

# **Exhibit 1**

**Exhibit 1**

**Declaration of Charles Fisher**

1  
2           1.     I am over 18 years old, competent to testify, and have personal knowledge of the  
3 matters in this declaration.

4           2.     I am the Executive Director of the Arizona Democratic Party (“ADP”). I am  
5 familiar with the mission and goals of ADP, as well as our members’ priorities and concerns.

6           3.     I have personal knowledge of the matters set forth in this Declaration. Except  
7 where described otherwise, my personal knowledge is based on my personal participation in or  
8 observation of the matters set forth herein.

9           4.     ADP is committed to electing Democrats in Arizona, growing the number of  
10 registered Democrats in the state, and representing the interests of registered Democrats in  
11 various ways. Specifically, ADP is committed to protecting and preserving Democrats’ right to  
12 vote, their right to secret ballot, and their right to secure elections.

13          5.     There are 816,745 registered Democrats in Maricopa County whose voter  
14 registration information is currently in possession and under the control of Cyber Ninjas.

15          6.     Approximately 84% of them (688,946 registered Democrats) voted in the 2020  
16 General Election and have ballots that they cast in possession and under the control of Cyber  
17 Ninjas.

18          7.     As an organization, ADP is deeply concerned about the erosion of public trust in  
19 our elections and efforts by Arizona’s Republican-led Legislature to make it harder to vote. ADP  
20 was vocal in its opposition to numerous lawsuits that were brought after the 2020 General  
21 Election to undermine the will of voters and change the results of the election based on false  
22 narratives of fraud.

23          8.     I am familiar with the so-called “audit” that Senate Republicans in Arizona, led by  
24 President Fann and Senator Petersen, are conducting.

25          9.     The threat of an audit conducted in violation of Arizona law – one that threatens  
26 the integrity of an elections system on which ADP relies and the confidentiality on which its



1 members rely – has frustrated ADP’s mission and forced it to divert resources in response. In  
2 just the past few weeks, I estimate that we have spent 50 hours of staff time (totaling thousands  
3 of dollars) reacting and responding to issues related to the Senate’s “audit,” and ADP has already  
4 incurred tens of thousands of dollars in attorneys’ fees to monitor the situation and bring this  
5 litigation to preserve its rights, and the rights of its members.

6 10. On March 26, 2021, Ken Bennett the Senate’s liaison for the audit contacted ADP  
7 and requested the names of Democrats who may be willing to serve as his co-liaison.

8 11. At the time, Mr. Bennett was not aware who the Senate was planning to hire to  
9 assist with the audit.

10 12. I spoke to Mr. Bennett for approximately 30 minutes and explained that, to  
11 consider his request, ADP needed information about the plan, schedule, process and procedures  
12 that the Senate planned to utilize for the audit. I explained that ADP was particularly interested  
13 in knowing how the Senate would protect the security and confidentiality of ballots and election  
14 equipment so as to not compromise the interests of ADP’s members and all Arizona voters.

15 13. Mr. Bennett told me the following: (a) he was working on developing procedures  
16 for the audit, (b) he expected the audit would not uncover any fraud, but agreed procedures were  
17 necessary, and (c) he would contact me again after he learned the identity of the contractor so  
18 that he could renew his request for ADP to participate.

19 14. At some point after my March 26 call with Mr. Bennett, President Fann retained  
20 Cyber Ninjas. The Master Services Agreement and Statement of Work entered into by Cyber  
21 Ninjas is broad and includes references to knocking on voters’ doors and interrogating them  
22 about votes cast in the last election.

23 15. I spoke to Mr. Bennett again on April 2, 2021 and he renewed his request for a  
24 Democratic co-liaison. I again requested from Mr. Bennett information about the plan, schedule,  
25 policies, and procedures for the audit. I also explained that ADP had serious concerns about the  
26



1 involvement of Cyber Ninjas and the fact that former Maricopa County Recorder Helen Purcell  
2 publicly stated her opposition to the audit and refused to participate in any way.

3 16. I also raised our members' concerns relating to the security and confidentiality of  
4 ballots, voter records, and tabulation machines.

5 17. Mr. Bennett assured me that he was working with Cyber Ninjas to develop policies  
6 and procedures, that they were committed to being transparent about the audit plan and process,  
7 and that he would get back to me soon with the information I requested.

8 18. At this point, it was unclear whether the audit would even proceed because the  
9 Senate had asked Maricopa County to delay delivery of the materials, and there was no plan in  
10 place for the location and staffing of the audit.

11 19. On April 9, 2021, and on at least one occasion thereafter, public records requests  
12 were sent to obtain copies of all documents relating to the audit, including procedures for  
13 handling ballots and equipment and policies for ensuring the security of such items.

14 20. On April 14, 2021, ADP learned that a contract had been signed with Arizona  
15 Veterans Memorial Coliseum for the audit. I contacted Mr. Bennett and requested a call with  
16 him as soon as possible to find out whether he had developed policies and procedures for the  
17 audit and how Cyber Ninjas planned to maintain the security and confidentiality of ballots, voter  
18 files, and election equipment.

19 21. Mr. Bennett agreed to have a call on April 19, 2021. During that call, which lasted  
20 approximately one hour, I requested information about the audit schedule, process, and  
21 procedures.

22 22. Mr. Bennett said that the audit will begin on Friday, April 23. He said, "it will go  
23 until it's done." He also said that he did not expect it will take longer than scheduled and, in fact,  
24 he boasted that they will likely finish early because they have built in a cushion based on the  
25 number of days Cyber Ninjas believes they need and the number of days they have the Coliseum.



1           23. Mr. Bennett described the audit has having three main components: (a) a  
2 subcontractor of Cyber Ninjas will review Dominion machines and “other equipment”; (b) hired  
3 staff will tabulate 2.1 million ballots through a machine and conduct a “hand count audit” of  
4 those same ballots to make sure the votes match; and (c) hired staff will compare ballot envelope  
5 signatures with signature samples from electronic voter records. Mr. Bennett said that the County  
6 has already transmitted electronic files including voter files.

7           24. When asked multiple times about the procedures for the audit and whether Mr.  
8 Bennett plans to publish the procedures before the audit begins, Mr. Bennett became defensive  
9 and said that if ADP wants information about what is happening at the audit, we should identify  
10 a co-liaison to work with him. Mr. Bennett further stated that Cyber Ninjas was tasked with  
11 developing procedures, but he does not know what they are. He admitted that he is “finding out  
12 as things happen” and “adjusting things as they happen.”

13           25. When challenged regarding his statement that ADP must participate in order to get  
14 information about the procedures, Mr. Bennett said, “if you want full transparency, then send a  
15 co-liaison to stand with me.”

16           26. It was during this call that ADP learned for the first time that no procedures,  
17 policies, plan, or schedule would be shared in advance of the audit. Moreover, this call raised  
18 serious concerns about the existence of any policies and procedures to maintain the security and  
19 confidentiality of Democratic voters’ ballots, voter file information, and election equipment that  
20 is necessary for the integrity of elections in Arizona.

21           27. At around the same time, I became aware of news reporters obtaining unfettered  
22 access to the Coliseum, and uncovering similar concerns that I had about the lack of formal  
23 process being employed by Cyber Ninjas and Mr. Bennett.

24           28. My opinion was based on reviewing tweets from journalists, two stories that were  
25 written based on the observations that were also captured in their real-time twitter feed are  
26 attached hereto as Exhibits A and B.



1           29. Shortly after filing the suit, I watched the press conference delivered by Mr.  
2 Bennett and the CEO of Cyber Ninjas. ABC 15, "Arizona Election Audit Press Conference,"  
3 *available at:* <https://www.facebook.com/ABC15/videos/445083626589120> (last viewed  
4 4/24/2021).

5           30. In this conference, at minutes 12 and 45, the auditors make clear that the  
6 individuals actually handling the ballots will not be balanced for party affiliation, but instead are  
7 chosen based on criteria related to "respectable" professions, passing a background check, and  
8 not having problematic social media history.

9           31. In this conference, at minute 16 and 31, the auditors provide conflicting  
10 information on the conduct of door-to-door voter interrogation, including when the process will  
11 begin and what the basis will be for being subjected to these interrogations.

12           32. In light of increasingly troubling reports of the lack of formal procedures to be  
13 employed during the audit and conflicting reports about potential voter interrogations to be  
14 conducted by Cyber Ninjas and perhaps its subcontractors, the ADP has diverted resources from  
15 its primary objective of promoting Democratic principles, to warning its members of the  
16 impending crisis and developing "Know Your Rights" training should its members be the target  
17 of the interrogations by Cyber Ninjas or their subcontractors.

18           33. The admissions made at minute 16 going forward make clear that the auditors will  
19 be in possession of voter history, voter addresses, voter signatures, and other aspects of the voter  
20 file, although at minute 42, the auditors disclaim that they currently have possession of envelopes  
21 with the voter's signature.

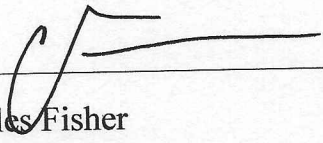
22           34. In this conference, at minute 13 and 20, the auditors refused to provide information  
23 about funding of the audit.

24           35. The various admissions made by the auditors in the press conference increased my  
25 already grave concerns about the integrity of ballots cast by ADP members and the privacy and  
26 security interests of ADP members registered to vote in Maricopa County.



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I declare under penalty of perjury that the foregoing is true and correct.  
Executed on April 25, 2021.

  
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Charles Fisher

# Exhibit A

Exhibit A



**ELECTIONS**

# Arizona Senate audit gets off to shaky start, with rules finalized on the fly

**Jen Fifield** Arizona Republic

Published 6:29 p.m. MT Apr. 23, 2021 | Updated 10:01 p.m. MT Apr. 23, 2021

The Arizona Senate Republicans' hand count of all 2.1 million Maricopa County ballots cast in November's presidential election got off to a shaky start on Friday morning.

Procedures seemed to be finalized on the spot, and a few significant changes were made during the day as the Senate's contractors started the recount at the Arizona Veterans Memorial Coliseum.

The changes included:

What color ink pens are allowed on the audit floor as ballots are being counted, which matters because a counter using blue ink could alter a ballot, confusing the voter's intent.

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The audit got off to a late start after the morning was spent seeing that the computer software was programmed correctly to review the ballots, that forms had the correct fields for ballot trackers to fill out, and that the ballot counters and supervisors were trained.

Counters had made it through about 150 ballots by about 1 p.m. and were still working on their first box. There are 46 pallets of boxes and 1,691 boxes of ballots, although some of the boxes do not have ballots in them, said Megan Gilbertson, spokesperson for the Maricopa County Elections Department.

The Senate only has so long to complete the complete recount — they have rented the coliseum until May 14. Along with the recount, auditors are examining voting machines and attempting to verify voter information.

Ken Bennett, the Senate's appointed liaison for the audit and former secretary of state, said on the audit floor that he saw a few ways to improve the process, but that he was not in charge. He said that Cyber Ninjas, the group the Senate hired to perform the work, and their contractors had decided on how the audit would be run.

No county staff was on hand to explain how ballots were stored or how voting machines were programmed.

Journalists were denied specific access to report or record the process, although The Arizona Republic and other media outlets have joined together seeking their reporters' immediate access to the coliseum to observe the audit of the ballots and tabulating equipment. For now, this reporter signed up as a volunteer observer to gain at least that access, working a six-hour shift on Friday.

## **Lack of procedures concerns Democratic Party**

The lack of clear procedures and controls on Friday caused even more concern from the Arizona Democratic Party and Maricopa County Supervisor Steve Gallardo, who had filed a last-minute lawsuit in Maricopa County Superior Court on Thursday night attempting to stop the audit.



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and procedures and there are no safeguards in place. There's no proper training. No procedures. No rules."

The concerns prompted a Maricopa County Superior Court judge to issue an injunction stopping the audit until Monday, but only if the Democratic Party would post a \$1 million bond to cover the potential costs of the delay. The party said Friday it would not pay and the recount continued.

The lawsuit is the latest attempt to try to stop the Senate from conducting the audit after the Senate finally had taken control of the ballots and voting machines after a months-long fight with the Maricopa County Board of Supervisors.

The county already had done multiple audits of the election results, including a hand count of a statistically significant number of ballots and multiple audits of voting machines. All of the audits came back clean, showing that votes were counted correctly.

## Procedures under scrutiny

One major issue came up as the contractors began to unpack the boxes: The Senate's contractors had programmed its software and developed its procedures believing that they would be dealing with batches of a certain amount of ballots and that boxes would be grouped in a certain way.

Gilbertson said that while early ballots are delivered in batches, Election Day ballots are not, and the number of ballots in each batch differs.

A few other procedures stuck out as differing from the way that Maricopa County completes its audit and the way that is outlined in Arizona state election law.

The first was regarding the color of pens on the audit floor.

**Blue ink, black ink, red ink:** Why ink color matters when handling Arizona ballots

State election law says that ballot counters may not bring any black pens or blue pens into the designated location of the hand count. But when counters arrived on Friday, a blue and red pen was waiting at each of their spots, and other blue pens were seen throughout the auditing floor, including near where the ballots would be scanned.

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boxes.

Logan also said before the audit began that they did not ensure that each counting board of three people had bipartisan representation. This is a practice with Maricopa County hand counts, which are run by the political parties themselves.

He told volunteer observers that he was counting on them to watch closely to ensure that the counters were counting ballots correctly.

Another practice that differed was the communication among the counters.

Three counters reviewed each ballot. As the first box of ballots was being counted, the counters were sometimes saying out loud which candidates they were marking votes for. They were also comparing the number of ballots that they had counted at certain times during the count.

Under Arizona election law, tallies should be documented independently and not compared until the end of each batch.

Bennett also questioned the way that the boxes of ballots were being tracked after they left their secure holding area. He said he thought there should have to be someone to sign off when a box reaches a certain table, and at every step of the process.

It's unclear what the final decisions were on some of the changes being made.

## **Access issues by observers**

Access issues also occurred Friday.

Observers were told to arrive at 7:30 a.m. but then did not get let through the coliseum gates until after 8 a.m., and some were turned away.

The people working at the gates said that because the Senate's observer sign-up sheet was disabled by Google, they lost some of the names of those who had volunteered.

And unlike at county election offices, where journalists are invited to photograph and film an audit process, reporters can't go inside unless they sign up to work six-hour shifts as observers. And observers can't have cameras or notepads of their own.



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# Exhibit B

Exhibit B



[https://www.azfamily.com/news/investigations/cbs\\_5\\_investigates/security-lapses-plague-arizona-senates-election-audit-at-state-fairgrounds/article\\_b499aee8-a3ed-11eb-8f94-bfc2918c6cc9.html](https://www.azfamily.com/news/investigations/cbs_5_investigates/security-lapses-plague-arizona-senates-election-audit-at-state-fairgrounds/article_b499aee8-a3ed-11eb-8f94-bfc2918c6cc9.html)

ARIZONA'S FAMILY INVESTIGATES

# Security lapses plague Arizona Senate's election audit at State Fairgrounds

MORGAN LOEW

UPDATED 23 HRS AGO

**PHOENIX (3TV/CBS 5)** - Arizona Senate election audit officials refused to address a series of security lapses and problems exposed by Arizona's Family Investigates, the night before the controversial recount was to begin.

"I question why security wasn't already in place," said Karl de la Guerra, who is a protective services consultant with 43 years in the industry. De la Guerra was reacting to a video sent to him by Arizona's Family Investigates. The video exposed a lack of security at the Arizona Veteran's Memorial Coliseum, the audit location. State Senate Republicans are performing the audit, but doing so on a shoe-string budget. And critics argue that the company hired to lead the operation is run by a Trump supporter who had tweeted false conspiracy theories about the election.

"I think the fact of the matter is that there have been numerous legitimate audits that have shown that there were no discrepancies," said Sen. Rebecca Rios, who is the leading Democrat in the state Senate.

After watching the video shot by Arizona's Family Investigates, Rios said the audit should be called off. "I don't know how



The people running this audit are supposed to ensure that the Veterans Memorial Coliseum, where the auditing and counting is happening is secure.

(Source: 3TV/CBS 5)

people walk away feeling comfortable about what is going on. We have asked repeatedly, "What is the plan? What is the plan for security?" said Rios.



County supervisor, Democrats file injunction to stop GOP audit of Arizona election results

At issue is the security of Maricopa County's election equipment and every ballot cast in the 2020 general election. A judge ordered county elections officials to turn everything over to Senate Republicans for the audit. The equipment and ballots had been held in the county facility known as "The Vault," because security is so tight. But Senate President Karen Fann chose the coliseum for the audit, which is not considered a secure location. "It is a very, very porous, what we call, 'Soft target public venue,'" said de la Guerra.

Added to the challenges of securing the location is the cost. Maricopa County Sheriff's Office officials estimated it would have cost the county \$175,000 for security alone, if the sheriff's office would have agreed to protect the site. Sheriff Paul Penzone declined, citing the cost and the effect taking those deputies off the street would have on public safety.

### **📄 Maricopa County delivering ballots, equipment for election audit**



The total amount of money Fann has dedicated to the audit is \$150,000. That is taxpayer money, but it is supposed to cover the facility expenses, four auditing companies, as well as security. Contractors are accepting private donations, although the audit officials refused to reveal how much they have taken in and from whom.

The contract between Senate Republicans and the audit companies states that the companies are responsible for security. The audit's Twitter page stated, "Please be assured that a robust security plan is in place to protect the ballots, equipment, workers and volunteer observers."



Arizona Senate will conduct audit at state fairgrounds

But on Monday, Tuesday, Wednesday and Thursday, the Arizona's Family Investigates team gained access to the coliseum, its hallways, staircases and the main floor, where the computer equipment will be used by the auditors. The team was able to get close to the actual ballots and county computer equipment. At no time did anyone at the site ask the team to leave. At no time did the team enter through any doorway or entry that contained a "No Trespassing" or "Restricted Access" sign.

***Morgan Loew's hard-hitting investigations can be seen weekdays on CBS 5 News at 6:30 p.m. and 10 p.m.***

# **Exhibit 2**

# **Exhibit 2**

# Cyber Ninjas, Inc. Master Services Agreement

This Master Services Agreement (the “Master Agreement”) is entered into as of the 31 day of March, 2021 (the “Effective Date”), between Cyber Ninjas, Inc., a Florida Corporation, (the “Contractor”), and the Arizona State Senate (the “Client”). Contractor and Client are referred to herein individually as a “Party” and collectively as the “Parties”.

WHEREAS, Client desires to retain Contractor, and Contractor desires to provide to Client the consulting and/or professional services described herein; and

WHEREAS, Client and Contractor desire to establish the terms and conditions that will regulate all relationships between Client and Contractor.

NOW THEREFORE, in consideration of the mutual covenants and promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

## 1 SCOPE OF AGREEMENT

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This Master Agreement establishes a contractual framework for Contractor’s consulting and/or professional services as described herein. The Parties agree to the terms and conditions set forth in this Master Agreement and in any Statement of Work executed by the Parties referencing this Master Agreement. Each Statement of Work is incorporated into this Master Agreement, and the applicable portions of this Master Agreement are incorporated into each Statement of Work. The Statement(s) of Work and this Master Agreement are herein collectively referred to as the “Agreement.”

## 2 STRUCTURE OF AGREEMENT.

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- 2.1 Components of the Agreement. The Agreement consists of:
- (a) The provisions set forth in this Master Agreement and the Exhibits referenced herein;
  - (b) The Statement(s) of Work attached hereto, and any Schedules referenced therein; and
  - (c) Any additional Statements of Work executed by the Parties pursuant to this Agreement, including the Schedules referenced in each such Statement of Work.
- 2.2 Statement(s) of Work. The Services (as defined in Article 4) that Contractor will provide for Client will be described in and be the subject of (i) one or more Statements of Work executed by the Parties pursuant to this Agreement, and (ii) this Agreement. Each Statement of Work shall be substantially in the form of, and shall include the set of Schedules described in, “Exhibit 1-Form of Statement of Work”, with such additions, deletions and modifications as the Parties may agree.
- 2.3 Deviations from Agreement, Priority. In the event of a conflict, the terms of the Statements of Work shall be governed by the terms of this Master Agreement, unless an applicable Statement of Work expressly and specifically notes the deviations from the terms of this Master Agreement for the purposes of such Statement of Work.



### 3 TERM AND TERMINATION.

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- 3.1 Term of Master Agreement. The Term of the Master Agreement will begin as of the Effective Date and shall continue until terminated as provided in Section 3.3 (the "Term").
- 3.2 Term of Statements of Work. Each Statement of Work will have its own term and will continue for the period identified therein unless terminated earlier in accordance with Section 3.4 (the "Service Term"). In the event that the Service Term on any applicable Statement of Work expires and Services continue to be provided by Contractor and received and used by Client, the terms and conditions of the Master Agreement shall apply until the Services have been terminated.
- 3.3 Termination of Master Agreement. Either Party may terminate this Agreement immediately upon written notice to the other Party if there is no Statement of Work in effect.
- 3.4 Termination of Statement of Work by Client. A Statement of Work may be terminated by Client, for any reason other than Contractor's breach, upon fourteen (14) days prior written notice to Contractor. In such event, (i) Contractor shall cease its activities under the terminated Statement of Work on the effective date of termination; and (ii) Client agrees to pay to Contractor all amounts for any amounts due for Services performed through the effective termination date. (iii) In the case of fixed price work whereby the effective date of termination is after Contractor has or will commence the Services, Client agrees to pay Contractor an amount that will be determined on a pro-rata basis computed by dividing the total fee for the Service by the number of days required for completion of the Services and multiplying the result by the number of working days completed at the effective date of termination. (iv) Client agrees to pay to Contractor all costs in full associated with equipment or other non-Service related costs that were incurred before the effective termination date.
- 3.5 Termination for Breach. Either party may terminate the Agreement in the event that the other party materially defaults in performing any obligation under this Agreement (including any Statement of Work) and such default continues un-remedied for a period of seven (7) days following written notice of default. If Client terminates the Agreement and/or any Statement of Work as a result of Contractor's breach, then to the extent that Client has prepaid any fees for Services, Contractor shall refund to Client any prepaid fees on a pro-rata basis to the extent such fees are attributable to the period after such termination date.
- 3.6 Effect of Termination. Upon termination or expiration of this Agreement and/or a Statement of Work: (i) the parties will work together to establish an orderly phase-out of the Services; (ii) Client will pay Contractor for any amounts due under the Agreement, including all Services rendered under the terminated Statement of Work up to the effective date of the termination; and (iii) each Party will promptly cease all use of and destroy or return, as directed by the other Party, all Confidential Information of the other Party except for all audit records (including but not limited to work papers, videotapes, images, tally sheets, draft reports and other documents generated during the audit) which will be held in escrow in a safe approved by the GSA for TS/SCI material for a period of three years and available to the Contractor and Client solely for purposes of addressing any claims, actions or allegations regarding the audit (the "Escrow"), provided that, pursuant to Section 15.4, the Parties shall provide to each other documents and information that are reasonably necessary to the defense of any third party claims arising out of or related to the subject matter of this Agreement.

## 4 SERVICES.

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- 4.1 Definitions.
- 4.1.1 “Services” shall mean consulting, training or any other professional services to be provided by Contractor to Client, as more particularly described in a Statement of Work, including any Work Product provided in connection therewith.
- 4.1.2 “Work Product” shall mean any deliverables which are created, developed or provided by Contractor in connection with the Services pursuant to a Statement of Work, excluding any Contractor’s Intellectual Property.
- 4.1.3 “Contractor’s Intellectual Property” shall mean all right, title and interest in and to the Services, including, but not limited to, all inventions, skills, know-how, expertise, ideas, methods, processes, notations, documentation, strategies, policies, reports (with the exception of the data within the reports, as such data is the Client’s proprietary data) and computer programs including any source code or object code, (and any enhancements and modifications made thereto), developed by Contractor in connection with the performance of the Services hereunder and of general applicability across Contractor’s customer base. For the avoidance of doubt, the term shall not include (1) the reports prepared by Contractor for Client (other than any standard text used by Contractor in such reports) pursuant to this Agreement or any Statement of Work, which shall be the exclusive property of Client and shall be considered “works made for hire” within the meaning of the Copyright Act of 1976, as amended; and (2) any data or process discovered on or obtained from the Dominion devices that will be the subject of the forensic review.
- 4.2 Obligation to Provide Services. Starting on the Commencement Date of each Statement of Work and continuing during each Statement of Work Term, Contractor shall provide the Services described in each such Statement of Work to, and perform the Services for, Client in accordance with the applicable Statement of Work and the Agreement.
- 4.3 Contractor’s Performance. Contractor will perform the Services set forth in each Statement of Work using personnel that have the necessary knowledge, training, skills, experience, qualifications and resources to provide and perform the Services in accordance with the Agreement. Contractor shall render such Services in a prompt, professional, diligent, and workmanlike manner, consistent with industry standards applicable to the performance of such Services.
- 4.4 Client’s Obligations. Client acknowledges that Contractor’s performance and delivery of the Services are contingent upon: (i) Client providing full access to such information as may be reasonably necessary for Contractor to complete the Services as described in the Statement(s) of Work including access to its personnel, facilities, equipment, hardware, network and information, as applicable; and (ii) Client promptly obtaining and providing to Contractor any required licenses, approvals or consents necessary for Contractor’s performance of the Services. Contractor will be excused from its failure to perform its obligations under this Agreement to the extent such failure is caused by Client’s delay in performing or failure to perform its responsibilities under this Agreement and/or any Statement of Work.
- 4.5 Location of Services. Contractor shall provide the Services at the site designated in the applicable Statement of Work.

- 4.6 Status Reports. Contractor shall keep Client informed of the status of the Services and provide Client with such status reports and other reports and information regarding the Services as reasonably requested by Client.
- 4.7 New Services. During the Term, Client may request that Contractor provide New Services for Client. New Services may be activities that are performed on a continuous basis for the remainder of the Term or activities that are performed on a project basis. Any agreement of the Parties with respect to New Services will be in writing and shall also become a "Service" and be reflected in an additional Statement of Work hereto or in an amendment to an existing Statement of Work hereunder.
- 4.8 Change of Services. "Change of Services" means any change to the Services as set forth in the Statement of Work that (i) would modify or alter the delivery of the Services or the composition of the Services, (ii) would alter the cost to Client for the Services, or (iii) is agreed by Client and Contractor in writing to be a Change. From time to time during the Term, Client or Contractor may propose Changes to the Services.
- The following process is required to effectuate a Change of Services by either Party:
- 4.9 A Project Change Request ("PCR") will be the vehicle for communicating change. The PCR must describe the change, the rationale for the change, and the effect the change will have on the Services.
- 4.10 The designated project manager of the requesting Party will review any proposed change prior to submitting the PCR to the other Party.
- 4.11 Contractor and Client will mutually agree upon any additional fees for such investigation, if any. If the investigation is authorized, the Client project manager will sign the PCR, which will constitute approval for the investigation charges. Contractor will invoice Client for any such charges. The investigation will determine the effect that the implementation of the PCR will have on Statement of Work terms and conditions.
- 4.12 Upon completion of the investigation, both parties will review the impact of the proposed change and, if mutually agreed, a written addendum to the Statement of Work must be signed by both Parties to authorize implementation of the investigated changes that specifically identifies the portion of the Statement of Work that is the subject of the modification or amendment and the changed or new provision(s) to the Statement of Work.
- 4.13 End Client Requirements. If Contractor is providing Services for Client that is intended to be for the benefit of a customer of Client ("End Client"), the End Client should be identified in an applicable Statement of Work. The Parties shall mutually agree upon any additional terms related to such End Client which terms shall be set forth in a Schedule to the applicable Statement of Work.
- 4.14 Client Reports; No Reliance by Third Parties. Contractor will provide those reports identified in the applicable Statement of Work ("Client Report"). The Client Report is prepared uniquely and exclusively for Client's sole use. The provision by Client of any Client Report or any information therein to any third party shall not entitle such third party to rely on the Client Report or the contents thereof in any manner or for any purpose whatsoever, and Contractor specifically disclaims all liability for any damages whatsoever (whether foreseen or unforeseen, direct, indirect, consequential, incidental, special, exemplary or punitive) to such third party arising from or related to reliance by such third party on any Client Report or any contents thereof.



4.15 Acceptance Testing. Unless otherwise specified in an Statement of Work, Client shall have a period of fourteen (14) days to perform Acceptance Testing on each deliverable provided by Contractor to determine whether it conforms to the Specifications and any other Acceptance criteria (collectively as the "Acceptance Criteria") stated in the Statement of Work. If Client rejects the deliverable as non-conforming, unless otherwise agreed to by the parties, Contractor shall, at its expense, within fourteen (14) days from the date of notice of rejection, correct the deliverable to cause it to conform to the Acceptance Criteria and resubmit the deliverable for further Acceptance testing in accordance with the process specified in this Section 4.15. In the event that the deliverable does not conform to the Acceptance Criteria after being resubmitted a second time, Client, may at its option, (i) provide Contractor with another fourteen (14) days to correct and resubmit the deliverable or (ii) immediately terminate the Statement of Work and obtain a refund of any amounts paid for the non-conforming Services pursuant to the applicable Statement of Work.

## 5 FEES AND PAYMENT TERMS.

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- 5.1 Fees. Client agrees to pay to Contractor the fees for the Services in the amount as specified in the applicable Statement of Work.
- 5.2 Invoices. Contractor shall render, by means of an electronic file, an invoice or invoices in a form containing reasonable detail of the fees incurred in each month. Upon completion of the Services as provided in the Statement of Work, Contractor shall provide a final invoice to Client. Contractor shall identify all taxes and material costs incurred for the month in each such invoice. All invoices shall be stated in US dollars, unless otherwise specified in the Statement of Work.
- 5.3 Payment Terms. All invoices are due upon receipt. Payment not received within 30 days of the date of the invoice is past due. Contractor reserves the right to suspend any existing or future Services when invoice becomes thirty (30) days past due. Client shall pay 1.5% per month non-prorated interest on any outstanding balances in excess of thirty days past due. If it becomes necessary to collect past due payments, Client shall be responsible for reasonable attorney fees required in order to collect upon the past-due invoice(s).
- 5.4 Taxes. The applicable Statement of Work shall prescribe the parties' respective responsibilities with respect to the invoicing and payment of state sales, use, gross receipts, or similar taxes, if any, applicable to the Services and deliverables to be provided by Contractor to Client. Client shall have no responsibility with respect to federal, state, or local laws arising out of Contractor's performance of any Statement of Work, including any interest or penalties.

## 6 PERSONNEL.

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- 6.1 Designated Personnel. Contractor shall assign employees that are critical to the provision and delivery of the Services provided (referred to herein as "Designated Personnel") and except as provided in this Article 6, shall not be removed or replaced at any time during the performance of Services in a Statement of Work, except with Client's prior written consent.
- 6.2 Replacement of Designated Personnel by Contractor. Notwithstanding the foregoing, if any Designated Personnel becomes unavailable for reasons beyond Contractor's reasonable control or Designated Personnel's professional relationship with Contractor terminates for any reason,

Contractor may replace the Designated Personnel with a similarly experienced and skilled employee. In such event, Contractor shall provide immediate notification to Client of a change in a Designated Personnel's status.

- 6.3 Replacement of Designated Personnel by Client. In the event that Client is dissatisfied for any reason with any Designated Personnel, Client may request that Contractor replace the Designated Personnel by providing written notice to Contractor. Contractor shall ensure that all Designated Personnel are bound by the terms and conditions of this Agreement applicable to their performance of the Services and shall be responsible for their compliance therewith.
- 6.4 Background Screening. Contractor shall have performed the background screening described in Exhibit 2 (Background Screening Measures) on all of its agents and personnel who will have access to Client Confidential Information prior to assigning such individuals or entities to provide Services under this Agreement.

## 7 PROPRIETARY RIGHTS.

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- 7.1 Client's Proprietary Rights. Client represents and warrants that it has the necessary rights, power and authority to transmit Client Data (as defined below) to Contractor under this Agreement and that Client has and shall continue to fulfil all obligations with respect to individuals as required to permit Contractor to carry out the terms hereof, including with respect to all applicable laws, regulations and other constraints applicable to Client Data. As between Client and Contractor, Client or a political subdivision or government entity in the State of Arizona owns all right, title and interest in and to (i) any data provided by Client (and/or the End Client, if applicable) to Contractor; (ii) any of Client's (and/or the End Client, if applicable) data accessed or used by Contractor or transmitted by Client to Contractor in connection with Contractor's provision of the Services (Client's data and Client's End User's data, collectively, the "Client Data"); (iii) all intellectual property of Client ("Client's Intellectual Property") that may be made available to Contractor in the course of providing Services under this Agreement.
- 7.2 License to Contractor. This Agreement does not transfer or convey to Contractor any right, title or interest in or to the Client Data or any associated Client's Intellectual Property. Client grants to Contractor a limited, non-exclusive, worldwide, revocable license to use and otherwise process the Client Data and any associated Client's Intellectual Property to perform the Services during the Term hereof. Contractor's permitted license to use the Client Data and Client's Intellectual Property is subject to the confidentiality obligations and requirements for as long as Contractor has possession of such Client Data and Intellectual Property.

**7.3 Contractor's Proprietary Rights.** As between Client and Contractor, Contractor owns all right, title and interest in and to the Services, including, Contractor's Intellectual Property. Except to the extent specifically provided in the applicable Statement of Work, this Agreement does not transfer or convey to Client or any third party any right, title or interest in or to the Services or any associated Contractor's Intellectual Property rights, but only grants to Client a limited, non-exclusive right and license to use as granted in accordance with the Agreement. Contractor shall retain all proprietary rights to Contractor's Intellectual Property and Client will take no actions which adversely affect Contractor's Intellectual Property rights. **For the avoidance of doubt and notwithstanding any other provision in this Section or elsewhere in the Agreement, all documents, information, materials, devices, media, and data relating to or arising out of the administration of the November 3, 2020 general election in Arizona, including but not limited to voted ballots, images of voted ballots, and any other materials prepared by, provided by, or originating from the Client or any political subdivision or governmental entity in the State of Arizona, are the sole and exclusive property of the Client or of the applicable political subdivision or governmental entity, and Contractor shall have no right or interest whatsoever in such documents, information, materials, or data.**

## **8 NONDISCLOSURE.**

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**8.1 Confidential Information.** "Confidential Information" refers to any information one party to the Agreement discloses (the "Disclosing Party") to the other (the "Receiving Party"). The confidential, proprietary or trade secret information in the context of the Agreement may include, but is not limited to, business information and concepts, marketing information and concepts, financial statements and other financial information, customer information and records, corporate information and records, sales and operational information and records, and certain other information, papers, documents, studies and/or other materials, technical information, and certain other information, papers, documents, digital files, studies, compilations, forecasts, strategic and marketing plans, budgets, specifications, research information, software, source code, discoveries, ideas, know-how, designs, drawings, flow charts, data, computer programs, market data; digital information, digital media, and any and all electronic data, information, and processes stored on Maricopa County servers, portable storage media and/or cloud storage (remote servers) technologies, and/or other materials, both written and oral. Notwithstanding the foregoing, Confidential Information does not include information that: (i) is in the Receiving Party's possession at the time of disclosure; (ii) is independently developed by the Receiving Party without use of or reference to Confidential Information; (iii) becomes known publicly, before or after disclosure, other than as a result of the Receiving Party's improper action or inaction; or (iv) is approved for release in writing by the Disclosing Party.

- 8.2 Nondisclosure Obligations. The Receiving Party will not use Confidential Information for any purpose other than to facilitate performance of Services pursuant to the Agreement and any applicable Statement of Work. The Receiving Party: (i) will not disclose Confidential Information to any employee or contractor or other agent of the Receiving Party unless such person needs access in order to facilitate the Services and executes a nondisclosure agreement with the Receiving Party, substantially in the form provided in Exhibit 3; and (ii) will not disclose Confidential Information to any other third party without the Disclosing Party's prior written consent. Without limiting the generality of the foregoing, the Receiving Party will protect Confidential Information with the same degree of care it uses to protect its own Confidential Information of similar nature and importance, but with no less than reasonable care. The Receiving Party will promptly notify the Disclosing Party of any misuse or misappropriation of Confidential Information that comes to the Receiving Party's attention. Notwithstanding the foregoing, the Receiving Party may disclose Confidential Information as required by applicable law or by proper legal or governmental authority; however, the Receiving Party will give the Disclosing Party prompt notice of any such legal or governmental demand and will reasonably cooperate with the Disclosing Party in any effort to seek a protective order or otherwise to contest such required disclosure, at the Disclosing Party's expense. For the avoidance of doubt, this provision prohibits the Contractor and its agents from providing data, information, reports, or drafts to anyone without the prior written approval of the Client. The Client will determine in its sole and unlimited discretion whether to grant such approval.
- 8.3 Injunction. The Receiving Party agrees that breach of this Article 8 might cause the Disclosing Party irreparable injury, for which monetary damages would not provide adequate compensation, and that in addition to any other remedy, the Disclosing Party will be entitled to injunctive relief against such breach or threatened breach, without proving actual damage or posting a bond or other security.
- 8.4 Return. Upon the Disclosing Party's written request and after the termination of the Escrow, the Receiving Party will return all copies of Confidential Information to the Disclosing Party or upon authorization of Disclosing Party, certify in writing the destruction thereof.
- 8.5 Third Party Hack. Contractor shall not be liable for any breach of this Section 8 resulting from a hack or intrusion by a third party into Client's network or information technology systems unless the hack or intrusion was through endpoints or devices monitored by Contractor and was caused directly by Contractor's gross negligence or wilful misconduct. For avoidance of doubt, Contractor shall not be liable for any breach of this Section 8 resulting from a third-party hack or intrusion into any part of Client's network, or any environment, software, hardware or operational technology, that Contractor is not obligated to monitor pursuant to a Statement of Work executed under this Agreement.
- 8.6 Retained Custody of Ballots. The Client shall retain continuous and uninterrupted custody of the ballots being tallied. For the avoidance of doubt, this provision requires Contractor and each of its agents to leave all ballots at the counting facility at the conclusion of every shift.



8.7 Survival. This Section 8 shall survive for three (3) years following any termination or expiration of this Agreement; provided that with respect to any Confidential Information remaining in the Receiving Party's possession following any termination or expiration of this Agreement, the obligations under this Section 8 shall survive for as long as such Confidential Information remains in such party's possession.

## 9 NO SOLICITATION.

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Contractor and Client agree that neither party will, at any time within twelve (24) months after the termination of the Agreement, solicit, attempt to solicit or employ any of the personnel who were employed or otherwise engaged by the other party at any time during which the Agreement was in effect, except with the express written permission of the other party. The Parties agree that the damages for any breach of this Article 9 will be substantial, but difficult to ascertain. Accordingly, the party that breaches this Article 9, shall pay to other party an amount equal to two times (2x) the annual compensation of the employee solicited or hired, which amount shall be paid as liquidated damages, as a good faith effort to estimate the fair, reasonable and actual damages to the aggrieved party and not as a penalty. Nothing in the Agreement shall be construed to prohibit either party from pursuing any other available rights or remedies it may have against the respective employee(s).

## 10 DATA PROTECTION

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10.1 Applicability. This Article 10 shall apply when Contractor is providing Services to Client which involves the processing of Personal Data which is subject to Privacy Laws.

10.2 Definitions. For purposes of this Article 10:

- (a) "Personal Data" means any information relating to an identified or identifiable natural person which is processed by Contractor, acting as a processor on behalf of the Client, in connection with the provision of the Services and which is subject to Privacy Laws.
- (b) "Privacy Laws" means any United States and/or European Union data protection and/or privacy related laws, statutes, directives, judicial orders, or regulations (and any amendments or successors thereto) to which a party to the Agreement is subject and which are applicable to the Services.

10.3 Contractor's Obligations. Contractor will maintain industry-standard administrative, physical, and technical safeguards for protection of the security, confidentiality, and integrity of Personal Data. Contractor shall process Personal Data only in accordance with Client's reasonable and lawful instructions (unless otherwise required to do so by applicable law). Client hereby instructs Contractor to process any Personal Data to provide the Services and comply with Contractor's rights and obligations under the Agreement and any applicable Statement of Work. The Agreement and any applicable Statement of Work comprise Client's complete instructions to Contractor regarding the processing of Personal Data. Any additional or alternate instructions must be agreed between the parties in writing, including the costs (if any) associated with complying with such instructions. Contractor is not responsible for determining if Client's instructions are compliant with applicable law, however, if Contractor is of the opinion that a Client instruction infringes applicable Privacy Laws, Contractor shall notify Client as soon as reasonably practicable and shall not be required to comply with such infringing instruction.

- 10.4 Disclosures. Contractor may only disclose the Personal Data to third parties for the purpose of: (i) complying with Client's reasonable and lawful instructions; (ii) as required in connection with the Services and as permitted by the Agreement and any applicable Statement of Work; and/or (iii) as required to comply with Privacy Laws, or an order of any court, tribunal, regulator or government agency with competent jurisdiction to which Contractor is subject, provided that Contractor will (to the extent permitted by law) inform the Client in advance of any disclosure of Personal Data and will reasonably co-operate with Client to limit the scope of such disclosure to what is legally required.
- 10.5 Demonstrating Compliance. Contractor shall, upon reasonable prior written request from Client (such request not to be made more frequently than once in any twelve-month period), provide to Client such information as may be reasonably necessary to demonstrate Contractor's compliance with its obligations under this Agreement.
- 10.6 Liability and Costs. Contractor shall not be liable for any claim brought by Client or any third party arising from any action or omission by Contractor or Contractor's agents to the extent such action or omission was directed by Client or expressly and affirmatively approved or ratified by Client.

## 11 DATA RETENTION

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- 11.1 Client's Intellectual Property and Confidential Information. All Client Intellectual Property and Client Confidential Information (to include Client Intellectual Property or Client Confidential Information that is contained or embedded within other documents, files, materials, data, or media) shall be removed from all Contractor controlled systems as soon as it is no longer required to perform Services under this Agreement and held in the Escrow. In addition, pursuant to Section 15.4, the Parties shall provide to each other documents and information that are reasonably necessary to the defense of any third party's claims arising out of or related to the subject matter of this Agreement.

## 12 REPRESENTATIONS AND WARRANTIES.

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- 12.1 Representations and Warranties of Client. Client represents and warrants to Contractor as follows:
- (a) Organization; Power. As of the Effective Date, Client (i) is a government entity in the State of Arizona, duly organized, validly existing and in good standing under the Laws of the State of Arizona, and (ii) has full corporate power to conduct its business as currently conducted and to enter into the Agreement.
  - (b) Authorized Agreement. This Agreement has been, and each Statement of Work will be, duly authorized, executed and delivered by Client and constitutes or will constitute, as applicable, a valid and binding agreement of Client, enforceable against Client in accordance with its terms.
  - (c) No Default. Neither the execution and delivery of this Agreement or any Statement of Work by Client, nor the consummation of the transactions contemplated hereby or thereby, shall result in the breach of any term or provision of, or constitute a default under, any charter provision or bylaw, agreement (subject to any applicable consent), order, or law to which Client is a Party or which is otherwise applicable to Client.

12.2 Representations and Warranties of Contractor. Contractor represents and warrants to Client as follows:

- (a) Organization; Power. As of the Effective Date, Contractor (i) is a corporation, duly organized, validly existing and in good standing under the Laws of the State of Florida, and (ii) has full corporate power to own, lease, license and operate its assets and to conduct its business as currently conducted and to enter into the Agreement.
- (b) Authorized Agreement. This Agreement has been, and each Statement of Work will be duly authorized, executed and delivered by Contractor and constitutes or will constitute, as applicable, a valid and binding agreement of Contractor, enforceable against Contractor in accordance with its terms.
- (c) No Default. Neither the execution and delivery of this Agreement or any Statement of Work by Contractor, nor the consummation of the transactions contemplated hereby or thereby, shall result in the breach of any term or provision of, or constitute a default under, any charter provision or bylaw, agreement (subject to any applicable consent), order or law to which Contractor is a Party or that is otherwise applicable to Contractor.

12.3 Additional Warranties of Contractor. Contractor warrants that:

- (a) The Services shall conform to the terms of the Agreement (including the Statement of Work);
- (b) Contractor will comply with all applicable laws, rules and regulations in delivering the Services (including without limitation any privacy, data protection and computer laws);
- (c) The Services shall be performed in a diligent and professional manner consistent with industry best standards;
- (d) Contractor and its agents possess the necessary qualifications, expertise and skills to perform the Services;
- (e) Contractor and all individuals handling Client Confidential Information are either U.S. citizens, or U.S. entities that are owned, controlled, and funded entirely by U.S. citizens.
- (f) Services requiring code review will be sufficiently detailed, comprehensive and sophisticated so as to detect security vulnerabilities in software that should reasonably be discovered given the state of software security at the time the Services are provided;
- (g) Contractor shall ensure that the Services (including any deliverables) do not contain, introduce or cause any program routine, device, or other undisclosed feature, including, without limitation, a time bomb, virus, software lock, drop-dead device, malicious logic, worm, trojan horse, or trap door, that may delete, disable, deactivate, interfere with or otherwise harm software, data, hardware, equipment or systems, or that is intended to provide access to or produce modifications not authorized by Client or any known and exploitable material security vulnerabilities to affect Client's systems (collectively, "Disabling Procedures");

- (h) If, as a result of Contractor's services, a Disabling Procedure is discovered by Contractor, Contractor will promptly notify Client and Contractor shall use commercially reasonable efforts and diligently work to eliminate the effects of the Disabling Procedure at Contractor's expense. Contractor shall not modify or otherwise take corrective action with respect to the Client's systems except at Client's request. In all cases, Contractor shall take immediate action to eliminate and remediate the proliferation of the Disabling Procedure and its effects on the Services, the client's systems, and operating environments. At Client's request, Contractor will report to Client the nature and status of the Disabling Procedure elimination and remediation efforts; and
- (i) Contractor shall correct any breach of the above warranties, at its expense, within fourteen (14) days of its receipt of such notice. In the event that Contractor fails to correct the breach within the specified cure period, in addition to any other rights or remedies that may be available to Client at law or in equity, Contractor shall refund all amounts paid by Client pursuant to the applicable Statement of Work for the affected Services.

### **13 LIMITATION OF LIABILITY.**

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IN NO EVENT SHALL CONTRACTOR BE HELD LIABLE FOR INDIRECT, SPECIAL, INCIDENTAL CONSEQUENTIAL, OR PUNITIVE DAMAGES ARISING OUT OF SERVICES PROVIDED HEREUNDER INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUE, BUSINESS INTERRUPTION, LOSS OF USE OF EQUIPMENT, LOSS OF GOODWILL, LOSS OF DATA, LOSS OF BUSINESS OPPORTUNITY, WHETHER CAUSED BY TORT (INCLUDING NEGLIGENCE), COSTS OF SUBSTITUTE EQUIPMENT, OR OTHER COSTS. If applicable law limits the application of the provisions of this Article 13, Contractor's liability will be limited to the least extent permissible.

EXCEPT FOR EACH PARTY'S INDEMNIFICATION OBLIGATIONS UNDER ARTICLE 15 AND NON-SOLICITATION OBLIGATIONS UNDER ARTICLE 9, LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT WILL NOT EXCEED THE TOTAL OF THE AMOUNTS PAID AND PAYABLE TO CONTRACTOR UNDER THE STATEMENT OF WORK(S) TO WHICH THE CLAIM RELATES. THE ABOVE LIMITATIONS WILL APPLY WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY.

### **14 DISCLAIMER OF WARRANTIES.**

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EXCEPT AS EXPRESSLY SET FORTH HEREIN, CONTRACTOR MAKES NO EXPRESS OR IMPLIED WARRANTIES WITH RESPECT TO ANY OF THE SERVICES PROVIDED UNDER THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, OR SUITABILITY OR RESULTS TO BE DERIVED FROM THE USE OF ANY SERVICE, SOFTWARE, HARDWARE, DELIVERABLES, WORK PRODUCT OR OTHER MATERIALS PROVIDED UNDER THIS AGREEMENT. CLIENT UNDERSTANDS THAT CONTRACTOR'S SERVICES DO NOT CONSTITUTE ANY GUARANTEE OR ASSURANCE THAT THE SECURITY OF CLIENT'S SYSTEMS, NETWORKS AND ASSETS CANNOT BE BREACHED OR ARE NOT AT RISK. CONTRACTOR MAKES NO WARRANTY THAT EACH AND EVERY VULNERABILITY WILL BE DISCOVERED AS PART OF THE SERVICES AND CONTRACTOR SHALL NOT BE LIABLE TO CLIENT SHOULD VULNERABILITIES LATER BE DISCOVERED.



## 15 INDEMNIFICATION.

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“Indemnified Parties” shall mean, (i) in the case of Contractor, Contractor, and each of Contractor’s respective owners, directors, officers, employees, contractors and agents; and (ii) in the case of Client, Client, and each of Client’s respective members, officers, employees, contractors and agents.

- 15.1 Mutual General Indemnity. Each party agrees to indemnify and hold harmless the other party from (i) any third-party claim or action for personal bodily injuries, including death, or tangible property damage resulting from the indemnifying party’s gross negligence or wilful misconduct; and (ii) breach of this Agreement or the applicable Statement of Work by the indemnifying Party, its respective owners, directors, officers, employees, agents, or contractors.
- 15.2 Contractor Indemnity. Contractor shall defend, indemnify and hold harmless the Client Indemnified Parties from any damages, costs and liabilities, expenses (including reasonable and actual attorney’s fees) (“Damages”) actually incurred or finally adjudicated as to any third-party claim or action alleging that the Services performed or provided by Contractor and delivered pursuant to the Agreement infringe or misappropriate any third party’s patent, copyright, trade secret, or other intellectual property rights enforceable in the country(ies) in which the Services performed or provided by Contractor for Client or third-party claims resulting from Contractor’s gross negligence or wilful misconduct (“Indemnified Claims”). If an Indemnified Claim under this Section 15.2 occurs, or if Contractor determines that an Indemnified Claim is likely to occur, Contractor shall, at its option: (i) obtain a right for Client to continue using such Services; (ii) modify such Services to make them non-infringing; or (iii) replace such Services with a non-infringing equivalent. If (i), (ii) or (iii) above are not reasonably available, either party may, at its option, terminate the Agreement will refund any pre-paid fees on a pro-rata basis for the allegedly infringing Services that have not been performed or provided. Notwithstanding the foregoing, Contractor shall have no obligation under this Section 15.2 for any claim resulting or arising from: (i) modifications made to the Services that were not performed or performed or provided by or on behalf of Contractor; or (ii) the combination, operation or use by Client, or anyone acting on Client’s behalf, of the Services in connection with a third-party product or service (the combination of which causes the infringement).
- 15.3 Client Indemnity. Client shall defend, indemnify and hold harmless the Contractor Indemnified Parties from any Damages actually incurred or finally adjudicated as to any third-party claim, action or allegation: (i) that the Client’s data infringes a copyright or misappropriates any trade secrets enforceable in the country(ies) where the Client’s data is accessed, provided to or received by Contractor or was improperly provided to Contractor in violation of Client’s privacy policies or applicable laws (or regulations promulgated thereunder); (ii) asserting that any action undertaken by Contractor in connection with Contractor’ performance under this Agreement violates law or the rights of a third party under any theory of law, including without limitation claims or allegations related to the analysis of any third party’s systems or processes or to the decryption, analysis of, collection or transfer of data to Contractor; (iii) the use by Client or any of the Client Indemnified Parties of Contractor’s reports and deliverables under this agreement; and (iv) arising from a third party’s reliance on a Client Report, any information therein or any other results or output of the Services. Notwithstanding the foregoing or any other provision of this Agreement, Client shall have (i) no indemnification obligations other than defense costs in connection with any third-party claim, action or allegation arising out of or relating to Contractor

Indemnified Parties' statements or communications to the media or other third-parties; and (ii) no indemnification obligations in connection with any third-party claim, action or allegation arising out of or relating to Contractor Indemnified Parties' material breach of this Agreement.

- 15.4 Indemnification Procedures. The Indemnified Party will (i) promptly notify the indemnifying party in writing of any claim, suit or proceeding for which indemnity is claimed, provided that failure to so notify will not remove the indemnifying party's obligation except to the extent it is prejudiced thereby, (ii) allow the indemnifying party to solely control the defence of any claim, suit or proceeding and all negotiations for settlement, and (iii) fully cooperate with the Indemnifying Party by providing information or documents requested by the Indemnifying Party that are reasonably necessary to the defense or settlement of the claim, and, at the Indemnifying Party's request and expense, assistance in the defense or settlement of the claim. In no event may either party enter into any third-party agreement which would in any manner whatsoever affect the rights of the other party or bind the other party in any manner to such third party, without the prior written consent of the other party. If and to the extent that any documents or information provided to the Indemnified Party would constitute Confidential Information within the meaning of this Agreement, the Indemnified Party agrees that it will take all actions reasonably necessary to maintain the confidentiality of such documents or information, including but not limited to seeking a judicial protective order.

This Article 15 states each party's exclusive remedies for any third-party claim or action, and nothing in the Agreement or elsewhere will obligate either party to provide any greater indemnity to the other. This Article 15 shall survive any expiration or termination of the Agreement.

## 16 FORCE MAJEURE

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- 16.1 Neither party shall be liable to the other for failure to perform or delay in performance of its obligations under any Statement of Work if and to the extent that such failure or delay is caused by or results from causes beyond its control, including, without limitation, any act (including delay, failure to act, or priority) of the other party or any governmental authority, civil disturbances, fire, acts of God, acts of public enemy, compliance with any regulation, order, or requirement of any governmental body or agency, or inability to obtain transportation or necessary materials in the open market.
- 16.2 As a condition precedent to any extension of time to perform the Services under this Agreement, the party seeking an extension of time shall, not later than ten (10) days following the occurrence of the event giving rise to such delay, provide the other party written notice of the occurrence and nature of such event.

## 17 INSURANCE

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During the of the Agreement Term, Contractor shall, at its own cost and expense, obtain and maintain in full force and effect, the following minimum insurance coverage: (a) commercial general liability insurance on an occurrence basis with minimum single limit coverage of \$2,000,000 per occurrence and \$4,000,000 aggregate combined single limit; (b) professional errors and omissions liability insurance with a limit of \$2,000,000 per event and \$2,000,000 aggregate; Contractor shall name Client as an additional insured to Contractor's commercial general liability and excess/umbrella insurance and as a loss payee on Contractor's professional errors and omissions liability insurance and Contractor's employee fidelity bond/crime insurance, and, if required, shall also name Client's End Customer. Contractor shall furnish to Client a certificate showing compliance with these insurance requirements within two (5) days of Client's written request. The certificate will provide that Client will receive ten (10) days' prior written notice from the insurer of any termination of coverage.

## 18 GENERAL

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- 18.1 Independent Contractors-No Joint Venture. The parties are independent contractors and will so represent themselves in all regards. Neither party is the agent of the other nor may neither bind the other in any way, unless authorized in writing. The Agreement (including the Statements of Work) shall not be construed as constituting either Party as partner, joint venture or fiduciary of the other Party or to create any other form of legal association that would impose liability upon one Party for the act or failure to act of the other Party, or as providing either Party with the right, power or authority (express or implied) to create any duty or obligation of the other Party.
- 18.2 Entire Agreement, Updates, Amendments and Modifications. The Agreement (including the Statements of Work) constitutes the entire agreement of the Parties with regard to the Services and matters addressed therein, and all prior agreements, letters, proposals, discussions and other documents regarding the Services and the matters addressed in the Agreement (including the Statements of Work) are superseded and merged into the Agreement (including the Statements of Work). Updates, amendments, corrections and modifications to the Agreement including the Statements of Work may not be made orally but shall only be made by a written document signed by both Parties.
- 18.3 Waiver. No waiver of any breach of any provision of the Agreement shall constitute a waiver of any prior, concurrent or subsequent breach of the same or any other provisions hereof.
- 18.4 Severability. If any provision of the Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby, and such provision shall be deemed to be restated to reflect the Parties' original intentions as nearly as possible in accordance with applicable Law(s).
- 18.5 Cooperation in Defense of Claims. The parties agree to provide reasonable cooperation to each other in the event that either party is the subject of a claim, action or allegation regarding this Agreement or a party's actions taken pursuant to this agreement, including, but not limited to, providing information or documents needed for the defence of such claims, actions or allegation; provided that neither party shall be obligated to incur any expense thereby.

- 18.6 Counterparts. The Agreement and each Statement of Work may be executed in counterparts. Each such counterpart shall be an original and together shall constitute but one and the same document. The Parties agree that electronic signatures, whether digital or encrypted, a photographic or facsimile copy of the signature evidencing a Party's execution of the Agreement shall be effective as an original signature and may be used in lieu of the original for any purpose.
- 18.7 Binding Nature and Assignment. The Agreement will be binding on the Parties and their respective successors and permitted assigns. Neither Party may, or will have the power to, assign the Agreement (or any rights thereunder) by operation of law or otherwise without the prior written consent of the other Party.
- 18.8 Notices. Notices pursuant to the Agreement will be sent to the addresses below, or to such others as either party may provide in writing. Such notices will be deemed received at such addresses upon the earlier of (i) actual receipt or (ii) delivery in person, by fax with written confirmation of receipt, or by certified mail return receipt requested. A notice or other communication delivered by email under this Agreement will be deemed to have been received when the recipient, by an email sent to the email address for the sender stated in this Section 19.7 acknowledges having received that email, with an automatic "read receipt" not constituting acknowledgment of an email for purposes of this section 19.7.

**Notice to Contractor:**

Cyber Ninjas Inc  
ATTN: Legal Department  
5077 Fruitville Rd  
Suite 109-421  
Sarasota, FL 34232

Email: [legal@cyberninjas.com](mailto:legal@cyberninjas.com)

**Notice to Client:**

Arizona State Senate  
Attn: Greg Jernigan  
1700 W. Washington St.  
Phoenix, AZ 85007  
[gjernigan@azleg.gov](mailto:gjernigan@azleg.gov)

- 18.9 No Third-Party Beneficiaries. The Parties do not intend, nor will any Section hereof be interpreted, to create for any third-party beneficiary, rights with respect to either of the Parties, except as otherwise set forth in an applicable Statement of Work.



- 18.10 Dispute Resolution. The parties shall make good faith efforts to resolve any dispute which may arise under this Agreement in an expedient manner (individually, "Dispute" and collectively "Disputes"). In the event, however, that any Dispute arises, either party may notify the other party of its intent to invoke the Dispute resolution procedure herein set forth by delivering written notice to the other party. In such event, if the parties' respective representatives are unable to reach agreement on the subject Dispute within five (5) calendar days after delivery of such notice, then each party shall, within five (5) calendar days thereafter, designate a representative and meet at a mutually agreed location to resolve the dispute ("Five-Day Meeting").
- 18.10.1 Disputes that are not resolved at the Five-Day Meeting shall be submitted to non-binding mediation, by delivering written notice to the other party. In such event, the subject Dispute shall be resolved by mediation to be conducted in accordance with the rules and procedures of the American Arbitration Association, and mediator and administrative fees shall be shared equally between the parties.
- 18.10.2 If the dispute is not resolved by mediation, then either party may bring an action in a state or federal court in Maricopa County, Arizona which shall be the exclusive forum for the resolution of any claim or defense arising out of this Agreement. The prevailing party shall be entitled to an award of its reasonable attorneys' fees and costs incurred in any such action.
- 18.10.3 Governing Law. All rights and obligations of the Parties relating to the Agreement shall be governed by and construed in accordance with the Laws of the State of Arizona without giving effect to any choice-of-law provision or rule (whether of the State of Arizona or any other jurisdiction) that would cause the application of the Laws of any other jurisdiction.
- 18.11 Rules of Construction. Interpretation of the Agreement shall be governed by the following rules of construction: (a) words in the singular shall be held to include the plural and vice versa and words of one gender shall be held to include the other gender as the context requires, (b) the word "including" and words of similar import shall mean "including, without limitation," (c) the headings contained herein are for reference purposes only and shall not affect in any way the meaning or interpretation of the Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Master Service Agreement to be effective as of the day, month and year written above.

Accepted by:

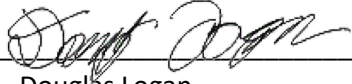
Client

By:  \_\_\_\_\_  
748DEF61BCE340B

\_\_\_\_\_  
Title: Karen Fann, President \_\_\_\_\_

Accepted by:

Contractor: Cyber Ninjas, Inc.

By:  \_\_\_\_\_  
Douglas Logan

Title: CEO & Principal Consultant

# EXHIBIT 1. FORM OF STATEMENT OF WORK

---

This Statement of Work (the "Statement of Work") is effective as of as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ (the "Effective Date"), between Cyber Ninjas, Inc., a Florida Corporation, (the "Contractor"), and the Arizona State Senate (the "Client"), and is deemed to be incorporated into that certain Master Service Agreement dated the 31 day of March, 2021 (the "Master Agreement") by and between Contractor and Client(collectively, this Statement of Work and the Master Agreement are referred to as the "Agreement").

## 1 GENERAL PROVISIONS

---

- 1.1 Introduction. The terms and conditions that are specific to this Statement of Work are set forth herein. Any terms and conditions that deviate from or conflict with the Master Agreement are set forth in the "Deviations from Terms of the Master Agreement" Schedule hereto. In the event of a conflict between the provisions of this Statement of Work and the Master Agreement, the provisions of Section 2.4 of the Master Agreement shall control such conflict.
- 1.2 Services. Contractor will provide to the Client the Services in accordance with the Master Agreement (including the Exhibits thereto) and this Statement of Work (including the Schedules hereto). The scope and composition of the Services and the responsibilities of the Parties with respect to the Services described in this Statement of Work are defined in the Master Agreement, this Statement of Work, [and any Schedules attached hereto].

## 2 SCOPE & SERVICES DESCRIPTION

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## 3 TECHNICAL METHODOLOGY

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## 4 DELIVERABLE MATERIALS

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## 5 COMPLETION CRITERIA

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## 6 FEES / TERMS OF PAYMENT

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The charges for the Services are: \$\_\_\_\_\_ to be paid as follows:

[\$\_\_\_\_\_ upon execution of the Agreement and \$\_\_\_\_\_ upon completion of the Services]. Invoicing and terms of payment shall be as provided in Article 5 of the Agreement.

## 7 TERM/PROJECT SCHEDULE

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## 8 SIGNATURE & ACKNOWLEDGEMENT

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**THE PARTIES ACKNOWLEDGE THAT THEY HAVE READ THIS STATEMENT OF WORK, UNDERSTAND IT, AND AGREE TO BE BOUND BY ITS TERMS AND CONDITIONS. FURTHER, THE PARTIES AGREE THAT THE COMPLETE AND EXCLUSIVE STATEMENT OF THE AGREEMENT BETWEEN THE PARTIES RELATING TO THIS SUBJECT SHALL CONSIST OF 1) THIS STATEMENT OF WORK, 2) ITS SCHEDULES, AND 3) THE AGREEMENT (INCLUDING THE EXHIBITS THERETO), INCLUDING THOSE AMENDMENTS MADE EFFECTIVE BY THE PARTIES IN THE FUTURE. THIS STATEMENT OF THE AGREEMENT BETWEEN THE PARTIES SUPERSEDES ALL PROPOSALS OR OTHER PRIOR AGREEMENTS, ORAL OR WRITTEN, AND ALL OTHER COMMUNICATIONS BETWEEN THE PARTIES RELATING TO THE SUBJECT DESCRIBED HEREIN.**

IN WITNESS WHEREOF, the parties hereto have caused this Statement of Work to be effective as of the day, month and year written above.

Accepted by:

Client:

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

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

Accepted by:

Contractor: Cyber Ninjas, Inc.

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

Douglas Logan

Title: CEO & Principal Consultant

## EXHIBIT 2. BACKGROUND SCREENING MEASURES

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The pre-employment background investigations include the following search components for U.S. employees and the equivalent if international employees:

- 10-Year Criminal History Search – Statewide and/or County Level
- 10-Year Criminal History Search – U.S. Federal Level
- Social Security Number Validation
- Restricted Parties List

### **Criminal History – State-wide or County:**

Criminal records are researched in the applicant's residential jurisdictions for the past seven years. records are researched through State-wide repositories, county/superior courts and/or lower/district/municipal courts. Generally, a State-wide criminal record search will be made in states where a central repository is accessible. Alternately, a county criminal record search will be conducted and may be supplemented by an additional search of lower, district or municipal court records. These searches generally reveal warrants, pending cases, and felony and misdemeanor convictions. If investigation and/or information provided by the applicant indicate use of an aka/alias, additional searches by that name must be conducted.

### **Criminal History – Federal:**

Federal criminal records are researched through the U.S. District Court in the applicant's federal jurisdiction for the past seven years. This search generally reveals warrants, pending cases and convictions based on federal law, which are distinct from state and county violations. The search will include any AKAs/aliases provided or developed through investigation.

### **Social Security Trace:**

This search reveals all names and addresses historically associated with the applicant's provided number, along with the date and state of issue. The search also verifies if the number is currently valid and logical or associated with a deceased entity. This search may also reveal the use of multiple social security numbers, AKAs/aliases, and additional employment information that can then be used to determine the parameters of other aspects of the background investigation.



**Compliance Database or Blacklist Check:**

This search shall include all of the specified major sanctioning bodies (UN, OFAC, European Union, Bank of England), law enforcement agencies, regulatory enforcement agencies, non-regulatory agencies, and high-profile persons (to include wanted persons, and persons who have previously breached US export regulation or violated World Bank procurement procedures including without limitation the lists specified below:

A search shall be made of multiple National and International restriction lists, including the Office of Foreign Asset Control (OFAC) Specially Designated Nationals (SDN), Palestinian Legislative Council (PLC), Defense Trade Controls (DTC) Debarred Parties, U.S. Bureau of Industry and Security Denied Persons List, U.S. Bureau of Industry and Security Denied Entities List, U.S. Bureau of Industry and Security Unverified Entities List, FBI Most Wanted Terrorists List, FBI Top Ten Most Wanted Lists, FBI Seeking Information, FBI Seeking Information on Terrorism, FBI Parental Kidnappings, FBI Crime Alerts, FBI Kidnappings and Missing Persons, FBI Televised Sexual Predators, FBI Fugitives – Crimes Against Children, FBI Fugitives – Cyber Crimes, FBI Fugitives – Violent Crimes: Murders, FBI Fugitives – Additional Violent Crimes, FBI Fugitives – Criminal Enterprise Investigations, FBI Fugitives – Domestic Terrorism, FBI Fugitives – White Collar Crimes, DEA Most Wanted Fugitives, DEA Major International Fugitives, U.S. Marshals Service 15 Most Wanted, U.S. Secret Service Most Wanted Fugitives, U.S. Air Force Office of Special Investigations Most Wanted Fugitives, U.S. Naval Criminal Investigative Services (NCIS) Most Wanted Fugitives, U.S. Immigration and Customs Enforcement (ICE) Most Wanted Fugitives, U.S. Immigration & Customs Enforcement Wanted Fugitive Criminal Aliens, U.S. Immigration & Customs Enforcement Most Wanted Human Smugglers, U.S. Postal Inspection Service Most Wanted, Bureau of Alcohol, Tobacco, and Firearms (ATF) Most Wanted, Politically Exposed Persons List, Foreign Agent Registrations List, United Nations Consolidation Sanctions List, Bank of England Financial Sanctions List, World Bank List of Ineligible Firms, Interpol Most Wanted List, European Union Terrorist List, OSFI Canada List of Financial Sanctions, Royal Canadian Mounted Police Most Wanted, Australia Department of Foreign Affairs and Trade List, Russian Federal Fugitives, Scotland Yard's Most Wanted, and the World's Most Wanted Fugitives.

# EXHIBIT 3. FORM OF NONDISCLOSURE SUBCONTRACT

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## Nondisclosure Agreement

1. I am participating in one or more projects for Cyber Ninjas, Inc., as part of its audit of the 2020 general election in Maricopa County, performed as a contractor for the Arizona State Senate (the "Audit").
2. In connection with the foregoing, I have or will be receiving information concerning the Audit, including but not limited to ballots or images of ballots (whether in their original, duplicated, spoiled, or another form), tally sheets, audit plans and strategies, reports, software, data (including without limitation data obtained from voting machines or other election equipment), trade secrets, operational plans, know how, lists, or information derived therefrom (collectively, the "Confidential Information").
3. In consideration for receiving the Confidential Information and my participation in the project(s), I agree that unless I am authorized in writing by Cyber Ninjas, Inc. and the Arizona State Senate, I will not disclose any Confidential Information to any person who is not conducting the Audit. If I am required by law or court order to disclose any Confidential Information to any third party, I will immediately notify Cyber Ninjas, Inc. and the Arizona State Senate.
4. Furthermore, I agree that during the course of the audit to refrain from making any public statements, social media posts, or similar public disclosures about the audit or its findings until such a time as the results from the audit are made public or unless those statements are approved in writing from Cyber Ninjas, Inc and the Arizona Senate.
5. I agree never to remove and never to transmit any Confidential Information from the secure site that the Arizona State Senate provides for the Audit; except as required for my official audit duties and approved by both Cyber Ninjas, Inc and the Arizona Senate.
6. I further understand that all materials or information I view, read, examine, or assemble during the course of my work on the Audit, whether or not I participate in the construction of such materials or information, have never been and shall never be my own intellectual property.
7. I agree that the obligations provided herein are necessary and reasonable in order to protect the Audit and its agents and affiliates. I understand that an actual or imminent failure to abide by these policies could result in the immediate termination of my work on the Audit, injunctive relief against me, and other legal consequences (including claims for consequential and punitive damages) where appropriate.

Signature: \_\_\_\_\_

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

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

# **Exhibit 3**

# **Exhibit 3**



# Statement of Work

This Statement of Work (the “Statement of Work”) is effective as of as of the 31 day of March, 2021 (the “Effective Date”), between Cyber Ninjas Inc., a Florida Corporation, (“Contractor”), and Arizona State Senate (“Client”), and is deemed to be incorporated into that certain Master Service Agreement dated March 31, 2021 (the “Master Agreement”) by and between Contractor and Client (collectively, this Statement of Work and the Master Agreement are referred to as the “Agreement”).

## 1 WHY CYBER NINJAS

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Cyber Ninjas is a cyber security company with a focus on application security and ethical hacking. We perform work across the financial services and government sectors. Our expertise allows us to both understand complex technology systems, as well as understand how a malicious attacker could potentially abuse those systems to meet his or her own agenda. This allows us to effectively enumerate the ways a system could be exploited, and with our partners to fully review if that scenario did in fact occur. This is very different from the compliance focused way that election systems are typically evaluated.

Both our company and our partners have extensive experience working specifically with Dominion Voting Systems. In addition, our subcontractors and partners are adept at digital forensic acquisition, and on implementing ballot hand-counting procedures. Two of our team members authored a hand-count ballot process that has been utilized in audits in two states; and has further been perfected for transparency and consistency. This combination of skills, abilities, and experience is what uniquely qualifies our team for the outlined work.

## 2 OUR TEAM

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Cyber Ninjas will serve as the central point-of-contact and organizer of all work conducted over the course of this agreement. However, there are different teams involved in each phase of the outlined work. Each of these teams have specialities and experience within the outlined areas of their coverage. This expertise is highlighted below.

### 2.1 Registration and Votes Cast Team

The Registration and Votes Cast Team has worked together with a number of individuals to perform non-partisan canvassing within Arizona related to the 2020 General election in order to statistically identify voter registrations that did not make sense, and then knock on doors to confirm if valid voters actually lived at the stated address. This brought forth a number of significant anomalies suggesting significant problems in the voter rolls.

They will be continuing this work as part of this effort to validate that individuals that show as having voted in the 2020 General election match those individuals who believe they have cast a vote.

## 2.2 Vote Count & Tally Team - Wake Technology Services

Members of the Wake Technology Services group have performed hand-count audits in Fulton County, PA and in New Mexico as part of the 2020 General Election cycle. In addition, team members have been involved in investigating election fraud issues, dating back to 1994. In that particular case in 1994, this team member worked closed with the FBI during the investigation.

As part of these audits in 2020, the Wake Technology Services team has developed an in-depth counting process that reduces opportunities for errors. This counting process has been expanded to make it more robust, and more transparent. As a result, they will be leading all ballot hand-counting processes.

## 2.3 Electronic Voting System Team – CyFIR, Digital Discovery & Cyber Ninjas, Analysts

Digital Forensic Acquisition will be performed either by CyFIR or Digital Forensics, and the analysis work will be performed by Cyber Ninjas, CyFIR and a number of additional analysts, the identities and qualifications of whom shall be made available to Client upon request.

CyFIR is a digital security and forensics company and a subcontractor on the contract for DHS's Hunt and Incident Response Team (HIRT). As specialists for DHS, they are familiar with responding to nation-state cyber activity including Advanced Persistent Threats (APT).

# 3 GENERAL PROVISIONS

---

3.1 Introduction. The terms and conditions that are specific to this Statement of Work are set forth herein. Any terms and conditions that deviate from or conflict with the Master Agreement are set forth in the "Deviations from Terms of the Master Agreement" Schedule hereto. In the event of a conflict between the provisions of this Statement of Work and the Master Agreement, the provisions of Section 2.34 of the Master Agreement shall control such conflict.

3.2 Services. Contractor will provide to the Client the Services in accordance with the Master Agreement (including the Exhibits thereto) and this Statement of Work (including the Schedules hereto). The scope and composition of the Services and the responsibilities of the Parties with respect to the Services described in this Statement of Work are defined in the Master Agreement, this Statement of Work, and any Schedules attached hereto.

# 4 SCOPE & SERVICES DESCRIPTION

---

This Statement of Work outlines the proposed methodology and scope for a full and complete audit of 100% of the votes cast within the 2020 November General Election within Maricopa County, Arizona. This audit will attempt to validate every area of the voting process to ensure the integrity of the vote. This includes auditing the registration and votes cast, the vote counts and tallies, the electronic voting system, as well as auditing the reported results. The final report will attempt to outline all the facts found throughout the investigation and attempt to represent those facts in an unbiased and non-partisan way. The final report will not include factual statements unless the statements can be readily substantiated with evidence, and such substantiation is cited, described, or appended to the report as appropriate.

The following sub-sections provides additional details of what will be conducted at each stage of the audit.



## 4.1 Registration and Votes Cast Phase

---

During the Registration and Votes Cast Phase, it will be validated that Maricopa County properly registers who voted during an election, and that this system properly prevents duplicate voting. This will be performed on a minimum of three precincts.

Proposed scope of work:

- Review of Arizona's SiteBook system for checking in and tracking voters;
- Complete audit of a minimum of 3 precincts, based on statistical anomalies and precinct size;
- Analysis of existing research and data validating the legitimacy of voter rolls; and/or
- Comparing results against known lists of invalid voters (e.g. deceased voters, non-citizens, etc.).

This phase may help detect:

- Problems that could result in voters being able to vote more than once;
- Voters that voted but do not show in the list of those who voted;
- Voters who likely did not vote but showed as having voted;
- Potential invalid voters who cast a vote in the 2020 general election; and/or
- Inconsistencies among vote tallies between the various phases.

This phase is NOT expected to detect:

- Individual ballots that are either wrong and/or invalid.

Anticipated artifacts for transparency and/or validation of results for the public:

- Final report outlining the discovered results; and/or
- Redacted spreadsheet of a list of those who voted in the target precincts.

## 4.2 Vote Count & Tally Phase

---

During the Vote Count & Tally Phase, the counts and tallies for votes and the voting machines will be validated. This will include a hand-tally and examination of every paper ballot.

Proposed scope of work:

- Physically inspecting and hand-counting of ballots in Maricopa County;
- Counting of the total number of provisional ballots;
- Capture of video footage of the hand-counting of ballots; and/or
- Scanning of ballots in Maricopa County
  - NOTE: Provisional ballots which still have signatures attached to them will be counted to be sure they match the expected numbers but will not be scanned nor will the contents be visible in video.

This phase may help detect:

- Counts that do not match the expected results;
- Ballots that are visually different and possibly fraudulent; and/or
- Inconsistencies among vote tallies between the various phases.

This phase is NOT expected to detect:

- Destroyed or otherwise missing ballots

Anticipated artifacts for transparency and/or validation of results for the public:

- Final report outlining the discovered results;
- Unedited camera footage of the counting of every ballot, provided that, absent express judicial approval, any such footage cannot be streamed, recorded or broadcast in such a manner that the candidate or ballot proposition selections on each ballot is visible or discernible; and/or
- Ballot images of every scanned ballot, provided that, absent express judicial approval, any such images cannot be released or published to any third party.

### 4.3 Electronic Voting System Phase

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During the Electronic Voting System Phase the results from the electronic voting machines will be validated to confirm they were not tampered with. This will be done on all systems related to SiteBook with Maricopa data, as well as all Election Management System related machines besides the Ballot Marking Devices (BMD)'s utilized for accessibility.

Proposed scope of work:

- Forensic Images of Arizona's SiteBook System including the database server, as well as any client machines associated with Maricopa County;
- Forensic images captured of the Election Management System main server, adjudication machines, and other systems related to the Election Management System;
- Forensic images of all Compact Flash, USB drives, and related media;
- Inspection to identify usage of cellular modems, Wi-Fi cards, or other technologies that could be utilized to connect systems to the internet or wider-area-network;
- Review of the Tabulator Paper Tally print-outs;
- Reviewing the exports from the EMS for "Audit File", "Audit Images" and "CVR";
- Reviewing ballot images captured by the tabulators
- Reviewing forensic images for possible altering of results or other issues; and/or
- Reviewing of tabulator and other logs.

This phase may help detect:

- Problems where the tabulator incorrectly tabulated results;
- Problems where the tabulator rejected results;
- Issues where results may have been manipulated in the software;
- Issues with the improper adjudication of ballots; and/or
- Inconsistencies among vote tallies between the various phases.

Anticipated artifacts for transparency and/or validation of results for the public:

- Final report outlining the discovered results;
- Ballot images and AuditMark images showing how the tabulator interpreted the ballot for counting, provided that, absent express judicial approval, such images cannot be released or published to any third party;
- CVR Report as generated from the software; and/or
- Log Files from the Tabulators (Redacted if Dominion Desires).

## 4.4 Reported Results Phase

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During the Reported Results Phase, results from all phases are compared against those expected results and those results which were publicly totalled as the official results to identify any inconsistencies.

Proposed scope of work:

- Results from various phases will be reviewed and tallied; and
- Results will be compared against the official, certified results.

This phase may help detect:

- Issues where result tallies were not properly transmitted to the official results; and/or
- Inconsistencies among vote tallies between the various phases.

Anticipated artifacts for transparency and/or validation of results for the public:

- Final report outlining the discovered results

## 5 METHODOLOGY

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The following section outlines the proposed methodology utilized in the various phases of the audit. When appropriate, these sections may reference more detailed procedures. Such procedures are considered proprietary and the intellectual property of Cyber Ninjas, our subcontractors or our Partners and can be made available for review but are not explicitly part of this agreement.

### 5.1 Registration and Votes Cast Phase

---

During the “Registration and Votes Cast Phase”, Contractor may utilize precincts that have a high number of anomalies based on publicly available voting data and data from prior canvassing efforts to select a minimum of three precincts to conduct an audit of voting history related to all members of the voter rolls. A combination of phone calls and physical canvassing may be utilized to collect information of whether the individual voted in the election. No voters will be asked to identify any candidate(s) for whom s/he voted. This data will then be compared with data provided from Maricopa County Board of Elections.

### 5.2 Vote Count & Tally Phase

---

The goal of the “Vote Count & Tally Phase” is to attempt to, in a transparent and consistent manner, count all ballots to determine the accuracy of all federal races, and to identify any ballots that are suspicious and potentially counterfeit. Ballots will be counted in a manner designed to be accurate, all actions are transparent, and the chain of custody is maintained.

#### 5.2.1 Counting Personnel

Non-partisan counters will be utilized that are drawn from a pool of primarily former law enforcement, veterans, and retired individuals. These individuals will undergo background checks and will be validated to not have worked for any political campaigns nor having worked for any vendor involved in the voting process. These individuals will also be prevented from bringing any objects other than clothing items worn on their persons into the counting area or taking any objects out of the counting area.

### 5.2.2 Accurate Counting

Counting will be done in groups with three individuals independently counting each batch of ballots, and an individual supervising the table. All counts will be marked on a sheet of paper as they are tallied. If, at the end of the hand count, the discrepancies between counting personnel aggregate to a number that is greater than the margin separating the first and second place candidates for any audited office, the ballots with discrepant total from the Contractor's counting personnel will be re-reviewed until the aggregate discrepancies within the hand count are less than the margin separating the first and second place candidates.

### 5.2.3 Transparent Counting

All activity in the counting facility will be videotaped 24 hours a day, from the time that Maricopa County delivers ballots and other materials until the time that the hand count is complete and all materials have been returned to the custody of Maricopa County. Such videotaping shall include 24-hour video monitoring of all entrances and exits, as well as activity at the counting tables.

### 5.2.4 Chain of Custody

All movement with ballots, cutting of seals, application of seals, and similar actions will be appropriately documented and logged, as well as captured under video to be sure the custody of ballots is maintained at all times. Access to the counting area will be restricted to duly authorized and credentialed individuals who have passed a comprehensive background check, with mandatory security searches and ingress/egress logs whenever entering or exiting the counting area.

## 5.3 Electronic Voting System Phase

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The proposed scope of the "Electronic Voting System Phase" is to confirm that the system accurately tallied and reported the votes as they were entered into the system and that remote access was not possible. All systems related to the voting will be forensically imaged, these machines will be booted up and checked for wireless signal usage, and the images will be reviewed to determine the accuracy of results and any indication of tampering.

### 5.3.1 Forensic Images

A digital forensics capture team will forensically capture all data on in-scope systems, utilizing industry best practices. This will create a digital copy of every single machine, Compact Flash Card, and USB drive in scope without altering the contents of the machines. Chain-of-custody documentation will be created to preserve these images in a manner sufficient to be utilized in a court-of-law.

### 5.3.2 Physical Analysis

The Election Management System equipment will be turned on and scanned with a wireless spectrum analysis tool to determine if the device is emitting any signals consistent with a known wireless frequency such as cellular, Bluetooth, WiFi or similar. Devices that show signs of emitting signals will be flagged and documented, and when possible without damaging the equipment; they will be physically inspected to determine the source of any detected signals.

### 5.3.3 Digital Analysis

The forensic images will be reviewed to validate reported totals from the tabulators, results stored within the Election Management System (EMS) Results Tally and Reporting software. These will be compared against the tabulator print-outs; and the machine will be checked for physical or digital tampering and any known ways of remote access to the machines.

#### 5.3.4 Opportunity for Observation

Before commencing the imaging or analysis steps described above (except for the Digital Analysis process), the Contractor will work with Maricopa County to provide at least five (5) days advance notice to any vendors of Maricopa County whose products will be the subject of imaging, inspection, or analysis. Such vendors will be permitted the opportunity to attend and observe the Contractor's imaging or inspection of the vendors' products. The vendor will not be allowed to be present for the analysis of the captured images. Such vendors are third party beneficiaries of this provision and will have standing to challenge and secure injunctive relief against any denial of their right to observe the inspection of their products.

### 5.4 Reported Results Phase

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During the Reported Results phase, results from all phases are compared to find differences between tallies or other anomalies. These results are then compared against data at the Secretary of State and Maricopa Board of Elections layers. Any inconsistencies will be reported and highlighted.

## 6 RESPONSIBILITIES

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The following section outlines the key responsibilities for the proper execution of the Agreement between the Contractor and the Client for all outlined work within the scope.

### 6.1 Registration and Votes Cast Phase

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#### Contractor Responsibilities

- Provide the proper personnel to conduct the analysis of the data required to execute the scope of this phase.

#### Client Responsibilities

- Arrange for a database export of SiteBook to be provided to the Client which includes all fields normally found in a publicly requested copy of the voter rolls, in addition to any other non-sensitive fields related to the data such as modifications or other time-stamps, voter history, last user edited, IP address of edit; or anything similar.

### 6.2 Vote Count & Tally Phase

---

#### Contractor Responsibilities

- Provide the proper personnel and equipment to execute all aspects of the phase including scanning, counting, the setup of equipment for recording of the counting, and the supervision of activities.
- Ensure that all onsite personnel follow any in-place COVID requirements.

#### Client Responsibilities

- Provide security of the building during the course of the engagement. This includes having sufficient security to prevent access to the building 24/7 during the entire time, including ensuring that safe working conditions can exist during the entirety of the audit;
- Provide electricity and access to the facilities and tables necessary for up to 120 people at a time following any current COVID requirements. This is estimated to be about 7,200 square feet;
- Provide access to all paper ballots from the November 2020 General Election within Maricopa County. This includes early voting, election day ballots, provisional ballots, spoiled ballots, printed unused ballots and any other ballot categories that are part of the 2020 General Election. For all ballots this should include the original hard copies of the ballots that were electronically adjudicated ballots.
- Provide a mechanism to allow for the proper equipment to be brought into the facility where the counting will take place.



- Full chain of custody documentation for all ballots from the point they were cast to the point where we gain access to the ballots, to the extent such documentation is in Client's possession.
- Purchase orders for all purchased ballots, or ballot paper, including counts of each, as well as delivery receipts of the quantity of ballots received, to the extent such documentation is in Client's possession.
- Full counts from any ballots printed on demand, as well as the location for which they were printed, to the extent such documentation is in Client's possession.
- Provide wired access to internet to be able to stream the counting video capture, provided that any such video footage must be streamed, recorded or broadcast in such a manner that the candidate or ballot proposition selections on each ballot shall not be visible or discernible.

## 6.3 Electronic Voting System Phase

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### Contractor Responsibilities

- Provide the proper personnel to execute all aspects of the phase including the capture of forensic digital images of all systems related to the Election Management System; and
- Ensure that all onsite personnel during the forensic capture follow any in-place COVID requirements.

### Client Responsibilities

- Provide physical access to the EMS Server, Adjudication machines, ImageCast Central, ImageCast Precinct, ImageCast Ballot Marking Devices, SiteBook, NOVUS systems, and any other Election Management System equipment or systems utilized in the November 2020 General Election to the forensic capture team;
- Provide access to Compact Flash Cards, USB Drives, and any other media utilized in the November 2020 General Election for the forensic capture team to image;
- Provide electricity and sufficient access to the machines in scope in order to provide a team of up to 15 forensic capture individuals to work and boot up the systems;
- Provide any needed credentials for decrypting media, decrypting computer hard drives, the EMS machines, or other systems that may be required for a proper forensic capture of the machines;
- Provide the output of the "Audit File," "Audit Images," and CVR exports from the Dominion machines which includes all ballot images and AuditMark images of every ballot processed by the machines; and
  - NOTE: The above may be able to be captured from the forensic images; but Maricopa County assistance could be needed in identifying where the AuditMark files are located.
- Provide any needed technical assistance allowing all the above to be successfully captured.

## 6.4 Reported Results Phase

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### Contractor Responsibilities

- Provide the proper personnel to conduct the analysis of the data required to execute the scope of this phase.

### Client Responsibilities

- Provide the official results per precinct for all counts associated with the November 2020 General Election.

## 7 DELIVERABLE MATERIALS

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The primary deliverable for the Election Audit will be a report detailing all findings discovered during the assessment. The parties agree that the report is provided AS IS, without any promise for any expected results. Additional artifacts as collected during the work will also be provided, as outlined within the scoping details.

This final report will include:

- An executive summary outlining the overall results of the audit from the various phases;
- A methodology section outlining in detail the methodology and techniques utilized to capture and validate the results;
- Tables, charts, and other data representing the findings of the data;
- Appendices or attached files demonstrating all evidence utilized to come to the outlined conclusions (if applicable); and
- Recommendations on how to prevent any detected weaknesses from being a problem in future elections (if applicable).

In addition to the report, various anticipated artifacts for public consumption will be generated over the course of this work, as outlined under the "Scope of Work." Client will determine in its sole and unlimited discretion whether, when, and how the Contractor should release those resources to the public. This will include all videos, ballot images, and other data.

## 8 COMPLETION CRITERIA

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Contractor shall have fulfilled its obligations when any one of the following first occurs:

- Contractor accomplishes the Contractor activities described within this Statement of Work, including delivery to Client of the materials listed in the Section entitled "Deliverable Materials," and Client accepts such activities and materials without unreasonable objections; or
- If Client does not object or does not respond to Contractor within seven (7) business days from the date that the deliverables have been delivered by Contractor to Client, such failure to respond shall be deemed acceptance by Client.

## 9 TERM / PROJECT SCHEDULE / LOCATION

The following table outlines the expected duration of the various proposed work outlined within the Agreement. Work will commence on a date mutually agreeable to both Contractor and Client according to a schedule which is outlined via email.

Each phase outlined below can be conducted simultaneously, with the exception of the Reported Results phase which must be completed at the end. Roughly an additional week of time at the conclusion of all phases is needed to complete and finalize reporting. Lead times before a phase can start as well as their duration can be found below. Faster lead times can potentially be accommodated on a case-by-case basis.

Service Name	Required Notice / Lead Time	Est. Duration in Days	Additional Details / Location
Registration and Votes Cast Phase	1 Week	20	This work will be done remotely.
Vote Count & Tally Phase	2-3 Weeks	20*	The entire time will be onsite at the location designated by the Client.  Access will be required 4 days before the start to setup the space.  *Race recounts as outlined in 5.2.2 may require the timeline to be extended beyond the listed days.
Electronic Voting System Phase	1-2 Weeks	35	It is estimated that 15 will be onsite. The remainder of the time will be remote.  Review of location setup is requested the week prior to ensure proper workspace.
Reported Results Phase	Completion of Other Phases	5	This phase will be completed offsite.  Final Report Delivered 1 Week After Completion

## 10 FEES / TERMS OF PAYMENT

The following table outlines the costs associated with the proposed work. A third of the fees will be due at the execution of the contract. The remaining balance will be payable within 30 days from the completion of the audit.

Selected	Name	Price Each	Total
1	Maricopa County – Full Audit	\$150,000	\$150,000.00
	<b>Total:</b>		\$150,000.00

## 11 SIGNATURE & ACKNOWLEDGEMENT

THE PARTIES ACKNOWLEDGE THAT THEY HAVE READ THIS STATEMENT OF WORK, UNDERSTAND IT, AND AGREE TO BE BOUND BY ITS TERMS AND CONDITIONS. FURTHER, THE PARTIES AGREE THAT THE COMPLETE AND EXCLUSIVE STATEMENT OF THE AGREEMENT BETWEEN THE PARTIES RELATING TO THIS SUBJECT SHALL CONSIST OF 1) THIS STATEMENT OF WORK, 2) ITS SCHEDULES, AND 3) THE AGREEMENT (INCLUDING THE EXHIBITS THERETO), INCLUDING THOSE AMENDMENTS MADE EFFECTIVE BY THE PARTIES IN THE FUTURE. THIS STATEMENT OF THE AGREEMENT BETWEEN THE PARTIES SUPERSEDES ALL PROPOSALS OR OTHER PRIOR AGREEMENTS, ORAL OR WRITTEN, AND ALL OTHER COMMUNICATIONS BETWEEN THE PARTIES RELATING TO THE SUBJECT DESCRIBED HEREIN.

IN WITNESS WHEREOF, the parties hereto have caused this Statement of Work to be effective as of the day, month and year written above.

Accepted by:

Client: Arizona State Senate

By:  748DF61BCF340B...

Title: Karen Fann, President

Accepted by:

Contractor: Cyber Ninjas, Inc.

By: 

Douglas Logan

Title: CEO & Principal Consultant

# Exhibit 4

Exhibit 4

KAREN FANN  
SENATE PRESIDENT  
FIFTY-FIFTH LEGISLATURE  
1700 WEST WASHINGTON, SENATE  
PHOENIX, ARIZONA 85007-2844  
CAPITOL PHONE: (602) 926-5874  
TOLL FREE: 1-800-352-8404  
kfann@azleg.gov  
DISTRICT 1



COMMITTEES:  
Rules, Chairman

## Arizona State Senate

April 20, 2021

Dear Sheriff Penzone:

As I am sure you are aware, the State Senate has rented the Veterans' Memorial Coliseum for the purpose of conducting an audit of the 2020 General Election. This was made necessary by the unfortunate refusal of the Maricopa County Board of Supervisors to cooperate with the Senate in conducting the audit at the County offices.

The Senate has hired some security but does not have all of the security capability to protect the election equipment and ballots on its own, given the rumors of protests and disruptions contemplated by some outside groups. Due to the sensitive nature of protecting the election equipment and federal ballots, it is absolutely necessary to have an adequate security presence at the site.

The ballots and equipment are scheduled to be delivered to the Coliseum at 12:00 pm on Wednesday, April 21, 2021. The audit will then begin upon receipt of the ballots and equipment, with completion anticipated by May 14.

Under the circumstances, I respectfully request that the Department of Public Safety assign at least six uniformed officers to provide security at the Coliseum on a twenty-four hour basis for the duration of the audit.

Sincerely,

A handwritten signature in cursive script that reads "Karen Fann".

Karen Fann  
PRESIDENT  
Arizona State Senate

# Exhibit 5

Exhibit 5



**From:** [Roopali Desai](#)  
**To:** [Sheri McAleister](#)  
**Subject:** FW: President Fann Letter to Sheriff Penzone 4-20-21  
**Date:** Sunday, April 25, 2021 2:28:37 PM

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**From:** Robyn Anderson (MCSO) <[Robyn\\_Anderson@MCSO.Maricopa.gov](mailto:Robyn_Anderson@MCSO.Maricopa.gov)> on behalf of Paul Penzone (MCSO) <[PaulPenzone@MCSO.Maricopa.gov](mailto:PaulPenzone@MCSO.Maricopa.gov)>  
**Sent:** Tuesday, April 20, 2021 6:26 PM  
**To:** Karen Fann  
**Cc:** Jack Sellers (BOS)  
**Subject:** RE: President Fann Letter to Sheriff Penzone 4-20-21

Senator Fann,

According to the Maricopa County Board of Supervisors, the agreement to transfer these ballots to the custody of the State included an indemnification. I was advised you were present and possibly the signatory of that agreement. The responsibility and safety of transfer from our custody to the State will be supported by the Maricopa County Sheriff's Office. Once each transfer is complete, any security needs on State property must be supplied at the facilitation and expense of the State.

Respectfully,

Paul Penzone  
Maricopa County Sheriff

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**From:** Karen Fann <[KFann@azleg.gov](mailto:KFann@azleg.gov)>  
**Sent:** Tuesday, April 20, 2021 2:53 PM  
**To:** Paul Penzone (MCSO) <[PaulPenzone@MCSO.Maricopa.gov](mailto:PaulPenzone@MCSO.Maricopa.gov)>  
**Cc:** Kory Langhofer <[kory@statecraftlaw.com](mailto:kory@statecraftlaw.com)>; Greg Jernigan <[GJernigan@azleg.gov](mailto:GJernigan@azleg.gov)>; Wendy Baldo <[wbaldo@azleg.gov](mailto:wbaldo@azleg.gov)>  
**Subject:** President Fann Letter to Sheriff Penzone 4-20-21

Please see the attached memo.

*Karen Fann*

*President of the Senate*

*Tel: 602.926.5874*

KAREN FANN  
SENATE PRESIDENT  
FIFTY-FIFTH LEGISLATURE  
1700 WEST WASHINGTON, SENATE  
PHOENIX, ARIZONA 85007-2844  
CAPITOL PHONE: (602) 926-5874  
TOLL FREE: 1-800-352-8404  
kfann@azleg.gov  
DISTRICT 1



COMMITTEES:  
Rules, Chairman

## Arizona State Senate

April 20, 2021

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Sincerely,

A handwritten signature in cursive script that reads "Karen Fann".

Karen Fann  
PRESIDENT  
Arizona State Senate