

You do not have to send a representative to this pre-proposal conference. However, if you decide to not send a representative, then we may not know of your intent to participate in this solicitation, and so may not send you any written amendments to this Request for Proposal. Further, we will assume that your failure to attend the pre-proposal conference is an indication that you expect us to review your proposal as if you had taken advantage of the pre-proposal conference.

SECTION IV – INSTRUCTIONS TO PROPOSERS

1. You must address and deliver your proposal to the receptionist area, first floor, University Services Building, Purchasing and Business Services, Arizona State University, 1551 S. Rural Road, Tempe, Arizona 85281, **on or before the time and date set for closing. No proposal will be accepted after this time.** The University Services Building is located on the east side of Rural Road between Apache Road and Broadway Road. **PROPOSALS MUST BE IN A MARKED SEALED CONTAINER** (i.e., envelope, box):

Name of Proposer

Title of Proposal

RFP Number

Date and Time Proposal is Due

No telephone, electronic or facsimile proposals will be considered. **Proposals received after the time and date for closing will be returned to the proposer unopened.**

2. **DIRECTIONS TO USB VISITOR PARKING.** Purchasing and Business Services is in the University Services Building (USB) 1551 S. Rural Road, Tempe, AZ, 85281 (located on the east side of Rural between Broadway Ave and Apache Boulevard). Visitors may park in the USB Lot 45, located directly behind the building, using the Pay by Space machine, which has a cost of \$1.00 per hour or any portion thereof. The meter will be located near the main entry to USB, to allow visitors to park their vehicles and easily access the machine on their way into the building.

All visitors to USB are to obtain a visitor's badge from the USB Reception Desk to wear while in the building, please check in at the USB Reception Desk. The receptionist will call to have you escorted to your meeting.

3. Proposals must be submitted as a complete document set as follows:
 - a. One (1) hardcopy clearly marked 'original' in 8.5" x 11" non-binding form. No metal or plastic binding – may use binder, folder, or clip for easy removal of proposal. Sections shall be index tabbed, reference Section X Form of Proposal for more specific instructions.
 - b. One (1) electronic copy on USB flash drive or CD as a PDF document that is PC readable, labeled, and not password protected. **One "single"** document for main submittal. Any confidential and/or proprietary documents must be on a separate flash drive or CD and labeled appropriately.
 - c. Proposer must check and play all flash drives or CDs before submitting. Company marketing materials should not be included unless the RFP specifically requests them. All photos must be compressed to small size formats.
4. Proposer should use recycled paper and double-sided copying for the production of all printed and photocopied proposal documents. Furthermore, the documents should be clearly marked to indicate that they are printed on recycled content (minimum 30% post-consumer waste paper).

5. You may withdraw your proposal at any time prior to the time and date set for closing.

6. No department, school, or office at the University has the authority to solicit or receive official proposals other than Purchasing and Business Services. All solicitation is performed under the direct supervision of the Executive Director of Purchasing and Business Services and in complete accordance with University policies and procedures.
7. The University reserves the right to conduct discussions with proposers, and to accept revisions of proposals, and to negotiate price changes. During this discussion period, the University will not disclose any information derived from proposals submitted, or from discussions with other proposers. Once a contract is executed, the solicitation file, and the proposals contained therein, are in the public record and will be disclosed upon request.
8. Proposers submitting proposals which meet the selection criteria and which are deemed to be the most advantageous to the University may be requested to give an oral presentation to a selection committee. Purchasing and Business Services will do the scheduling of these oral presentations.
9. The award shall be made to the responsible proposer whose proposal is determined to be the most advantageous to the University based on the evaluation factors set forth in this Request for Proposal. Price, although a consideration, will not be the sole determining factor.
10. If you are submitting any information you consider to be proprietary, you must place it in a separate envelope and mark it "Proprietary Information". If the Executive Director of Purchasing and Business Services concurs, this information will not be considered public information. The Executive Director of Purchasing and Business Services is the final authority as to the extent of material, which is considered proprietary or confidential. Pricing information cannot be considered proprietary.
11. **The University is committed to the development of Small Business and Small Disadvantaged Business (SB & SDB) suppliers. If subcontracting (Tier 2 and higher) is necessary, the successful proposer (Tier 1) will make every effort to use SB & SDB in the performance of any contract resulting from this proposal. A report may be required at each annual anniversary date and at the completion of the contract indicating the extent of SB & SDB participation. A description of the Proposers expected efforts to solicit SB & SDB participation should be enclosed with your Proposal.**
12. Your proposal should be submitted in the format shown in Section X. Proposals in any other format will be considered informal and may be rejected. Conditional proposals will not be considered. An individual authorized to extend a formal proposal must sign all proposals. Proposals that are not signed may be rejected.
13. The University reserves the right to reject any or all proposals or any part thereof, or to accept any proposal, or any part thereof, or to withhold the award and to waive or decline to waive irregularities in any proposal when it determines that it is in its best interest to do so. The University also reserves the right to hold all proposals for a period of 60 days after the opening date and the right to accept a proposal not withdrawn before the scheduled proposal opening date.
14. **EXCEPTIONS:** The successful proposer is expected to enter into a standard form of agreement approved by the Arizona Board of Regents. The Arizona State University contract terms and conditions are included in this Request for Proposal in Section XII. These terms

and conditions are intended to be incorporated into the agreement between the University and the successful proposer. **Proposals that are contingent upon any changes to these mandatory contract terms and conditions may be deemed nonresponsive and may be rejected.**

15. Unless specifically stated to the contrary, any manufacturer's names, trade names, brand names or catalog numbers used in the specifications of this Request for Proposal are for the purpose of describing and/or establishing the quality, design and performance required. Any such reference is not intended to limit or restrict an offer by any proposer and is included in order to advise the potential proposer of the requirements for the University. Any offer, which proposes like quality, design or performance, will be considered.
16. Days: Calendar days
- May: Indicates something that is not mandatory but permissible/ desirable.
- Shall, Must, Will: Indicates mandatory requirement. Failure to meet these mandatory requirements will result in rejection of your proposal as non-responsive.
- Should: Indicates something that is recommended but not mandatory. If the proposer fails to provide recommended information, the University may, at its sole option, ask the proposer to provide the information or evaluate the proposal without the information.
17. Any person, firm, corporation or association submitting a proposal shall be deemed to have read and understood all the terms, conditions and requirements in the specifications/scope of work.
18. All responses and accompanying documentation will become the property of the University at the time the proposals are opened. **It will be the proposer's responsibility to request that samples be returned to the proposer and provide a method for doing so at the expense of the proposer. If a request is not received and a method of return is not provided, all samples shall become the property of the University 45 days from the date of the award.**
19. All required performance and payment bonds shall be held by the University in a secure location until the performance of the Agreement and the payment of all obligations arising there under have been 100% fulfilled. Upon completion of the project and all obligations being fulfilled, it shall be the proposer's responsibility to request the surety bonding company to submit to the University the necessary documents to approve the release the bonds. Until such time the bonds shall remain in full force and effect.
20. The University of Arizona, Northern Arizona University, and Arizona State University are all state universities governed by the Arizona Board of Regents. **Unless reasonable objection is made in writing as part of your response to this solicitation, the Board or either of the other two Universities may purchase goods and/or services from any agreement resulting from this solicitation.**
21. The University has entered into Cooperative Purchasing Agreements with The Maricopa County Community College District and with Maricopa County, in accordance with A.R.S. Sections 11-952 and 41-2632. Under these Cooperative Purchasing Agreements, and with the concurrence of the successful proposer, the Community College District and/or Maricopa

County may access an Agreement resulting from a solicitation done by the University. If you do not want to grant such access to the Maricopa County Community College District and or Maricopa County, **please so state** in your proposal. In the absence of a statement to the contrary, the University will assume that you do wish to grant access to any Agreement that may result from this Request for Proposal.

- 22.** Arizona State University is also a member of the Strategic Alliance for Volume Expenditures (\$AVE) cooperative purchasing group. \$AVE includes the State of Arizona, many Phoenix metropolitan area municipalities, and many K-12 unified school districts. Under the \$AVE Cooperative Purchasing Agreement, and with the concurrence of the successful contractor under this solicitation, a member of \$AVE may access an Agreement resulting from a solicitation done by the University. If you **do not** want to grant such access to a member of \$AVE, **please so state** in your proposal. In the absence of a statement to the contrary, the University will assume that you do wish to grant access to any Agreement that may result from this Request for Proposal.
- 23.** All formal inquiries or requests for significant or material clarification or interpretation, or notification to the University of errors or omissions relating to this Request for Proposal must be directed, in writing or by facsimile, to:

Stacie Malekooti
Purchasing and Business Services
University Services Building
Arizona State University
PO Box 875212
Tempe, AZ 85287-5212

Tel: 480-965-8860
Fax: 480-965-2234
E-mail: stacie.malekooti@asu.edu

Requests must be submitted on a copy of the Proposer Inquiry Form included in Section XI of this Request for Proposal. All formal inquiries must be submitted at least seven (7) calendar days before the time and date set for closing this Request for Proposal. Failure to submit inquiries by this deadline may result in the inquiry not being answered.

Note that the University will answer informal questions orally. The University makes no warranty of any kind as to the correctness of any oral answers and uses this process solely to provide minor clarifications rapidly. Oral statements or instructions shall not constitute an amendment to this Request for Proposal. Proposers shall not rely on any verbal responses from the University.

- 24.** The University shall not reimburse any proposer the cost of responding to a Request for Proposal.
- 25.** In accordance with an executive order titled "Air Pollution Emergency Proclamation" modified by the Governor of Arizona on July 16, 1996, the University formally requests that all products used in the performance of any contract that results from this solicitation be of low- or no-content of reactive organic compounds, to the maximum extent possible.

26. Arizona requires that we purchase ENERGY STAR® products or those certified by the Federal Energy Management Program as energy efficient in all categories available. If this solicitation is for a product in a category for which ENERGY STAR® or certified products are available, please submit evidence of the ENERGY STAR® status or certification for the products you are bidding. Please note that if you fail to submit this information but a competitor does, we will select your competitor's product as meeting specifications and deem your product as not meeting specifications. See A.R.S. §34-451.
27. The University requires that all desktop computers, notebooks, and monitors purchased must meet Electronic Product Environmental Assessment Tool (EPEAT) Gold status as contained in the IEEE 1680 Standard for the Environmental Assessment of Personal Computer Products. The registration criteria and a list of all registered equipment are at <http://www.epeat.net> on the Web.
28. To the extent applicable to any agreement resulting from this solicitation, the proposer shall comply with the Standards for Privacy of Individually Identifiable Information under the Health Insurance Portability and Accountability Act of 1996 contained in 45 CFR Parts 160 and 164 (the "HIPAA Privacy Standards") as of the effective date of the HIPAA Privacy Standards on April 14, 2003 or as later determined. Proposer will use all security and privacy safeguards necessary to protect Protected Health Information (PHI), as defined by HIPPA, and shall immediately report to University all improper use or disclosure of PHI of which it becomes aware. Proposer agrees to ensure that its agents and subcontractors agree to and abide by these requirements. Proposer agrees to indemnify the State of Arizona, the Arizona Board of Regents, Arizona State University and their regents, employees and agents against all harm or damage caused or contributed to by Proposer's breach of its obligations under this paragraph.
29. All systems containing ASU data must be designed, managed and operated in accordance with information security best practices and in compliance with all applicable federal and state laws, regulations and policies. In addition, systems must be managed in such a way that they are in compliance or are consistent with ASU's policies and standards regarding data usage and information security. In an effort to diminish information security threats, Successful Proposer will (or will require the third party host appointee to):
- i. Complete SSAE 16 or substantially equivalent reviews in accordance with ASU policies, as the same may be amended from time to time, which reviews are subject to review and approval by ASU. At the present time no more than two reviews per year are required.
 - ii. Perform periodic scans, including penetration tests, for unauthorized applications, services, code and system vulnerabilities on the delegated services network and systems at regular intervals in accordance with ASU's policies and standards. Weaknesses must be corrected within a specified period of time as defined in ASU's policies and standards as amended from time to time.
 - iii. Use secure development and coding standards including secure change management procedures in accordance with ASU's policies and standards as the same may be amended from time to time. Internal standards and procedures are to be provided to ASU for review and approval a minimum of one time annually.
 - iv. Carry out updates and patch management 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 request.
 - v. Control access to ASU's resources, including sensitive data, limiting access to legitimate business need based on an individual's job-related assignment. Access should be

approved and tracked by the system owner to ensure proper usage and accountability and shall be subject to review by ASU upon request.

- vi. Report information security incidents immediately (including, but not limited to those that involve information disclosure incidents, network intrusions, successful virus attacks, unauthorized access or modifications, and threats and vulnerabilities).

- 30.** The University believes that it can best maintain its reputation for treating suppliers in a fair, honest, and consistent manner by conducting solicitations in good faith and by granting competitors an equal opportunity to win an award. If you feel that we have fallen short of these goals, you may submit a protest pursuant to the Arizona Board of Regents procurement procedures, section 3-809, in particular section 3-809C. This paragraph does not include all of the provisions of the Regents procedures, but it does tell you what you have to do to initiate a protest. First, you have to be an "interested party." An "interested party" is an actual or prospective proposer whose direct economic interest may be affected by the issuance of a solicitation, the award of a contract, or by the failure to award a contract. Whether an actual prospective bidder or offer or has a *direct* economic interest will depend upon the circumstances in each case. At a minimum, the interest must be substantial and must be tangibly affected by the administrative action or proposed action concerned in the case. For instance, a bidder or proposer who is fourth in line for award does not have a sufficient economic interest to protest the proposed award of a contract to the low bidder. Second, you must submit the protest in a timely manner. In procurements inviting bids, protests based upon alleged errors, irregularities or, improprieties in a solicitation that are apparent before the bid opening shall be filed before the bid opening. In procurements requesting proposals, protests based upon alleged errors, irregularities or improprieties in a solicitation that are apparent before the closing date for receipt of initial proposals shall be filed before the closing date for receipt of initial proposals. Protests concerning improprieties that do not exist in the initial solicitation, but that are subsequently incorporated into the solicitation, shall be filed by the next closing date for receipt of proposals following the incorporation. In cases other than those just covered, protests shall be filed no later than ten days after a contract is awarded in connection with the procurement action. Failure to timely protest shall be deemed a waiver of all rights. Third, and finally, your protest shall be in writing and shall include the following information: (1) The name, address, telephone number, and fax number of the protestor; (2) The signature of the protestor or its representative; (3) Identification of the solicitation or contract number; (4) A detailed statement of the legal and factual grounds of the protest including copies of relevant documents; and (5) The form of relief requested.

Protests should be directed to:

John F. Riley, C.P.M.
Executive Director of Purchasing and Business Services
Arizona State University
PO Box 875212
Tempe AZ 85287-5212
Fax: (480) 965-2234

Please note that as the University takes protests very seriously; we expect you to do so as well. Frivolous protests will not result in gain for your firm.

SECTION V – SPECIFICATIONS/SCOPE OF WORK

Campus Metabolism (CM) is an Arizona State University (ASU) public website that displays real time energy information for buildings on the Tempe Campus. It shares the same database backend as the Energy Information System (EIS) within Facilities Management. Campus Metabolism currently monitors only the buildings on the Tempe Campus but the intent of the design is to interface with current and extended energy systems.

Campus Metabolism serves two purposes; it provides real time and historical utility data for higher energy management functions and continuously informs facility and installation personnel on how actions affect energy utilization and operational costs.

Technology:

The current version of CM utilizes a central database, Microsoft SQL Server. The data from SQL server is made available to front end (web application) using web service functions developed with ASP.NET. The main website is developed with Flex 4 architecture and delivered over the internet via Flash Player.

There currently exist two iterations of CM. The original instance can be viewed at <http://cm.asu.edu> and the recent, unreleased, enhancement is available at <http://cm.asu.edu/cm2/>.

1. Development

ASU desires that the CM dashboard maintain a specific look and feel. As such, ASU will serve as advisor to the development team of the awarded organization with regards to application enhancement. Below are listed some of the high level deliverables anticipated. This not a comprehensive list of work.

- Dashboard and user interface based on original Campus Metabolism application design and functionality.
- Real time data display and functionality.
- Customizable historical displays
- Inclusion of all ASU campuses, properties and associated buildings where metering is available.
- The application shall display all data available or required from the backend EIS database which includes, but is not limited to, Electric, Chilled Water, Heating, Gas, Renewable data.
- Incorporation of Renewable Energy installations.
- Incorporation of the “Virtual Room” environment for both Office and Residential Hall spaces.
- Incorporation of appropriate links, i.e., Weather, Solar, News, Campus events, Web 2.0, etc.
- Incorporation of statistical gauges, graphs, comparison tools, exporting functions and charts of individual structures, to include structure totals and floor totals where available..
- Scalable technology functionality, i.e., adjustment of screen size to accommodate client settings, upgrade current map with interactive features (see CM2).

- Built in scalability and admin tools for future growth, expansion as well as, sustainability goals, i.e., water, transportation, etc.
2. **Marketing and Distribution**
Proposal shall include methodology for development of Marketing and Distribution timelines, royalty estimates and other information as appropriate.
 3. **Reporting Processes**
Proposal shall include methodology for reporting and analyses of quarterly royalties. Sample reports with timeline and milestones must be provided.
 4. **University Technology Office and Fire Systems and Support Technologies** will be included to assist with any data transfer to ensure ASU infrastructure and associated security issues are in adherence to defined policies and procedures.

SECTION VI – GREEN PURCHASING REQUIREMENTS/SPECIFICATIONS

In order to reduce the adverse environmental impact of our purchasing decisions we are committed to buy goods and services from manufacturers and suppliers who share our environmental concern and commitment. Green purchasing is the method wherein environmental and social considerations are taken with equal weight to the price, availability and performance criteria that we use to make purchasing decisions.

Proposer shall use environmentally preferable products, materials and companies where economically feasible. Environmentally preferable products have a less or reduced effect on human health and the environment when compared to other products and companies that serve the same purpose. If two products are equal in performance characteristics and the pricing is within 5%, the University will favor the more environmentally preferable product and company.

If you are citing environmentally preferred product claims, you must provide proper certification or detailed information on environmental benefits, durability and recyclable properties.

The University and the supplier may negotiate during the contract term to permit the substitution or addition of Environmentally Preferable Products (EPPs) when such products are readily available at a competitive cost and satisfy the university's performance needs.

Unless otherwise specified, proposers and contractors should use recycled paper and double-sided copying for the production of all printed and photocopied documents. Furthermore, the documents shall be clearly marked to indicate that they are printed on recycled content (minimum 30% post-consumer waste) paper.

Proposer shall provide packaging/packing materials that meet at least one of, and preferably, all of the following criteria:

- Made from 100% post-consumer recycled materials
- Be recyclable
- Reusable
- Non-toxic
- Biodegradable

This information will be used as part of the evaluation criteria for Proposer Sustainability efforts for the RFP process.

SECTION VII – PROPOSER QUALIFICATIONS

The University is soliciting proposals from firms, which are in the business of providing services as listed in this Request for Proposal. Your proposal shall include, at a minimum, the following information. Failure to include these items may be grounds for rejection of your proposal.

1. Proposer shall present evidence that the firm has been engaged for at least the past three (3) years in providing services as listed in this Request for Proposal to private institution and/or educational institution.
2. Proposer shall submit three (3) references from projects the Proposer considers similar in scope and nature to this Request for Proposal. References must include the name, position, telephone number, fax number, and if available the e-mail address of the contact person for each account listed.

SECTION VIII – EVALUATION CRITERIA

Proposals will be evaluated on the following criteria, listed in order of their relative priority with most important listed first:

1. Experience and performance in the developing, licensing and marketing of software.
 - a. Management Methodology
 - b. Client references
 - c. Personnel assigned to the University
2. Development of Software and Distribution Method
3. Exceptions to the Terms and Conditions
4. State your willingness to sign a contract substantially similar to the Sample Contract provided as Appendix 1 of this RFP. Itemize and clearly state any proposed changes to the terms and conditions stated.
5. Confidential and/or Proprietary Information **must** be submitting per the instructions in Section IV, item 10. Any watermarks, footnotes or reference to Confidential and/or Proprietary throughout the submitted proposal will be disregarded as boilerplate markings.

SECTION IX – PRICING SCHEDULE

Using the format of your choice, detail the total cost of the engagement, to include a breakout of:

1. Proposed Pricing Schedule shall detail remuneration, including any minimum guarantees of University royalties or maximum fees to be paid by the University.
2. Collect licensee fees (royalties) on a quarterly basis and remit to the University.
 - 2.1. Provide timely detailed electronic reports and analyses of quarterly royalties. Provide sample of company's form / report.
 - 2.2. Electronically send complete list of licensee names, addresses and telephone numbers on a monthly basis to ASU Management.
 - 2.3. Conduct yearly audits, of licensee records. Provide sample of company's form / report.

SECTION X – FORM OF PROPOSAL/SPECIAL INSTRUCTIONS

Format of Submittal

To facilitate direct comparisons, your proposal must be submitted in the following format:

- **One (1)** clearly marked hardcopy “original” in 8.5” x 11” double-sided, non-binding form. Submittal shall be in order as listed below and index tabbed to match. No metal or plastic binding – may use binder, folder, or clip for easy removal of proposal.
- **One (1)** electronic copy on USB flash drive or CD as a PDF document that is PC readable, labeled, and not password protected. One “**single**” document for main submittal. Any confidential and/or proprietary documents must be on a separate flash drive or CD and labeled appropriately.
- Proposer must check and play all flash drives or CDs before submitting. Company marketing materials should not be included unless the RFP specifically requests them. All photos must be compressed to small size formats.

Content of Submittal

If proposer fails to provide any of the following information, with the exception of the mandatory proposal certifications, the University may, at its sole option, ask the proposer to provide the missing information or evaluate the proposal without the missing information.

1. Cover Page, Appendix 2 and the Mandatory Certifications, Section XIII
2. Detailed response to Section VII, Proposer Qualifications. This response shall be no more than (3) pages, using 10pt font.
3. Detailed response to Section V Scope of Work. A complete description of the three (3) consulting engagements your or your firm did that you consider to be most similar to the work requested in this solicitation. Include the results obtained; the total cost of the engagement; the name, title, telephone number, and email address of the individual at the client organization who is most familiar with this engagement. Please limit each of the three descriptions to a maximum of (2) pages, using 10pt font. Note: This may require that you obtain the client’s permission to provide this information to us.
4. Pricing Schedule per Section IX
5. Exceptions to Terms and Conditions.
6. Financial Statements per Section IV Instructions to Proposers.

SECTION XI – PROPOSER INQUIRY FORM

Pre-Proposal Questions, General Clarifications, etc.

PROJECT NAME: Campus Metabolism Development and Marketing Rights

PROPOSAL NUMBER: 021301

INQUIRY DEADLINE: 3:00 P.M., MST, August 27, 2012

QUESTIONS ON: ORIGINAL PROPOSAL or ADDENDUM NO.

SECTION NUMBER:

DATE:

WRITER:

COMPANY:

E-MAIL ADDRESS:

PHONE:

FAX:

QUESTIONS:

SECTION XII – TERMS & CONDITIONS

1. **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 is payable only and solely from funds appropriated for the purpose of this Agreement. The payment terms for this Agreement are Net 30 days. An invoice shall be submitted directly to the University's Payables and Reimbursements Department, unless otherwise directed. Any delays in payment are usually attributable to one of the following: failure of the supplier to submit an invoice to Payables and Reimbursements, dissatisfaction of the requesting department with the order delivered by the supplier, and a variance of the dollar amounts on the purchase order, the receiver, and the invoice. The interest rate on overdue payments is eighteen (18) percent APR. Such interest will begin accruing on the thirty-first (31st) day after the latest date of: the date of a valid purchase order, the date a correct supplier invoice is received at Payables and Reimbursements, and the date of delivery of an order that is satisfactory to the requesting department. Any claims for interest must be substantiated by copies of documents that show the date of the valid purchase order, the date a correct invoice was delivered to Payables and Reimbursements, and the date an order was delivered to the requesting department. The University may adjust the interest period, or deny the interest claim, based upon their documentation that there was no valid purchase order, that an incorrect invoice was submitted, that the order delivered was not satisfactory, or that the dates of any event were other than as claimed.
2. **REMEDIES AND APPLICABLE LAW.** This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona. The University and Contractor shall have all remedies afforded each by said law.
3. **FORCE MAJEURE.** Neither party shall be held responsible for any losses resulting if the fulfillment of any terms or provisions of this Agreement 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.
4. **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 operations and direct business relationships.
5. **GRATUITIES.** The University may, by written notice to the Contractor, cancel this Agreement if it is found by the University that gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Contractor, or any agent or representative of the Contractor, to any officer or employee of the 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 Agreement is canceled by 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 Contractor in providing such gratuities.

6. **MODIFICATIONS.** This Agreement can be modified or rescinded only by a writing signed by both parties or their duly authorized agents.
7. **ASSIGNMENT-DELEGATION.** No right or interest in this Agreement shall be assigned, or any obligation delegated, by Contractor without the written permission of the University. Any attempted assignment or delegation by Contractor shall be wholly void and totally ineffective for all purposes unless made in conformity with this paragraph.
8. **INTERPRETATION-PAROL EVIDENCE.** This writing is intended by the parties as a final expression of their Agreement and is intended also as a complete and exclusive statement of the terms of their Agreement. 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 Agreement. Acceptance or acquiescence in a course of performance rendered under this Agreement shall not be relevant to determine the meaning of this Agreement 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 Agreement, the definition contained in the Code is to control.
9. **EQUAL OPPORTUNITY CLAUSE.** The Provisions of Section 202 of Executive Order 11246.41, C.F.R. §60-1.4.41, C.F.R. §60-250.4 and 41, and C.F.R. §60-741.4 are incorporated herein by reference and shall be applicable to this Agreement unless this Agreement is exempted under the rules, regulations or orders of the Secretary of Labor.
10. **TERMINATION FOR DEFAULT.** In the event that the Contractor shall fail to maintain or keep in force any of the terms and conditions of this Agreement, the University may notify the Contractor in writing of such failure and demand that the same be remedied within 10 days. Should the Contractor fail to remedy the same within said period, the University shall then have the right to terminate this Agreement.
11. **NO WAIVER.** No waiver by University of any breach of the provisions of this Agreement by the Contractor 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 Agreement.
12. **TERMINATION.** The University may by written notice, stating the extent and effective date terminate this order for convenience in whole or in part, at any time. University shall pay the Contractor as full compensation for performance until such termination: (1) the unit or pro rata order price for the delivered and accepted portion; and (2) a reasonable amount, not otherwise recoverable from other sources by the Contractor as approved by the University, with respect to the undelivered or unacceptable portion of this order, provided compensation hereunder shall in no event exceed the total order price.
13. **CANCELLATION OF STATE CONTRACT.** In accordance with A.R.S. §38-511, this Agreement may be canceled without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Agreement on behalf of the University is, at anytime while the Agreement or any extension of the Agreement is in effect, an employee of any other party to the

Agreement in any capacity or a consultant to any other party of the Agreement with respect to the subject matter of the Agreement.

14. **LABOR DISPUTES.** Contractor shall give prompt notice to the University of any actual or potential labor dispute which delays or may delay performance under this Agreement.
15. **CONTRACT CLAIMS AND CONTROVERSIES.** All contract claims and controversies arising under this Agreement shall be resolved pursuant to the Arizona Board of Regents procurement procedures, section 3-809, in particular section 3-809C.
16. **CANCELLATION FOR LACK OF FUNDING.** This Agreement may be canceled without any further obligation on the part of the Arizona Board of Regents and Arizona State University in the event that sufficient appropriated funding is unavailable to assure full performance of its terms. The Contractor shall be notified in writing of such non-appropriation at the earliest opportunity.
17. **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, the Contractor hereby assigns to the Arizona Board of Regents for and on behalf of the University any and all claims for such overcharges.
18. **INSPECTION AND AUDIT.** All books, accounts, reports, files and other records relating to this Agreement shall be subject at all reasonable times to inspection and audit by the Arizona Board of Regents, Arizona State University or the Auditor General of the State of Arizona, or their agents for five (5) years after completion of this Agreement. Such records shall be produced at Arizona State University, or such other location as designated by Arizona State University, upon reasonable notice to the Contractor.
19. **INSOLVENCY.** The University shall have the right to terminate this Agreement at any time in the event Contractor files a petition in bankruptcy, or is adjudicated bankrupt; or if a petition in bankruptcy is filed against Contractor and not discharged within thirty (30) days; or if Contractor 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 Contractor or its business.
20. **ADVERTISING.** Contractor agrees that it will not use Arizona State University or any of its names or trademarks in any Contractor advertising.
21. **INDEMNIFICATION.** Contractor 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 Contractor 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 contractor 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 Indemnatee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnatee, be indemnified by Contractor from and against any and all claims. It is agreed that Contractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. In consideration of the award of this contract, the Contractor agrees to waive all rights of subrogation against the State of Arizona, its officers, officials, agents and employees for losses arising from the work performed by the Contractor for the State of Arizona.

22. **PARKING.** The Contractor shall obtain all parking permits and/or decals required while performing work on University premises. The Contractor should contact Parking and Transit, <http://cfo.asu.edu/pts>.
23. **OFFSHORE PERFORMANCE OF WORK PROHIBITED.** Due to security and identity protection concerns, direct services under this contract shall be performed within the borders of the United States. Any services that are described in the specifications or scope of work that directly serve Arizona State University and may involve access to secure or sensitive data or personal client data or development or modification of software for the University shall be performed within the borders of the United States. Unless specifically stated otherwise in the specifications, this definition does not apply to indirect or "overhead" services, redundant back-up services or services that are incidental to the performance of the contract. This provision applies to work performed by Subcontractors at all tiers.
24. **NON-DISCRIMINATION.** The successful contractor or supplier shall comply with all applicable state and federal statutes and regulations governing Equal Employment Opportunity, Non – Discrimination, and Immigration.
25. **UNIVERSITY WEAPONS POLICY.** 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-affiliate sponsored events and activities, except as provided in §12-781 of the *Arizona Revised Statutes* or unless written permission is given by the ASU Police Department (ASU PD). Notification by vendors to all persons or entities who are employees, officers, subcontractors, consultants, agents, guests, invitees, or licensees of vendor (Vendor Parties) of this policy is a condition and requirement of the contract. Vendor further agrees to enforce this contractual requirement against all Vendor Parties.
26. **PAYMENT CARD INDUSTRY DATA SECURITY STANDARD.** For e-commerce business and/or credit card transactions, Contractor 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.

Contractor is required to be in compliance with the requisites of the SAS 70 and/or Payment Card Industry Data Security Standard and provide written attestation of compliance annually.

27. **BYRD ANTI-LOBBYING AMENDMENT (31 U.S.C. 1352).** Contractors 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 of 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.
28. **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 <http://epls.arnet.gov>.
29. **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.
30. **COPYRIGHT OWNERSHIP.** Contractor’s work under this agreement is “work for hire” for purposes of the copyright laws of the United States and any foreign countries, and title to any subject copyright will vest with the University.

If for any reason the Work would not be considered a work made for hire under applicable law, Contractor sells, assigns, and transfers to University all rights and title to the copyright in the Work, related registrations and copyright applications, and any related renewals and extensions. This grant of rights and assignment extends to all works based upon, derived from, or incorporating the Work, to all income, royalties, damages, claims and payments payable now or later, to all causes of action, either in law or in equity for past, present, or future infringement based on the copyrights, and to all corresponding rights throughout the world.

If the Work is one to which the provisions of 17 U.S.C. 106A apply, the Author waives and appoints University to assert on the Contractor's behalf the Contractor's moral rights or any equivalent rights regarding the form or extent of any alteration to the Work (including removal or destruction) or the making of any derivative works based on the Work, including photographs, drawings or other visual reproductions or the Work, in any medium, for university purposes.

Contractor agrees to execute all papers and to perform other proper acts as University may deem necessary to secure these rights for University or its designee.

- 31. INSURANCE REQUIREMENTS.** Without limiting any liabilities or any other obligation of the Contractor, the Contractor shall purchase and maintain (and cause its subcontractors to purchase and maintain), in a company or companies lawfully authorized to do business in the State of Arizona, and rated at least A- VII in the current A.M. Best's, the minimum insurance coverage below. **Minimum requirements are subject to change based on scope of work and contract awarded.**

Contractor and subcontractors shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Contract, are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, employees or subcontractors.

The *insurance requirements* herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The University in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that might arise out of the performance of the work under this contract by the Contractor, its agents, representatives, employees or subcontractors, and Contractor is free to purchase additional insurance.

A. MINIMUM SCOPE AND LIMITS OF INSURANCE: Contractor shall provide coverage with limits of liability not less than those stated below.

1. Commercial General Liability – Occurrence Form

Policy shall 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
- Blanket Contractual Liability – Written and Oral \$1,000,000
- Fire Legal Liability \$50,000
- Each Occurrence \$1,000,000

- a. The policy shall be endorsed to include the following additional insured language: **“The State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees shall be named as additional insured’s with respect to**

liability arising out of the activities performed by or on behalf of the Contractor".

- b. 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.

2. Business Automobile Liability

Bodily Injury and Property Damage for any owned, hired, and/or non-owned vehicles used in the performance of this Contract.

- Combined Single Limit (CSL) \$1,000,000
- a. The policy shall be endorsed to include the following additional insured language: **"The State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees shall be named as additional insured's with respect to liability arising out of the activities performed by or on behalf of the Contractor, involving automobiles owned, leased, hired or borrowed by the Contractor".**
- b. 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.

3. Worker's Compensation and Employers' Liability

- Workers' Compensation Statutory
- Employers' Liability
 - Each Accident \$500,000
 - Disease – Each Employee \$500,000
 - Disease – Policy Limit \$1,000,000
- a. 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.
- b. This requirement shall not apply to: Separately, EACH contractor or subcontractor exempt under A.R.S. 23-901, AND when such contractor or subcontractor executes the appropriate waiver (Sole Proprietor/Independent Contractor) form.

4. Professional Liability (Errors and Omissions Liability)

- Each Claim \$1,000,000
- Annual Aggregate \$2,000,000
- a. In the event that the professional liability insurance required by this Contract is written on a claims-made basis, Contractor warrants that any

retroactive date under the policy shall precede the effective date of this Contract; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years beginning at the time work under this Contract is completed.

- b.** The policy shall cover professional misconduct or lack of ordinary skill for those positions defined in the Scope of Work of this contract.

5. Technology Errors and Omissions Insurance

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

Coverage to include:

- Systems analysis;
- Software design;
- Systems programming;
- Data processing;
- Systems integration;
- Outsourcing including outsourcing development and design;
- Systems design, consulting, development and modification;
- Training services relating to computer software or hardware;
- Management, repair and maintenance of computer products, networks and systems;
- Marketing, selling, servicing, distributing, installing and maintaining computer hardware or software; and
- Data entry, modification, verification, maintenance, storage, retrieval or preparation of data output.

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

b. The policy shall cover professional misconduct or lack of ordinary skill for those positions defined in the Scope of Work of this contract.

B. ADDITIONAL INSURANCE REQUIREMENTS: The policies shall include, or be endorsed to include, the following provisions:

1. The Contractor's insurance coverage shall be primary insurance with respect to all other available sources.
2. Coverage provided by the Contractor shall not be limited to the liability assumed under the indemnification provisions of this Contract.

C. NOTICE OF CANCELLATION: Each insurance policy required by the insurance provisions of this Contract shall provide the required coverage and shall not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty (30) days prior written notice has been given to the State of Arizona. Such notice shall be sent directly to Arizona State University, Purchasing and Business Services, PO Box 875212, Tempe, Arizona 85287 and shall be sent by certified mail, return receipt requested.

D. VERIFICATION OF COVERAGE: Contractor shall furnish the University with certificates of insurance (ACORD form or equivalent approved by the State of Arizona) as required by this Contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

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

All certificates required by this Contract shall be sent directly to Arizona State University, Purchasing and Business Services, PO Box 875212, Tempe, Arizona 85287. The University project/contract number and project description shall be noted on the certificate of insurance. The University reserves the right to require complete, certified copies of all insurance policies required by this Contract at any time.

E. SUBCONTRACTORS: Contractors' certificate(s) shall include all subcontractors as insured's under its policies **or** Contractor shall furnish to the University separate certificates and endorsements for each subcontractor. All coverage's for subcontractors shall be subject to the minimum requirements identified above.

32. SALES AND USE TAX. The Contractor agrees to comply with and to require all of his subcontractors to comply with all the provisions of applicable state sales excise tax law and compensation use tax law and all amendments to same. The Contractor 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 Contractor or any subcontractor to comply with the provisions of any or all said laws and amendments.

The University is not exempt from state sales excise tax and compensation use tax, except for equipment purchased for research or development under the provisions of A.R.S. §42-5159 (B) (14). Any equipment ordered as tax exempt shall be invoiced separately from taxable systems, even if purchased on the same purchase order from the University.

33. **PERSONNEL.** Employees of the Contractor assigned to the project and identified by name in the proposal shall remain dedicated to this project. Personnel changes shall be permitted only with prior notification and approval of the University.
34. **THE ARIZONA STATE UNIVERSITY CONFIDENTIAL FINANCIAL INFORMATION AGREEMENT IS REQUIRED.** This agreement is necessary to comply with the requirements of the “Gramm Leach Bliley Act” dealing with the confidentiality of customer information and the Safeguarding Rule.
35. **The University and Contractor recognize that student educational records are protected by the federal Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. 1232g).** FERPA permits disclosure of student record information to “other school officials” who have a legitimate educational interest in the information. The federal Family Compliance Office has recognized that institutions can designate other entities, including vendors and consultants, as “other school officials”. Designated representatives of Contractor will be designated as “other school officials” for purposes of this Agreement. No designated representative of the Contractor shall disclose information it receives under this agreement to any third party, except with the consent of the student or as required by law. Any disclosures made by the Contractor should comply with the University’s definition of legitimate educational purpose. If any designated representative discloses or misuses any educational record, the University will take appropriate action against the designated representative that is similar to action ASU would take against one of its employees who disclosed or misused the educational records of its students.

SECTION XIII – MANDATORY CERTIFICATIONS & SUBSTITUTE W-9

CONFLICT OF INTEREST CERTIFICATION

(Date)

Purchasing and Business Services
Arizona State University
PO Box 875212
Tempe, AZ 85287-5212

The undersigned certifies that to the best of his/her knowledge: **(check only one)**

- () There is no officer or employee of Arizona State University who has, or whose relative has, a substantial interest in any contract resulting from this request.

- () The names of any and all public officers or employees of Arizona State University who have, or whose relative has, a substantial interest in any contract resulting from this request, and the nature of the substantial interest, are included below or as an attachment to this certification.

(Firm)

(Address)

(Email Address)

(Signature required)

(Phone)

(Print name)

(Fax)

(Print title)

(Federal Taxpayer ID Number)

(Purchasing 01-31-2007. Previous editions are obsolete and cannot be used.)

FEDERAL DEBARRED LIST CERTIFICATION

Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters (Dec 2001)

(Date)

Purchasing and Business Services
Arizona State University
PO Box 875212
Tempe, AZ 85287-5212

In accordance with the Federal Acquisition Regulation, 52.209-5:

(a) (1) The Offeror certifies, to the best of its knowledge and belief, that—

(i) The Offeror and/or any of its Principals—

(A) (check one) **Are** () or **are not** () presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency; (The debarred list (List of Parties Excluded from Federal Procurement and Nonprocurement Programs) is at <http://epls.arnet.gov> on the Web.)

(B) (check one) **Have** () or **have not** (), within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; and

(C) (check one) **Are** () or **are not** () presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in paragraph (a)(1)(i)(B) of this provision.

(ii) The Offeror (check one) **has** () or **has not** (), within a three-year period preceding this offer, had one or more contracts terminated for default by any Federal agency.

(2) "Principals," for the purposes of this certification, means officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions).

This Certification Concerns a Matter Within the Jurisdiction of an Agency of the United States and the Making of a False, Fictitious, or Fraudulent Certification May Render the Maker Subject to Prosecution Under Section 1001, Title 18, United States Code.

(b) The Offeror shall provide immediate written notice to the Contracting Officer if, at any time prior to contract award, the Offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

(c) A certification that any of the items in paragraph (a) of this provision exists will not necessarily result in withholding of an award under this solicitation. However, the certification will be considered in connection with a determination of the Offeror's responsibility. Failure of the Offeror to furnish a certification or provide such additional information as requested by the Contracting Officer may render the Offeror nonresponsible.

(d) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (a) of this provision. The knowledge and information of an Offeror is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

(e) The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Offeror knowingly rendered an erroneous certification, in addition to other remedies available to the Government, the Contracting Officer may terminate the contract resulting from this solicitation for default.

(Firm)

(Address)

(Email Address)

(Signature required)

(Phone)

(Print name)

(Fax)

(Print title)

(Federal Taxpayer ID Number)

(Purchasing 01-31-2007)

ANTI-LOBBYING CERTIFICATION

Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions (Sept 2007)

(Date)

Purchasing and Business Services
Arizona State University
PO Box 875212
Tempe, AZ 85287-5212

In accordance with the Federal Acquisition Regulation, 52.203-11:

(a) The definitions and prohibitions contained in the clause, at FAR 52.203-12, Limitation on Payments to Influence Certain Federal Transactions, included in this solicitation, are hereby incorporated by reference in paragraph (b) of this certification.

(b) The offeror, by signing its offer, hereby certifies to the best of his or her knowledge and belief that on or after December 23, 1989—

(1) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of this contract;

(2) If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with this solicitation, the offeror shall complete and submit, with its offer, OMB standard form LLL, Disclosure of Lobbying Activities, to the Contracting Officer; and

(3) He or she will include the language of this certification in all subcontract awards at any tier and require that all recipients of subcontract awards in excess of \$100,000 shall certify and disclose accordingly.

(c) Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by Section 1352, Title 31, United States Code. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this provision, shall be subject to a civil penalty of not less than \$10,000, and not more than \$100,000, for each such failure.

(Signature page follows)

(Firm)

(Address)

(Email Address)

(Signature required)

(Phone)

(Print name)

(Fax)

(Print title)

(Federal Taxpayer ID Number)

(Purchasing 01-31-2007)

SUDAN OR IRAN BUSINESS OPERATIONS CERTIFICATION

(Date)

Purchasing and Business Services
Arizona State University
PO Box 875212
Tempe, AZ 85287-5212

The undersigned certifies that pursuant to Arizona Revised Statutes § 35-391 and 35-393, the below entity does not have a scrutinized business operation in either Sudan or Iran.

(Firm)

(Address)

(Email address)

(Signature required)

(Phone)

(Print name)

(Fax)

(Print title)

(Federal Taxpayer ID Number)

(Purchasing 02-18-2009)

LEGAL WORKER CERTIFICATION

(Date)

Purchasing and Business Services
Arizona State University
PO Box 875212
Tempe, AZ 85287-5212

As required by Arizona Revised Statutes §41-4401 the University is prohibited after September 30, 2008 from awarding a contract to any contractor who fails, or whose subcontractors fail, to comply with Arizona Revised Statutes § 23-214-A. The undersigned entity warrants that it complies fully with all federal immigration laws and regulations that relate to its employees, that it shall verify, through the employment verification pilot program as jointly administered by the U.S. Department of Homeland Security and the Social Security Administration or any of its successor programs, 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 below entity.

The undersigned acknowledges that a breach of this warranty by the below entity or by any subcontractor or sub-subcontractor under any Contract resulting from this solicitation shall be deemed a material breach of the Contract, and is grounds for penalties, including termination of the Contract, by the University. The University retains the right to inspect the records of the below entity, subcontractor and sub-subcontractor employee who performs work under the Contract, and to conduct random verification of the employment records of the below entity and any subcontractor and sub-subcontractor who works on the Contract, to ensure that the below entity and each subcontractor and sub-subcontractor is complying with the warranties set forth above.

(Firm)

(Address)

(Email address)

(Signature required)

(Phone)

(Print name)

(Fax)

(Print title)

(Federal Taxpayer ID Number)

(Purchasing 09-23-2008)

SUPPLIER SUSTAINABILITY QUESTIONNAIRE

Company Name: _____

Date: _____

The Supplier Sustainability Questionnaire must be completed and returned with your Proposal unless you have previously submitted a completed form and have no change. This questionnaire is applicable to firms that provide only services as well as those that provide goods.

1. What policies are in place to monitor and manage your supply chain regarding environmental issues? Please check the items that apply.

- We apply environmental criteria when making purchasing decisions.
 - We purchase "green" (recyclable, reusable, non-toxic, bio-degradable, and made from 100% post-consumer recycled materials) supplies, products and materials.
 - We specify sustainable products and or locally manufactured products
 - We specify products using Electronic Products Environmental Assessment Tool (EPEAT) standards
 - We partner with sustainable suppliers or utilize suppliers who share in the sustainability commitment
 - Our Director of Sustainability is researching industry best procurement practices
- Other – describe other ways your company monitors and manages your supply chain regarding environmental issues:

2. What type of sustainable packaging/shipping materials do you use? Please check the items that apply.

- Our packaging/shipping materials are recyclable
 - Our packaging/shipping materials are reusable
 - Our packaging/shipping materials are bio-degradable
 - Our packaging/shipping materials are made from 100% post-consumer recycled materials
- Other – describe other types of sustainable packaging/shipping materials you use:

3. Does your company have a Green Transportation Plan for your operation? Please check the items that apply.

- We encourage carpooling, public transportation, and using other alternative modes of transportation
 - We subsidize public transportation for employees
 - We are developing a Green Transportation Plan
 - We have an established Green Transportation Plan (describe below)
 - We offer flexible hours, telecommuting or a compressed work week
 - We utilize teleconference, video conference, WebEx or GoTo Meetings
 - We purchase carbon offsets
 - We own electric, hybrid, or E-85 fueled vehicles
 - We rent hybrid vehicles
- Other – describe your company's Green Transportation Plan for your operation:

4. What does your company do to minimize the environmental costs associated with shipping? Please check the items that apply.

- We are evaluating what the company can do to minimize the environmental costs associated with shipping
- We combine deliveries with customer visits
- We consolidate deliveries
- We use bike couriers for local delivery

- We utilize electronic communications and electronic transfer of documents. E-mail, fax and Portable Document Format (PDF)
- We use eco-friendly courier's packaging/shipping materials that include post-consumer waste recycled materials and are recyclable
- Our packaging and shipping materials are reused until they eventually get recycled
- We have established a sustainability plan that minimizes the need for shipping (describe below)
- We update mailing lists to minimize unwanted mailings
- We specify products that can be purchased within a 500 mile radius of the delivery location
- Other – describe what your company does to minimize the environmental costs associated with shipping

5. Does your company have an environmental policy statement? Please check the items that apply.

- We are developing an environmental policy statement
- Our environmental policy statement consists of a commitment to promote environmental stewardship
- Our environmental policy statement describes our company's Sustainability Initiative
- We have formed an oversight committee to ensure the success of our environmental policy
- Our environmental policy statement describes how our company explores opportunities to work with communities, governments and non-governmental and professional organizations to help articulate, teach and advance the principles of sustainability
- Other - Provide (or supply a link) your company's environmental policy statement

6. Has your company ever been cited for non-compliance of an environmental or safety issue? Please check the item that applies.

- No, my company HAS NOT been cited for non-compliance of an environmental or safety issue.
- Yes, my company HAS been cited for non-compliance of an environmental or safety issue. State the reason, date and outcome of the citation

7. What programs do you have in place, or planned for promoting resource efficiency? (i.e. an environmental or waste audit)? Please check the items that apply.

- We recycle consumables, reduce waste and practice energy reduction when possible
- We are developing a recycling program
- We utilize a formal energy management system
- We are a member of various environmental organizations
- We have formed a Sustainability Committee to identify sustainable solutions for our company
- We have a company-wide Recycling Program
- Our Director of Sustainability initiates and supports sustainability efforts
- We have performed an environmental or waste audit
- We are recognized by peers and environmental organizations for providing leadership in sustainability
- We are a carbon-neutral company
- Other - what other programs do you have in place, or planned for promoting resource efficiency

8. Does your company have web-based materials available documenting your "Green" initiatives? Please check the items that apply.

- We are developing web-based documentation of "Green" initiatives (provide link)
- Our website includes "Green" reference information (provide link)
- Our website contains an environmental policy statement (provide link)
- Our website includes materials that document company's "Green" initiatives (provide link)

- Our website contains our company's Sustainability Report (provide link)
Other – Does your company have other web-based materials available documenting your "Green" initiatives? (provide link)

9. If you are providing a product, does the manufacturer of the product that you are proposing have an environmental policy statement? Please check the item that applies.

- No, the manufacturer of the product that I am proposing DOES NOT have an environmental policy statement
- Yes, the manufacturer of the product that I am proposing HAS an environmental policy statement
Provide Environmental Policy Statement

10. If you are providing a product, has the manufacturer of the product that you are proposing ever been cited for non-compliance of an environmental or safety issue? Please check the item that applies.

- No, the manufacturer of the product that I am proposing HAS NOT been cited for non-compliance of an environmental or safety issue
- Yes, the manufacturer of the product that I am proposing HAS been cited for non-compliance of an environmental or safety issue
Provide reason, date and outcome of the citation

11. Has an environmental life-cycle analysis of the product that you are proposing been conducted by a certified testing organization, such as Green Seal? Please check the item that applies.

- No, an environmental life-cycle analysis of the product that I am proposing HAS NOT been conducted by a certified testing organization, such as Green Seal
- Yes, an environmental life-cycle analysis of the product that I am proposing HAS been conducted by a certified testing organization, such as Green Seal.
Provide certification

12. If selected pursuant to this solicitation, what are your plans for continuing your operations and services to ASU if there is a major and/or catastrophic pandemic influenza outbreak?

RETURN TO ASU	ARIZONA STATE UNIVERSITY SUBSTITUTE W-9 & VENDOR AUTHORIZATION FORM – Page 1 of 2	DO NOT SEND TO IRS
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Foreign persons who are non-residents for US Tax purposes do not complete the ASU Substitute W-9 form. Instead, complete IRS Form W-8 BEN available at <http://www.irs.gov/pub/irs-pdf/fw8ben.pdf>

▶ Taxpayer Identification Number (TIN)		<input type="checkbox"/> Employer ID Number (EIN) <input type="checkbox"/> Social Security Number (SSN)
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▶ LEGAL NAME: <i>(must match TIN above)</i>	
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Are you doing business in Arizona for purposes of sales/use tax collection and remittance? Yes No

If "Yes" please provide Arizona License # _____ and sales/use tax rate charged _____ % DUNS# _____

▶ LEGAL MAILING ADDRESS:	<i>(Where tax information and general correspondence is to be sent)</i>			
DBA/Branch/Location:				
ADDRESS:				
ADDRESS LINE 2:				
CITY:		ST:		ZIP:

▶ REMIT TO ADDRESS:	<input type="checkbox"/> Same as Legal Mailing Address			
DBA/Branch/Location:				
ADDRESS:				
ADDRESS LINE 2:				
CITY:		ST:		ZIP:

▶ ENTITY TYPE				
<input type="checkbox"/> Individual (not a business)	<input type="checkbox"/> Sole proprietor (individually owned business) or sole proprietor organized as LLC or PLLC	<input type="checkbox"/> Corporation (NOT providing health care, medical or legal services)	<input type="checkbox"/> Corporation (providing health care, medical or legal services)	<input type="checkbox"/> Partnership, LLP or partnership organized as LLC or PLLC
<input type="checkbox"/> The US or any of its political subdivisions or instrumentalities	<input type="checkbox"/> A state, a possession of the US, or any of their political subdivisions or instrumentalities	<input type="checkbox"/> Tax-exempt organizations under IRC §501	<input type="checkbox"/> An international organization or any of its agencies or instrumentalities	<input type="checkbox"/> State of Arizona Employee

▶ CERTIFICATION	
Under penalties of perjury, I certify that:	
<ol style="list-style-type: none"> 1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), 2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me I am no longer subject to backup withholding, 3. I am a U.S. person (including a resident alien). 	
Certification instructions: You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return.	
The Internal Revenue Service does not require your consent to any provision of this document other than the certification required to avoid backup withholding	

Signature of U.S. Individual	Date:
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NOTE: IF BOTH PAGES OF THIS FORM ARE NOT COMPLETED THE FORM WILL BE RETURNED TO YOU. Arizona State University (ASU) is fulfilling a mandate associated with state agencies increasing procurements from Arizona Small and Diverse Businesses.

RETURN TO ASU	ARIZONA STATE UNIVERSITY SUBSTITUTE W-9 & VENDOR AUTHORIZATION FORM – Page 2 of 2	DO NOT SEND TO IRS
Legal Name:		TIN:
SECTION 1 - FEDERAL INFORMATION - REQUIRED		
What is the Federal classification type of your business? - See definitions on link below. (S.B.A. Small Business definition FAR 19.001 and size standards FAR 19.102) http://www.sba.gov/size		
LARGE Business? YES <input type="checkbox"/> NO <input type="checkbox"/> SMALL Business? YES <input type="checkbox"/> NO <input type="checkbox"/>		
Please check all that apply to your business for Federal Supplier Type:		
Service Disabled Veteran Owned (VD) <input type="checkbox"/>	Small Disadvantaged (SD) <input type="checkbox"/>	Women Owned (WO) <input type="checkbox"/>
Veteran Owned (VO) <input type="checkbox"/>	Minority Institution (MI) <input type="checkbox"/>	HUB Zone (HZ) <input type="checkbox"/>
SECTION 2 - STATE OF ARIZONA SMALL BUSINESS INFORMATION - REQUIRED		
Are you self-certified according to this State of Arizona definition? <i>"100 full-time employees or less OR \$4 million in volume or less in the last fiscal year"</i>		YES <input type="checkbox"/> NO <input type="checkbox"/>
Per FAR 52.219-1 and under 15 U.S.C. 645(d), any person who misrepresents a firm's status as a small, HUB Zone small, small disadvantaged, or women-owned small business concern in order to obtain a contract to be awarded under the preference programs established pursuant to section 8(a), 8(d), 9, or 15 of the Small Business Act or any other provision of Federal law that specifically references section 8(d) for a definition of program eligibility, shall be punished by imposition of fine, imprisonment, or both; be subject to administrative remedies, including suspension and debarment; and be ineligible for participation in programs conducted under the authority of the Act.		
Print Name:		
Signature:		
PHONE:	FAX:	
VENDOR – LIST PRODUCT or SERVICE PROVIDED		
IF BUYER NAME IS LISTED PLEASE RETURN TO BUYER	Buyer:	Phone:
		Fax:

NOTE: IF BOTH PAGES OF THIS FORM ARE NOT COMPLETED THE FORM WILL BE RETURNED TO YOU. Arizona State University (ASU) is fulfilling a mandate associated with state agencies increasing procurements from Arizona Small and Diverse Businesses.

APPENDIX 1 - SAMPLE COPYRIGHT LICENSE

COPYRIGHT LICENSE AGREEMENT

THIS AGREEMENT is entered as of _____ (“Effective Date”) by and between Arizona Science and Technology Enterprises LLC d/b/a Arizona Technology Enterprises (“AzTE”), and _____ (“LICENSEE”).

RECITALS

WHEREAS, the parties agree that Arizona Board of Regents for and on behalf of Arizona State University (“ASU”) is the owner of the Copyright and Work (as defined below);

WHEREAS, AzTE is the exclusive intellectual property company for ASU; and

WHEREAS, AzTE and LICENSEE desire for LICENSEE to obtain an exclusive license under and to the Copyright and Work for licensing, sale and other disposition of Products (as defined below) by LICENSEE pursuant to the terms of this Agreement.

AGREEMENT

1. DEFINITIONS

- 1.1. “Affiliate” shall mean any corporation or other entity that directly or indirectly controls, is controlled by, or is under common control with, another corporation or entity. Control means direct or indirect ownership of, or other beneficial interest in, fifty percent (50%) or more of the voting stock, other voting interest, or income of a corporation or other entity.
- 1.2. “Copyright” means the copyright in and to the Work owned by ASU.
- 1.3. “Net Sales” means the total gross revenue received by LICENSEE and Affiliates from the use, commercialization, distribution, lease, license, publication, rental, reproduction, sale, or other disposition of Products and any derivative works thereof, including from any activities undertaken under the license granted under Section 2 hereof. Net Sales shall include all revenue received by LICENSEE and Affiliates from any seminars, workshops and other forums that distribute, publish or reproduce copies of Work. Net Sales shall exclude (i) reasonable discounts, rebates and price reductions to customers (limited to 5% of the sale price charged to other customers), (ii) reasonable credits to customers for rejected or returned Products, and (iii) sales taxes.
- 1.4. “Product” means any content, material, offering, product, service, technology, or work (or component or derivative work thereof), in any form, that is either (i) covered by the Copyright or (ii) constitutes, incorporates, or involves use of Work. Product shall include any services or training offered in connection with Product.
- 1.5. “Sublicensee” means any third party to whom LICENSEE has granted a sublicense pursuant to this Agreement.

- 1.6. "Sublicensee Net Sales" means the total gross revenue received by Sublicensee from the use, commercialization, distribution, lease, license, publication, rental, reproduction, sale, or other disposition of Products and any derivative works thereof, including from any activities undertaken under the license grant under Section 2 hereof. Sublicensee Net Sales shall include all revenue received by Sublicensee from any seminars, workshops and other forums that distribute, publish or reproduce copies of Work. Sublicensee Net Sales shall exclude (i) reasonable discounts, rebates and price reductions to customers (limited to 5% of the sale price charged to other customers), (ii) reasonable credits to customers for rejected or returned Products, and (iii) sales taxes.
- 1.7. "Work" shall mean the content, materials, and work described in Exhibit A hereto, and any derivative work thereof created by on or behalf of LICENSEE.

2. GRANT

- 2.1. Subject to the terms and conditions of this Agreement, AzTE grants to LICENSEE an exclusive, worldwide license (i) to practice all rights under the Copyright and Work, including the right to use, copy, distribute, print, publish, and modify and create derivative works of the same, and (ii) to commercialize, lease, rent, sell, and commercialize Products in all languages and all media forms (including, books, seminars and workshops). Such license grant also shall include the right to grant sublicenses to Affiliates and third parties, subject to (i) prior written approval of AzTE, not to be unreasonably withheld or delayed, and (ii) the payment and royalty obligations on the part of LICENSEE as set forth in this Agreement. LICENSEE may offer services or training in connection with the Product. For the avoidance of doubt, all activities undertaken under the license granted under this Section 2.1 shall be subject to the royalty and payment obligations under this Agreement, including Section 3.
- 2.2. AzTE expressly reserves for ASU the right to practice and use the Copyright, Product, and Work for research, educational, and scholarly purposes and to advance the public service mission of ASU in all languages and all media forms, including the right to modify and create derivative works of the Copyright, Product, and Work. Subject to the preceding sentence, during the term of this Agreement, AzTE shall not grant a license to any third party to license, sell or otherwise commercialize the Copyright, Product, or Work.
- 2.3. All rights and licenses granted by AzTE to LICENSEE under this Agreement are subject to (i) any limitations imposed by the terms of any government grant, government contract or government cooperative agreement applicable to the licenses granted under this Agreement, and (ii) applicable requirements of 35 U.S.C. Sections 200 et seq., as amended, and implementing regulations and policies.
- 2.4. All rights not specifically granted herein are reserved to AzTE. Except as expressly provided under this Section 2, no right or license is granted (expressly or by implication or estoppel) by AzTE to LICENSEE or its Affiliates or Sublicensees under any tangible or intellectual property, content, materials, work, patent, patent application, trademark, copyright, trade secret, know-how, technical information, data or other proprietary right.
- 2.5. Neither ASU nor AzTE will be responsible for any technology or other support of the Copyright, Product, or Work, or the provision of any services to LICENSEE, Affiliates or Sublicensees.

3. PAYMENTS

- 3.1. In consideration for the rights granted hereunder, LICENSEE shall pay to AzTE a royalty of ___% of Net Sales. All royalty payments are non-creditable, nonrefundable and non-recoverable.
- 3.2. In further consideration for the rights granted hereunder, LICENSEE shall pay to AzTE a royalty of ___% of Sublicensee Net Sales. All royalty payments are non-creditable, nonrefundable and non-recoverable.
- 3.3. LICENSEE shall be responsible for payment of all bank transfer charges, taxes, duties and other charges payable in connection with payments of royalties from LICENSEE to AzTE.

4. COPYRIGHT, LEGAL REIMBURSEMENT, AND INFRINGEMENT

- 4.1. ASU owns, and subject to the licenses granted herein, shall own all right, title and interest in and to the Copyright and Work. LICENSEE shall place ASU's copyright mark on all Work and any other related materials along with a footnote that reads: "copyrighted by Arizona State University, all rights reserved."
- 4.2. In consultation with LICENSEE, AzTE and/or ASU shall have the sole right to pursue Copyright or any other intellectual property protection regarding the Work. LICENSEE shall reimburse AzTE and/or ASU for any expenses incurred in doing so following the Effective Date of this Agreement; such expenses shall be reimbursed by LICENSEE within fourteen (14) days of receipt of an invoice from AzTE.
- 4.3. LICENSEE shall inform AzTE promptly in writing of any alleged infringement by a third party of the Copyright, Product, or Work which comes to LICENSEE's attention and of any available evidence thereof. At its expense, AzTE shall have the sole right, but not the obligation, to pursue action against any and all infringers; any recovery from such action shall be retained by AzTE.

5. DUE DILIGENCE AND MARKETING OBLIGATIONS

- 5.1. LICENSEE shall use its best efforts to develop, market, sell, and distribute Products. To such end, such efforts shall include but not be limited to the following: (i) deliver to AzTE a business plan with three months of execution of this Agreement, and (ii) achieve a commercial sale of a Product within one year of execution of this Agreement.
- 5.2. AzTE shall have the right to terminate this Agreement, or at its option, to convert the license granted hereunder to a non-exclusive license, in the event that LICENSEE fails to exercise such best efforts.
- 5.3. If LICENSEE fails to make a royalty payment to AzTE for any two year period of time, regardless of whether LICENSEE has collected revenue from Products, AzTE shall have the right to terminate this Agreement, or at its option, to convert the license granted hereunder to a non-exclusive license.

6. REPORTS; AUDIT

- 6.1. Within thirty (30) days after the first business day of each calendar quarter after the Effective Date, LICENSEE shall submit to AzTE a written report with respect to the preceding calendar quarter (the "Report") in a form reasonably acceptable to AzTE stating:
- 6.1.1. LICENSEE'S development and marketing efforts of Products, in a form reasonably acceptable to AzTE;
 - 6.1.2. all royalties and other revenue owed to AzTE hereunder with an itemization of the source of such revenue (e.g., products sold, services, received, etc.), Net Sales on all Products, and other information reasonably requested by AzTE. If no payment is due for any period, LICENSEE shall so report;
 - 6.1.3. a calculation under Section 3 of the amounts due to AzTE.
- 6.2. Simultaneously with the submission of each Report, LICENSEE shall make payments to AzTE of the amounts due for the calendar quarter covered by the Report. Payment shall be by check payable to Arizona Technology Enterprises and sent to the following address:

Arizona Technology Enterprises
SkySong – Arizona State University
1475 N. Scottsdale Road, Suite 200
Scottsdale, Arizona 85257-3538
Attn: Nicole Reilly, Director of Finance

or to such other address as AzTE may specify by notice hereunder, or, if requested by AzTE, by wire transfer of immediately available funds by LICENSEE to:

Arizona Science and Technology Enterprises LLC

Wells Fargo
100 West Washington Street
Phoenix, AZ 85003
602-378-4644
ABA # 121000248
Account # 4121599518
Swift Code (for international wires): WFBIUS6WFFX

Other identifying info: include invoice #, contract #

or to such other bank and account identified by notice to LICENSEE by AzTE. LICENSEE is required to send the Report whether or not any payments are due.

- 6.3. LICENSEE shall maintain at its principal office usual books of account and records showing its actions under this Agreement, and sufficient to determine LICENSEE's compliance with its obligations hereunder. Upon reasonable notice, but not more than once per calendar year, AzTE may have an independent certified public accountant or independent auditor, and an attorney (each as to whom LICENSEE has no reasonable objection) inspect and copy such books and records for purposes of verifying the accuracy of the amounts paid under this Agreement. The review may cover a period of not more than seven (7) years before the first day of the calendar quarter in which the review is requested. In the event that such review shows that LICENSEE has underpaid royalties by five percent (5%) or more with respect to any calendar quarter, or if such underpayment is in excess of \$5,000.00 for any calendar

quarter, or an aggregate of \$10,000 for any calendar year, LICENSEE shall pay, within ten days after demand by AzTE, the costs and expenses of such review (including the fees charged by AzTE's accountant and attorney involved in the review), in addition to amount of any underpayment and any interest (at the rate described in Section 6f below) thereon. LICENSEE agrees to cooperate fully with AzTE's accountant or auditor and attorney in connection with any such review. During the review, LICENSEE shall provide AzTE's accountant or auditor and attorney with all information reasonably requested, including without limitation, information relating to sales, inventory, manufacturing, purchasing, transfer records, customer lists, invoices, purchase orders, sales orders, shipping documentation, royalty reports (including those from Sublicensees), cost information, pricing policies, and agreements with and relevant financial information from other parties (including Affiliates and Sublicensees).

6.4. LICENSEE shall reimburse AzTE for any costs and expenses incurred in connection with collecting on any arrears of LICENSEE with respect to its payment and reimbursement obligations under this Agreement (such as Section 3 of this Agreement), including the costs of engaging any collection agency for such purpose.

6.5. In the event any payment is not received by AzTE when due under this Agreement, the LICENSEE will pay to AzTE interest charges at a rate of ten percent (10%) per annum, compounded monthly or that amount set by Arizona law, whichever is less. Interest will be calculated from the date of payment was due until actually received by AzTE.

7. NOTICES

7.1. Any notice or other communication required or permitted to be made or given to either party pursuant to this Agreement will be sufficiently made or given on the date of mailing if sent to the party by certified or registered mail, postage prepaid, addressed to it at its address set forth or to such other address as it will be designated by written notice to the other party as follows:

In the case of AzTE:

Arizona Technology Enterprises
SkySong – Arizona State University
1475 N. Scottsdale Road, Suite 200
Scottsdale, Arizona 85257-3538
Attention: Chief Executive Officer

In the case of LICENSEE:

Attn: _____

8. ASSIGNMENTS

- 8.1. Except as set forth below, this Agreement will not be assignable by either party without the prior written consent of the other party, except to a successor in ownership of all or substantially all of the business assets to which this Agreement pertains.

9. DISCLAIMER OF WARRANTY; LIMITATION OF LIABILITY; INDEMNITY

- 9.1. AZTE IS LICENSING THE COPYRIGHT, PRODUCT AND WORK, AND THE SUBJECT OF ANY OTHER LICENSE HEREUNDER, ON AN "AS IS" BASIS. NEITHER AZTE, ASU, THE ARIZONA BOARD OF REGENTS, THE ASU FOUNDATION, THE STATE OF ARIZONA NOR ITS REGENTS, FELLOWS, OFFICERS, EMPLOYEES, STUDENTS OR AGENTS (INDIVIDUALLY "AZTE PARTY" AND COLLECTIVELY "AZTE PARTIES"), MAKE ANY WARRANTIES EITHER EXPRESS OR IMPLIED OF ANY KIND, AND HEREBY EXPRESSLY DISCLAIMS ANY WARRANTIES, REPRESENTATIONS OR GUARANTEES OF ANY KIND AS TO THE COPYRIGHT, PRODUCT, WORK AND/OR ANYTHING DISCOVERED, DEVELOPED, MANUFACTURED, USED, SOLD, OFFERED FOR SALE, IMPORTED, EXPORTED, DISTRIBUTED, RENTED, LEASED OR OTHERWISE DISPOSED OF UNDER ANY LICENSE GRANTED HEREUNDER, INCLUDING BUT NOT LIMITED TO: ANY WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS, ADEQUACY OR SUITABILITY FOR A PARTICULAR PURPOSE, USE OR RESULT; ANY WARRANTIES AS TO THE VALIDITY, ENFORCEABILITY, SCOPE OR BREADTH OF ANY COPYRIGHT OR OTHER INTELLECTUAL PROPERTY RIGHT; ANY WARRANTIES RELATED TO THE PREPARATION, FILING, PROSECUTION, AND MAINTENANCE OF ANY COPYRIGHT, AND ANY WARRANTIES OF FREEDOM FROM INFRINGEMENT OF ANY DOMESTIC OR FOREIGN PATENTS, COPYRIGHTS, TRADE SECRETS OR OTHER PROPRIETARY RIGHTS OF ANY PARTY. LICENSEE has not relied on any oral or written statements or any other materials provided by the AzTE Parties (including, without limitation, any researchers or faculty members) in connection with this Agreement and that the decision to enter into this Agreement is based solely on LICENSEE's independent due diligence.
- 9.2. In no event shall the AzTE Parties have any liability to LICENSEE, Affiliates or Sublicensees, or any third party arising out of the use of the Copyright, Products or Work, or anything discovered, developed, manufactured, used, sold, offered for sale, imported, exported, distributed, rented, leased or otherwise disposed of under any license granted hereunder by LICENSEE, Affiliates or Sublicensees, or any third party for any reason, including but not limited to, the unmerchantability, inadequacy or unsuitability of the Copyright, Product, Work and/or anything discovered, developed, manufactured, used, sold, offered for sale, imported, exported, distributed, rented, leased or otherwise disposed of under any license granted hereunder for any particular purpose or to produce any particular result, or for any latent defects therein.
- 9.3. In no event will the AzTE Parties be liable to LICENSEE, Affiliates or Sublicensees, or any third party, for any consequential, incidental, special or indirect damages (including, but not limited to, from any destruction to property or from any loss of use, revenue, profit, time or good will) based on activity arising out of or related to this Agreement, whether pursuant to a claim of breach of contract or any other claim of any type.
- 9.4. In no event shall the AzTE Parties' liability to LICENSEE exceed the payments made to AzTE by LICENSEE under this Agreement.

- 9.5. The parties hereto acknowledge that the limitations and exclusions of liability and disclaimers of warranty set forth in this Agreement form an essential basis of the bargain between the parties and are reasonable under the circumstances.
- 9.6. LICENSEE shall indemnify and hold harmless AzTE Parties from and against any claims by Affiliates, Sublicensees or third parties arising out of the license granted under this Agreement, including, without limitation, the use, commercialization, or other disposition of Products.

10. TERMINATION

- 10.1. Unless terminated earlier under Section 10, the term of this Agreement shall commence on the Effective Date and continue for the full term of the Copyright in the United States.
- 10.2. Failure by either party to comply with any of the material obligations and conditions contained in this Agreement will entitle the other party to give to the party in default written notice requiring it to cure the default. If the default is not cured within sixty (60) days after the receipt of notice, the notifying party will be entitled (without prejudice to any of its other rights conferred on it by this Agreement) to terminate this Agreement by giving notice to take effect immediately upon receipt by the party in default. The right of either party to terminate this Agreement, will not be affected in anyway by its waiver of, or failure to take action with respect to, any previous default, and will not result in a refund of any amounts paid prior to any such termination.
- 10.3. Termination of this Agreement, by expiration or otherwise for any reason will be without prejudice to: (i) AzTE's right to receive full payment due under Section 3 here; (ii) AzTE's right to legal reimbursement under Section 4.2; or (iii) any other remedies that a party may have under law or equity.
- 10.4. Upon any termination of this Agreement pursuant to Section 10.2, all sublicense agreements granted by the LICENSEE pursuant to this Agreement shall be assigned to AzTE, upon request and at AzTE's discretion, provided that AzTE's obligations under such sublicense agreements shall be consistent with and not exceed AzTE's obligations to LICENSEE under this Agreement and provided that the Sublicensee agrees in a writing sent to AzTE to assume all obligations of this Agreement for the benefit of AzTE, including the obligations to make all payments due to AzTE under this Agreement.
- 10.5. Sections 8, 9, 10.3, 10.4, and 11.9 shall survive any expiration or termination of this Agreement.

11. GENERAL

- 11.1. Waiver. The failure of any party to insist upon strict adherence to any term of this Agreement on any occasion shall not be considered a waiver or deprive that party thereafter of the right to insist upon strict adherence to that term or any other term of this Agreement. All waivers must be in writing and signed by an authorized representative of the party against which such waiver is being sought. The pursuit by either party of any remedy to which it is entitled at any time or continuation of the Agreement despite a breach by the other shall not be deemed an election of remedies or waiver of the right to pursue any other remedies to which it may be entitled.

- 11.2.Representations. Each party represents that it is authorized to enter into this Agreement and that in the due performance of its obligations it would not be acting in violation of any outstanding obligation, contractual or otherwise, that may be owed by that party to any third party.
- 11.3.Entire Agreement, Amendment. This Agreement, together with the Exhibits, sets forth the entire agreement between the parties concerning the subject matter hereof and supersedes all previous agreements, written or oral, concerning such subject matter. This Agreement may be amended only by written agreement duly executed by the parties.
- 11.4.Use of Name; Press Release. LICENSEE will have no right to use the name or other designation of the Arizona Board of Regents, ASU, AzTE beyond those uses specified in this Agreement without the express written consent of AzTE. Notwithstanding the foregoing, the parties will agree, acting reasonably and in good faith, on a press release regarding this Agreement.
- 11.5.Compliance with Policies and Law; Severability. This Agreement is subject to all applicable Arizona Board of Regents policies. In addition, nothing in this Agreement shall be construed to require the commission of any act contrary to law. In the event that any provision of this Agreement is held by a court of competent jurisdiction to be unenforceable because it is invalid, illegal or unenforceable, the validity of the remaining provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular provisions held to be unenforceable, unless such construction would materially alter the meaning of this Agreement.
- 11.6.Independent Contractors. It is the express intention of the parties that the relationship of AzTE and LICENSEE shall be that of independent contractors and shall not be that of agents, partners or joint venturers. Nothing in this Agreement is intended or shall be construed to permit or authorize either party to incur, or represent that it has the power to incur, any obligation or liability on behalf of the other party.
- 11.7.Binding on Successors. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns to the extent assignment is permitted under this Agreement.
- 11.8.No Third-Party Beneficiaries. Except as expressly set forth herein and ASU, the parties hereto agree that there are no third-party beneficiaries of any kind to this Agreement.
- 11.9.Governing Law. This Agreement shall be governed by and construed in accordance with the laws and within the jurisdiction of the State of Arizona, and without reference to the conflict or choice of laws principles of any jurisdiction. Unless otherwise separately agreed in writing, the parties agree that any and all claims arising under or related to this Agreement shall be heard and determined only in the courts of the State of Arizona located in Maricopa County, and the parties irrevocably agree to submit themselves to the exclusive and personal jurisdiction of those courts and irrevocably waive any and all rights any such party may now or hereafter have to object to such jurisdiction or the convenience of the forum.

* * * Signature Page Follows * * *

APPENDIX 2 - RFP CHECKLIST/COVER PAGE

The following documents are required for this proposal (please mark off each document to acknowledge that you have submitted the document in the proper format):

<input type="checkbox"/>	Section 1	RFP Cover Page & Checklist, Mandatory Certifications and Substitute W-9
<input type="checkbox"/>	Section 2	Qualification, Section VII, 3 pages
<input type="checkbox"/>	Section 3	Response to the Scope of Work, Section V, 3 pages
<input type="checkbox"/>	Section 4	Price Schedule, IX
<input type="checkbox"/>	Section 5	Exceptions to Terms and Conditions
<input type="checkbox"/>	Section 6	Supplier Sustainability Questionnaire
	Section 7	Financial Statements per Section IV Instructions to Proposers
<input type="checkbox"/>	Section 8	Confidential/Proprietary Justification Letter with Sealed documents.
<input type="checkbox"/>	Section 9	Sample Copyright License, Appendix 1

After carefully reviewing all the terms and conditions, the authorized undersigned agrees to furnish such goods/services in accordance with the specifications/scope of work.

Firm (CO.) Name	By (Signature) By	Date

Phone #	Email Address	Fax#