



Notice of Request for Proposal

SOLICITATION # YH18-0037

Third Party Liability and Recovery Audit Services

Procurement Officer:

Jennifer Roberts, Senior Procurement Specialist
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Issue Date: **JANUARY 29, 2018**

LOCATION: ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM ADMINISTRATION (AHCCCS)
Procurement Office (First Floor)
701 E. Jefferson, MD 5700
Phoenix, AZ 85034

DESCRIPTION: **Third Party Liability and Recovery Audit Services**

PROPOSAL DUE DATE: **MARCH 7, 2018** AT 3:00 P.M.
ARIZONA TIME

Pre-Proposal Conference: A Pre-Proposal Conference has **NOT** been scheduled.

QUESTIONS CONCERNING THIS SOLICITATION SHALL BE SUBMITTED TO THE PROCUREMENT OFFICER NAMED ABOVE, IN WRITING, VIA E-MAIL BY **FEBRUARY 9, 2018, 5:00 PM** ARIZONA TIME ON THE QUESTIONS AND ANSWERS FORM PROVIDED WITH THIS RFP. ANSWERS TO ALL QUESTIONS WILL BE POSTED IN THE AHCCCS WEBSITE IN THE FORM OF A SOLICITATION AMENDMENT FOR THE BENEFIT OF ALL POTENTIAL OFFERORS.

In accordance with A.R.S. § 36-2906, which is incorporated herein by reference, competitive sealed proposals will be received at the above specified location, until the time and date cited. Proposals received by the correct time and date will be opened and the name of each Offeror will be publicly read.

Proposals must be in the actual possession of AHCCCS on or prior to the time and date and at the location indicated above.

Late proposals shall not be considered.

Proposals must be submitted in a sealed envelope or package with the Solicitation Number and the Offeror's name and address clearly indicated on the envelope or package. All proposals must be typewritten. Additional instructions for preparing a proposal are included in this solicitation document.

Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting the person named above. Requests should be made as early as possible to allow time to arrange the accommodation.

OFFERORS ARE STRONGLY ENCOURAGED TO CAREFULLY READ THE ENTIRE SOLICITATION.



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Attached Separately:

Attachment A: Periodic Report Requirements

Attachment B: AHCCCS TPL Program Recoveries

Attachment C: AHCCCS Commercial TPL Coverage Record Data Exchange Layout



OFFER AND ACCEPTANCE

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OFFER

The undersigned Offeror hereby agrees to provide all services in accordance with the terms and requirements stated herein, including all exhibits, amendments, and final proposal revisions (if any). Signature also certifies Small Business Status.

Arizona Transaction (Sales) Privilege Tax License No.:

For clarification of this offer, contact:

Name: _____

Federal Employer Identification No.:

Title: _____

E-Mail Address: _____

Phone: _____

_____ Company Name

_____ Signature of Person Authorized to Sign Offer

_____ Address

_____ Printed Name

_____ City State Zip

_____ Title

CERTIFICATION

By signature in the Offer section above, the Offeror certifies:

1. The submission of the offer did not involve collusion or other anti-competitive practices.
2. The Offeror shall not discriminate against any employee or applicant for employment in violation of Federal Executive Order 11246, State Executive Order 2009-09 or A.R.S. §§ 41-1461 through 1465.
3. The Offeror has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted offer. Failure to provide a valid signature affirming the stipulations required by this clause shall result in rejection of the offer. Signing the offer with a false statement shall void the offer, any resulting contract and may be subject to legal remedies provided by law.
4. The Offeror _____ is / _____ is **not** a small business with less than 100 employees or has gross revenues of \$4 million or less.
5. The Offeror is in compliance with A.R.S. § 41-3532 when offering electronics or information technology products, services, or maintenance; and
6. The Offeror certifies that it is not debarred from, or otherwise prohibited from participating in any contract awarded by federal, state, or local government.

ACCEPTANCE OF OFFER (to be completed by AHCCCS)

Your offer, including all exhibits, amendments and final proposal revisions (if any), contained herein, is accepted. The Contractor is now bound to provide all services listed by the attached contract and based upon the solicitation, including all terms, conditions, specifications, amendments, etc., and the Contractor's Offer as accepted by AHCCCS.

The Contractor is cautioned not to commence any billable work or to provide any material or service under this contract until Contractor receives purchase order, contract release document or written notice to proceed.

This contract shall henceforth be referred to as

Contract No. YH18-0037-01.

CONTRACT SERVICE START DATE: **DATE, 2018.**

AWARD DATE: _____

MEGGAN HARLEY, CPPO, MSW, AHCCCS Chief Procurement Officer



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1. AHCCCS OVERVIEW

AHCCCS is the single state Medicaid agency for the State of Arizona. In that capacity it is responsible for operating the Title XIX and Title XXI programs through the State's 1115 Research and Demonstration Waiver, which was granted by the Centers for Medicare and Medicaid Services (CMS), U.S. Department of Health and Human Services. As of **June 1, 2017**, AHCCCS provides coverage to approximately **1.9 million** members in Arizona.

Over **82.43%** of the AHCCCS program's expenditures in **SFY 2017** were through managed care programs. AHCCCS contracts with Managed Care Organizations (MCOs) that are responsible for providing Acute, Long Term Care, and Behavioral Health Services. A list of contracted plans can be found here: <https://azweb.statemedicaid.us/HealthPlanLinksNet/HPLinks.aspx>

The program has a total fund budget for **SFY 2018** of approximately **\$13.5 billion**. AHCCCS has over **70,000 active providers** in Arizona, such as individual medical and behavioral health practitioners, therapy disciplines, institutions, durable medical equipment companies and transportation entities. Additional information may be found on the AHCCCS website reporting page: <https://www.azahcccs.gov/Resources/Reports/federal.html>

2. PURPOSE

The purpose of this Request for Proposal (RFP) is to procure the services of an organization (hereby referred to as "Contractor") which has the experience and expertise to provide AHCCCS with First Party Liability and Third Party Liability recovery services, Medicaid Recovery Audit Contractor (RAC) services, Commercial Insurance Coverage Verification/ Data Match and other related services as described in this RFP. Compensation under this contract will be based upon the Pricing Schedule accepted by AHCCCS, contained herein, and is subject to the review and approval of CMS.

The contract shall be available to all AHCCCS contracted health plans for Credit Balance Recovery activities. A separate agreement will be entered into with each health plan that chooses to participate in Credit Balance Recovery program. AHCCCS will pay the Contractor for Credit Balance Recovery activities it performs for any AHCCCS contracted health plan that enters a separate agreement with AHCCCS and the Contractor pursuant to the payment terms.

It is the intention of AHCCCS to evaluate proposals and award a contract to a single Vendor for the services specified herein.

3. LEGAL AUTHORITY

This contract is being entered into pursuant to A.R.S. § 36-2906, and any rules adopted thereunder.

4. CONTRACTOR DUTIES AND RESPONSIBILITIES

4.1 The Contractor shall be responsible for all recovery programs described in this RFP. The Contractor shall also be responsible for commercial insurance data matching and coverage verification for all AHCCCS members. While operating these programs, the responsibilities include, but are not limited to, the following:

- 4.1.1 Maximizing AHCCCS recoveries and cost avoidance;
- 4.1.2 Complying with all federal and state laws, regulations, policies and procedures;
- 4.1.3 Complying with reporting requirements as set forth by CMS and AHCCCS;
- 4.1.4 Researching and documenting cases with potential TPL recoveries;
- 4.1.5 Preparing any reports, data, or responses needed by AHCCCS in order to submit reports or information to executive management, government entities, auditors, or legislators;
- 4.1.6 Providing financial reports on recoveries, including reconciliation of dollars recovered vs. disbursed;
- 4.1.7 Providing financial reports for reporting federal share of recoveries to CMS;
- 4.1.8 Coordinating with AHCCCS Health Plan Contractors as needed to ensure cases are being processed by the appropriate contractor within required timeframes;
- 4.1.9 Maintaining processes to ensure compliance with HIPAA standards;



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- 4.1.10 Identifying, researching, and verifying payments made by AHCCCS to providers;
- 4.1.11 Filing, amending and releasing Liens;
- 4.1.12 Calculating and reporting AHCCCS lien and claim amounts;
- 4.1.13 Performing active estate identification monthly by date of death reports, court records, etc.;
- 4.1.14 Developing case facts and making recommendations to AHCCCS on Casualty and Estate Recovery cases and after the settlement amounts have been agreed to by AHCCCS, conduct all appropriate activities to settle the cases;
- 4.1.15 Receiving and processing all referral information within five business days of receipt, and referring Total Plan cases to the appropriate AHCCCS Health Plan Contractor;
- 4.1.16 Collecting AHCCCS Health Plan Contractor claims data that is needed to process Joint Plan cases, and following up with AHCCCS Health Plan Contractors as needed to promptly collect overdue claims data;
- 4.1.17 Providing technical assistance and training to AHCCCS Health Plan Contractors ;
- 4.1.18 Receiving and processing information received from the Industrial Commission of Arizona and the Arizona Department of Transportation, and referring select data to the appropriate AHCCCS Health Plan Contractor;
- 4.1.19 Referring suspected cases of fraud/abuse to AHCCCS;
- 4.1.20 Enter into data sharing agreements with insurers that provide healthcare coverage to Arizona residents to help AHCCCS maintain a current database of insurance coverage information;
- 4.1.21 Conduct ongoing data matches of the AHCCCS Member eligibility files with the files of insured coverage and provide AHCCCS with daily electronically-transmitted update files of Member commercial insurance policies that should be added or updated in AHCCCS' systems;
- 4.1.22 Coordinate RAC activities with AHCCCS' Office of the Inspector General (OIG);
- 4.1.23 Ensure providers identified by the Contractor are not under investigation by AHCCCS OIG and/ or have no existing pending complaints;
- 4.1.24 Keeping AHCCCS informed of personnel who are assigned under the AHCCCS contract for recovery and reporting purposes;
- 4.1.25 Timely notification and reporting of all activities and issues;
- 4.1.26 Maintaining solid internal control systems; bank procedures, and cash control;
- 4.1.27 Recommending new programs or processes that will enhance the recovery of AHCCCS expenditures;
- 4.1.28 Commenting on proposed changes in state and federal legislation, rules, policies, and procedures;
- 4.1.29 Researching, analyzing, and implementing proposed or required program or process changes;
- 4.1.30 Responding timely to surveys, requests for information, and correspondence;
- 4.1.31 Responding timely to subpoenas and other court documents;
- 4.1.32 Recommending settlement amounts to AHCCCS and then settling claim amounts in accordance with AHCCCS direction;
- 4.1.33 Providing monthly lists of open cases for each recovery program;
- 4.1.34 Conducting a monthly reconciliation of case inventory to include the number of claims and recovery amounts for each recovery program;
- 4.1.35 Maintaining an adequate staff with appropriate expertise and training;
- 4.1.36 Regularly monitoring TPL Contractor staff compliance to policies and procedures to ensure recovery cases are being worked appropriately and timely;
- 4.1.37 Establishing and maintaining contractual relationships with insurance companies for data matches and post payment billing activities;
- 4.1.38 Providing and maintaining a case management tracking system, that is accessible to AHCCCS, which documents the detail case history and all recovery activities;
- 4.1.39 Promptly providing copies of case files when requested by AHCCCS;
- 4.1.40 Periodically archiving closed recovery cases in accordance with AHCCCS and state requirements;
- 4.1.41 Providing a weekly Aging Report that shows how many cases are coming due or are overdue, broken down by each stage of the recovery programs; and



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- 4.1.42 Providing all necessary legal expertise associated with cases prior to the State Fair Hearing process. This includes, but is not limited to representing AHCCCS in foreclosure cases, interpleader actions, and alternative dispute resolution proceedings.
- 4.2 AHCCCS retains the right to expand the scope of work by mutual agreement for any additional services that may be beneficial to AHCCCS.
- 4.3 As part of this contract, any changes to operating policies and procedures pertaining to the recovery processes, as defined herein, must be approved by AHCCCS. All policies and procedures that are developed between the Contractor staff and the AHCCCS staff are the property of AHCCCS.
- 4.4 The Contractor shall adhere to banking procedures as specified and/or modified by AHCCCS. The Contractor's personnel authorized to endorse settlement checks are subject to AHCCCS' written approval. Settlement checks payable to AHCCCS, which require endorsement, shall be endorsed using the endorsement stamp provided by AHCCCS. The Contractor shall provide AHCCCS with a letter that identifies its employees who are authorized to endorse such checks. The Contractor shall notify AHCCCS by letter within five working days to the attention of AHCCCS TPL Administrator, of making any change to this endorsement authority listing.
- 4.5 AHCCCS may obtain First Party Liability and Third Party Liability cases from an AHCCCS Health Plan Contractor when the AHCCCS Health Plan Contractor terminates its AHCCCS contract. The Contractor is obligated to pursue recovery of those cases under the same terms and conditions for similar AHCCCS recoveries.
- 4.6 The Contractor shall work cooperatively with AHCCCS to prepare operational manuals for its cost avoidance and recovery programs and ensure the operational manuals are kept current to maximize AHCCCS recoveries and to remain in compliance with Federal and State requirements. Any changes shall be coordinated with AHCCCS and finalized with a revision completed within thirty (30) days of the operational change. The operational manuals will address all required timeframes per individual recovery program.
- 4.7 The Contractor shall comply with the requirements of HIPAA and all federal regulations as described in the "Business Associate" addendum that is included herein.
- 4.8 The Contractor shall provide information to AHCCCS on any program change that they believe should be disseminated to external entities involved with recovery practices.

5. **FIRST PARTY LIABILITY AND THIRD PARTY LIABILITY RECOVERY PROGRAMS**

The sources of potential recovery that the Contractor shall pursue include, but are not limited to: Casualty and Tortfeasor, Restitution, Estate Recovery, TEFRA Liens, Trusts, Annuities, Commercial Insurance, and Credit Balance recoveries. Each of these is briefly described below. In addition, Attachment A, "Periodic Report Requirements," contains a list of the financial and statistical reports that the Contractor must prepare and submit on a weekly, monthly or quarterly basis, as required by AHCCCS. Attachment B, "AHCCCS TPL Program Recoveries," lists examples of specific activities the Contractor must do, at a minimum, to adequately perform this contract.

- 5.1 **Casualty and Tortfeasor:** Casualty and Tortfeasor recoveries are obtained from settlements or awards to FFS Members and Joint Liability and Mass Tort Cases for injuries or illness resulting from automobile accidents, malpractice suits, workers' compensation cases, etc. AHCCCS has 60 days from the date of notification of hospital discharge or medical care and treatment to file a lien. If this 60-day period has expired, AHCCCS relies on its assignment and subrogation rights as set forth in State law to enforce its claim.

The Contractor is responsible for identifying FFS Members who have claims with specific trauma codes that are consistent with injuries that may be covered by Liable Parties. In accordance with 42 CFR 433.138(e) the Contractor is required to identify FFS claims that contain trauma codes utilizing claim information provided by



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AHCCCS. The Contractor will treat all claims identified through this trauma code match process as a new Casualty referral.

In addition to the referrals generated by the trauma code match process, other referrals come from a variety of sources including: the Acute Care Contractors or Long Term Care Contractors, attorneys, insurance companies, Providers, Members, etc. The Contractor is responsible for processing all referrals and determining whether the case is a Mass Tort Case, Joint Liability Case, or Total Plan Case.

Certain factors have a bearing on how Casualty cases are worked for recovery. The Contractor shall recover FFS and AHCCCS Health Plan Contractor expenses on Joint Liability and Mass Tort Cases. All Reinsurance and FFS expenditures are reimbursed to AHCCCS from Joint Liability and Mass Tort Case recoveries before any payment is made to the AHCCCS Health Plan Contractor. The Contractor refers all Total Plan Cases, except Mass Tort Cases, to the AHCCCS Health Plan Contractor for recovery.

There are ongoing changes in law that may impact the Casualty and tortfeasor recovery process. The Contractor shall take all necessary steps to comply with any changes in law.

- 5.2 **Restitution:** Restitution recoveries are obtained through a Restitution court order, upon a defendant's conviction for an offense causing economic loss to any person. The court, at its sole discretion, may order that all or any portion of the fine imposed be allocated as Restitution to be paid by the defendant to any person who suffered an economic loss caused by the defendant's conduct. In ordering Restitution for economic loss, the court shall consider all loss caused by the criminal offense or offenses for which the defendant has been convicted.

Federal and State Courts will order a convicted defendant to pay Restitution to AHCCCS in criminal cases where AHCCCS has paid for medical services that are related to the victim's injuries. Requests for paid medical services information for Restitution cases are primarily requested by County Adult Probation Officers. In these cases, the County Adult Probation Officer will submit the AHCCCS claim amount to the court. After the court determines the amount of the Restitution, the court, or a staff member designated by the court, including a probation officer, shall specify the manner in which the Restitution is to be paid.

Restitution recovery is similar to the Casualty and tortfeasor recovery process in that recovery can be a FFS, Joint Liability or a Total Plan Case. The Contractor shall be responsible for processing all referrals and determining whether the case is a FFS case, a Joint Liability Case or a Total Plan Case. If needed, the Contractor will contact the applicable court to collect sufficient information to process a referral. The Contractor shall recover FFS and Acute Care Contractor and Long Term Care Contractor expenses on a Joint Liability Case. All Reinsurance and FFS expenditures are reimbursed to AHCCCS from a Joint Liability Case recovery before any payment is made to the Acute Care Contractors or Long Term Care Contractors.

The Contractor shall provide a monthly report that identifies the current balance due to AHCCCS on open cases. The report format and content shall be as prescribed by AHCCCS.

The Contractor shall establish and maintain a line of communication whereby AHCCCS will be informed of court orders pertaining to AHCCCS recovery case so as to maximize recoveries of AHCCCS expenditures.

On a Joint Liability Case, when AHCCCS is paid in full, the case will be referred to the concerned AHCCCS Health Plan Contractor for collection of the balance due.

Total Plan Cases are forwarded to the appropriate AHCCCS Health Plan Contractor for recovery.

- 5.3 **Estate Recovery:** AHCCCS receives federal, state, and county funds to operate the ALTCS-EPD program. The ALTCS-DD program is funded by federal and state funds. The Contractor shall separately account for ALTCS-EPD and



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ALTCS-DD estate recovery collections. Section 1917 of the Social Security Act required all states to implement an estate recovery program that at a minimum recovers Title XIX payments for nursing facility services, home and community based services, and related hospital and prescription drug services provided to Medicaid individuals age 55 and older. AHCCCS only recovers from the estates of ALTCS Members. AHCCCS was granted the authority under its 1115 demonstration waiver to exempt the recovery from the estates of Acute Care Contractor program enrollees 55 or older who receive long term care services.

The AHCCCS estate claim that is filed against the Member's estate is the total of the Title XIX (ALTCS) expenditures that were incurred by AHCCCS during the Member's ALTCS enrollment period when the member was age 55 and older, minus the sum of: the Share-of-Cost payments that were paid by the Member during the enrollment period; approved payments made to a Qualified Long-Term Care Insurance Policy; and the Medicare Benefit paid by AHCCCS on, or after January 1, 2010 for dual eligible Members.

The Contractor shall be responsible for processing application requests for statutory exemptions under hardship and partial recovery as defined in AHCCCS Rules, A.A.C. R9-28-911 and R9-28-912. The Contractor shall review the application and supporting documentation and make a recommendation to AHCCCS. AHCCCS will waive its estate claim when an heir meets all of the undue hardship waiver criteria. AHCCCS may also reduce the amount of the estate claim when an heir to the estate meets the criteria for a "Partial Recovery (Reduction)" of the estate claim. The Contractor shall review the application and supporting documentation and make a recommendation to AHCCCS when an heir to the estate submits a completed application for a partial recovery (reduction) of the estate claim. The Contractor shall notify the requester of the decision made on any request to waive the claim or reduce the amount of the claim. In the absence of a statutory exemption, or an undue hardship, the Contractor shall pursue recovery of the AHCCCS estate claim from the Member's estate.

Under Arizona probate law, if probate is not opened within two (2) years of the Member's death, the Member's property, including the Member's real estate, passes to the survivors free and clear of any claims. In some instances no one is willing to open an estate, so from time-to-time AHCCCS may acquire the powers and undertake the duties and liabilities of a personal representative of a decedent to protect its interest as a creditor of the estate. In these instances, AHCCCS shall be the estate's personal representative, and the Contractor may be asked to retain independent legal counsel, approved by AHCCCS, to provide ongoing legal advice in opening, administering, and closing probate. Prior to opening probate AHCCCS will provide the Contractor with guidance if the reasonable fees and costs of the independent legal counsel will be paid from proceeds of the estate or if the Contractor shall be required to pay the legal costs from the contingency fee related to the recovery.

There may also be situations where a negotiated settlement is in AHCCCS' best interest. These situations may include, but are not limited to, cases involving tax lien foreclosures, judicial foreclosures, and transferred properties. In these cases, AHCCCS will provide the Contractor with guidance if reasonable fees of independent legal counsel will be paid from proceeds of the estate or if the Contractor shall be required to pay the legal costs from the contingency fee related to the recovery. All negotiated settlements need to be pre-approved by AHCCCS.

- 5.4 **TEFRA Liens:** As authorized under 42 U.S.C. 1396p, AHCCCS imposes TEFRA Liens against the real property, including the Member's primary residence, of permanently institutionalized ALTCS Members meeting AHCCCS' TEFRA lien criteria. The purpose of the Lien is to recover at least some of the cost of ALTCS benefits upon sale or the transfer of the ALTCS Member's property prior to the Members' death. The Contractor shall be responsible for the preparation, filing, and release of all TEFRA Liens. If the property, subject to the TEFRA Lien, is sold prior to the Member's death, the Contractor shall pursue recovery of the AHCCCS estate claim from proceeds of the sale of the property if there is not a statutory exemption from recovery. The Contractor shall pay the Lien fees and AHCCCS will reimburse the full amount of the Lien fees.
- 5.5 **Trusts:** As part of ALTCS eligibility a Member may create a Trust that meets certain specifications. Only specified payments are allowed to be made from the Trust which includes tort/subrogation matters under the assignment of rights, and payments for share of cost. AHCCCS must be designated the primary beneficiary for reimbursement of



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ALTCS expenditures upon the Member's death, or upon the revocation of the Trust. Expenditures for burial expenses are generally not deductible from the Trust.

Upon the death of the individual or termination of the Trust, AHCCCS is paid the remaining funds from the Trust, including share-of-cost payments that have been returned to the trust account, up to the total amount of the AHCCCS expenditures on behalf of the Member. The Contractor shall pursue recovery of the amount of the AHCCCS expenditures from any remaining Trust funds. If a Member moves out of state, AHCCCS retains its beneficiary right to the Trust and is required to be notified when the Member dies, or upon the revocation of the Trust.

- 5.6 **Annuities:** The Contractor will be responsible for making recoveries from applicable annuities when an ALTCS member or Annuitant passes.
- 5.7 **Credit Balance Recovery Program:** AHCCCS utilizes two Credit Balance Recovery Program processes. The first process allows an AHCCCS contracted provider to conduct a "self-audit" to identify accounts receivable credit balances and allowed the provider to return overpayments with "amnesty." The second process involves on-site or desk reviews of the credit balances for selected providers. The Contractor shall coordinate with AHCCCS to determine which process to use for each applicable provider and conducting the Credit Balance Recovery Program on behalf of AHCCCS. At least annually, the Contractor will submit a tentative audit schedule for AHCCCS approval. The Contractor may also audit credit balances and make recoveries for AHCCCS Health Plan Contractors during its AHCCCS audits if a Credit Balance Recovery Agreement signed by the Contractor, AHCCCS Health Plan Contractor, and AHCCCS is in place.
- 5.8 **Commercial Insurance Recovery:** Health Insurers are required by the Deficit Reduction Act of 2005 (DRA) and A.R.S. 36-2923 to:
- 5.8.1 Accept the state's right of recovery from a third party payor;
 - 5.8.2 Respond to an inquiry regarding a claim for payment that is submitted for payment within three (3) years of the date of service; and,
 - 5.8.3 Not deny a claim submitted solely on the basis of the date the claim was submitted, the type or format of the claim, or the failure to present proper documentation at the time of service as long as: (a) the claim is submitted within three years of the date of service, and (b) the action to enforce its rights with respect to the claim is commenced within six (6) years after the date of service.

AHCCCS Health Plan Contractors are required to engage in retroactive third party recovery efforts for members for whom a claim was paid, for up to two (2) years from the date of service. After two (2) years from the service date, the Contractor will direct the recovery efforts on behalf of AHCCCS for the retroactive recovery of claims not previously identified by the AHCCCS Health Plan Contractor as having a reasonable expectation of recovery.

The Contractor shall be responsible for identifying claims that may be covered by other commercial insurers, billing the appropriate carrier, and pursue recovery of the billed claims on behalf of AHCCCS.

6. COMMERCIAL INSURANCE COVERAGE VERIFICATION/ DATA MATCH

The Contractor shall take reasonable measures, pursuant to 42 CFR 433.138, to determine the legal liability of a Liable Party to pay for services to AHCCCS Members. To ensure that AHCCCS is in compliance with the federally mandated cost avoidance requirements to deny and avoid the cost of claims when there is a known Liable Party, the Contractor shall be responsible to maintain valid TPL records in the AHCCCS third party leads file database. In order to ensure that only a valid Liable Party record is added to the database, the Contractor shall be responsible for verifying third party leads received from various sources including, but not limited to, AHCCCS, eligibility entities, AHCCCS Health Plan Contractors and



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commercial insurers. Additionally, the Contractor shall be required to have a Web-based referral process in place to accept on-line insurance coverage referrals, no later than December 1, 2018.

AHCCCS is required by A.R.S. § 36-2923 to report annually to the Arizona State Legislature on the commercial insurers' compliance with this statute. The Contractor will provide information needed for this report to include Excel lists of compliant and noncompliant carriers with the number of member policies assigned to each carrier as of the end of the State fiscal year.

6.1 **Coverage Verification:** The Contractor shall receive health insurance referral information files from AHCCCS weekly, Monday-Friday. Those files contain TPL coverage records that require verification of the type of coverage, the timeframe of the coverage, and other required data elements prior to submitting the verified coverage information to AHCCCS for posting in the third party coverage database. These verified commercial coverage records will be used for cost avoidance and cost recovery activities. The Contractor shall be responsible for the initial verification of the insurance coverage information using industry accepted practices according to AHCCCS timeliness criteria. Verified and not verified referrals should be returned to AHCCCS within 90 days of initial transmission. Referrals entered directly into the Contractor's Web-based referral product should be returned either verified or not verified to AHCCCS within seven business days. The Contractor shall also conduct a reverification of active coverage record information every six (6) months on a rolling six-month cycle based on the last verification date, or on another timetable defined by AHCCCS. All verified insurance information, as well as any updates thereto, shall be transferred to AHCCCS electronically using the established AHCCCS TPL file layout and shall include the AHCCCS assigned Master Carrier ID (MCID) number identifying the insurance carrier. See **ATTACHMENT C** for the current file layout, which may be amended as required. As of September 2017, AHCCCS' commercial insurance database contained information on 144,100 active insurance policies of current Members.

6.2 **Commercial Insurance Data Match:** The Deficit Reduction Act of 2005 and A.R.S. 36-2923 requires health care insurers to provide all enrollment information necessary to determine the time period in which a person who is defined as an AHCCCS eligible person, or that person's spouse or dependents, may be or have been covered by the health care insurer and the nature of that coverage. The Contractor shall enter into, and maintain, trading partner agreements with insurers that provide major medical, pharmacy, dental, and/or Medicare Supplemental coverage to allow for the receipt of commercial insurance coverage information for AHCCCS members that they insure. The Contractor shall be required to perform a data match of the eligibility information received from the health insurers with the AHCCCS recipient eligibility file at least monthly. The Contractor shall provide AHCCCS all verified matched records using the Contractor's match criteria as defined in their response to this RFP and further approved by AHCCCS. All verified data match insurance information, as well as any updates thereto, shall be transferred to AHCCCS electronically using the established TPL file layout, including the AHCCCS MCID. The eligibility file currently contains all AHCCCS members with at least one (1) day of enrollment in the previous 12 months and excludes state-only members.

6.3 **Other Data Matches:** In addition to obtaining member and paid claims file information from AHCCCS to perform matches, the Contractor will receive TPL leads, via AHCCCS, from:

6.3.1 Arizona Department of Transportation, Motor Vehicle Division, and

6.3.2 Arizona Industrial Commission for workers' compensation data.

The Contractor shall be required to utilize this data in their recovery efforts, and to pass the non-FFS member data to the appropriate AHCCCS Health Plan Contractor in a timely manner. The Contractor shall treat all claims identified through these data matches as a Casualty referral.

7. **MEDICAID RECOVERY AUDIT CONTRACTOR (RAC) SERVICES**



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Section 6411 of the Affordable Care Act of 2010 established the Medicaid RAC program and 42 CFR Part 455 Subpart F, implements section 1902(a)(42)(B) of the Social Security Act. The federal rule requires Medicaid RACS to review fee-for-service claims for overpayments and underpayments.

Within the contract term AHCCCS may request that the Contractor develop a methodology for a recovery audit of managed care claims.

7.1 Contractor Shall Adhere to the Following Responsibilities for Fee for Service Claims:

7.1.1 **All requirements as defined in 42 CFR 455.506 and 455.508, that include:**

- 7.1.1.1 Providing at all times trained medical professionals, to the satisfaction of AHCCCS, who are in good standing with the relevant State licensing authorities, where applicable, to review Medicaid claims. In addition, the Contractor must hire certified coders for effective review of claims.
- 7.1.1.2 Hiring 1.0 FTE Medical Director who is a Doctor of Medicine or Doctor of Osteopathy in good standing with the relevant State licensing authorities and has relevant work and educational experiences.
- 7.1.1.3 Working collaboratively with AHCCCS to develop an education and outreach program which includes notification to providers of audit policies and protocols.
- 7.1.1.4 Providing customer service measures such as a toll free customer number; compiling and maintaining provided addresses and points of contact; mandatory acceptance of electronic medical records.
- 7.1.1.5 Refraining from reviewing claims that are older than six (6) years from the date of the service. Eliminate claims from review that have been settled or negotiated through the State Fair Hearing Process or through AHCCCS.
- 7.1.1.6 Refraining from auditing claims that are in process of being audited by another entity.
- 7.1.1.7 Notifying providers of overpayment findings within sixty (60) calendar days of findings.
- 7.1.1.8 Referring suspected cases of fraud/abuse to AHCCCS.
- 7.1.1.9 Collaborating with AHCCCS to set limits on the number and frequency of medical records to be reviewed.

7.1.2 **Audit/Review/Coordination:**

- 7.1.2.1 Coordinate all audit and recovery efforts with AHCCCS, other contractors and entities, including but not limited to the efforts of the AHCCCS Office of Inspector General, federal and state law enforcement, the Federal Department of Justice, the Federal Bureau of Investigations, the Federal Office of Inspector General, and the Arizona State Medicaid Fraud Control Unit to ensure activities proposed are not duplicative of other program integrity activities or operations.
- 7.1.2.2 Provide information on types of providers and claims recommended for review/audit; provide the reason for selecting the type; and define the scope of the review/audit (time frame, type of claim and services reviewed/audited).



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- 7.1.2.3 Provide a list of criteria that is utilized to identify candidates for the provider on-site audits/ desk reviews.
- 7.1.2.4 Establish provider medical record request process consistent with AHCCCS policy.
- 7.1.2.5 Allow providers the opportunity to present additional documentation and reconsideration consistent with AHCCCS policy.
- 7.1.2.6 Invoice the provider using an AHCCCS approved format.
- 7.1.2.7 Maintain tracking and reporting processes as specified by the Agency.
- 7.1.3 **Appeals.** The Contractor shall provide all necessary documentation and support to defend the audit findings in the appeals process, if needed, as well as witness testimony, if required any administrative appeal or court proceeding resulting from a review/audit of a Medicaid provider by the Contractor.
- 7.1.4 **Overpayment.** The recovery techniques utilized by the Contractor shall be legally supportable and follow the guidelines of all applicable AHCCCS policies, regulations and manuals as well as all federal laws and regulations. The Contractor shall not forward claims for adjustment if the claim is incorrectly coded but the coding error does not equate to a difference in the payment amount. For example, HCPCS code E0250 requires an RR modifier for payment. Payment with the modifier is \$25.00 per service. Without the modifier payment is \$25.00 per service. While the claim without the modifier is incorrect, there is no overpayment therefore the claim should not be forwarded for adjustment.
- 7.1.5 **Underpayment.** The contingency fee for underpayments will be paid for underpayments of \$250.00 or more on claims submitted on a UB04, and \$100.00 or more on claims submitted on CMS 1500 and ADA forms. However the contractor shall still identify underpayments of any amount.
- 7.1.6 **Right to Terminate RAC Recoveries.** If the Contractor demonstrates, with a reasonable degree of certainty, that the fees earned on RAC recoveries during any three (3) month period following the first twelve (12) month period of the start of this contract do not cover the direct costs of the recovery efforts during that same time period, the Contractor may exercise its right to terminate its contractual obligations under Section 7 of the Scope of Work (“MEDICAID RECOVERY AUDIT CONTRACTOR (RAC) SERVICES”) after giving AHCCCS sixty (60) days written notice and obtaining agreement from AHCCCS regarding such termination. AHCCCS agrees not to unreasonably withhold such agreement from the Contractor. Further, efforts to exercise this Right to Terminate clause do not abrogate any other sections of this Scope of Work nor relieve either party from its obligations under the remainder of this agreement.

8. COMPUTER SYSTEM

The Contractor shall lease, own, or have access to computer facilities that can meet the requirements of this contract and HIPAA. The Contractor’s computer facilities shall have the capability of accepting and processing all referred accounts in the format provided by AHCCCS utilizing Electronic Data Interchange (EDI). The file format and content may be revised from time to time to comply with HIPAA and with AHCCCS data requirements. See Attachment C for current information on files.

AHCCCS requires a secure connection to its Secured File Transfer Protocol (SFTP) server. This requires adherence to the *External User Affirmation Statement* found on AHCCCS' website.

The Contractor is authorized to exchange data with AHCCCS relating to the information requirements of this contract and as required to support the data elements to be provided in the format specified. The information so recorded and submitted to AHCCCS shall be in accordance with all procedures, policies, rules, or statutes in effect during the term of this



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contract. If any of these procedures, policies, rules, or statutes are hereinafter changed, both parties agree to conform to these changes following appropriate notification to both parties by AHCCCS. The Contractor shall be responsible for any incorrect data, delayed submission or payment and/or penalty applied due to any error, omission, deletion, or erroneous insert caused by Contractor submitted data. Any data that does not meet the standards required by AHCCCS shall not be accepted by AHCCCS.

The Contractor shall be responsible for identifying any inconsistencies immediately upon receipt of data from AHCCCS and communicating to AHCCCS those inconsistencies within ten (10) days. If any unreported inconsistencies are subsequently discovered, the Contractor shall be responsible for the necessary adjustments to correct its records at its own expense.

The Contractor shall accept from AHCCCS original evidence of eligibility and enrollment in a form appropriate for electronic data exchange.

The use of any of the above files for purposes other than identified herein is prohibited without prior written consent from AHCCCS.

The Contractor's computer facilities shall be able to transmit third party coverage information to AHCCCS computer system in a format acceptable to AHCCCS and to receive third party liability information from AHCCCS computer system.

Recovery Database: The Contractor shall maintain a database of all cases where recovery has been attempted or completed. The format and content of the data will be established through mutual agreement. The Contractor's database pertaining to AHCCCS cases shall be accessible online to the AHCCCS TPL Section staff.

Recovery Extract: The Contractor shall maintain and transmit to AHCCCS an electronic extract in a format, content, and time frames as prescribed by AHCCCS that contains valid recovery data pertaining to recoveries. The contractor shall write standardized queries for use by AHCCCS in monitoring contractor activities.

9. SYSTEM INTERFACE/TESTING REQUIREMENTS

The Contractor shall provide AHCCCS or authorized government officials with full access to its computer system for monitoring, review, and testing of the Contractor's operations relating to the contract.

The Contractor shall ensure that changing or making major upgrades to their information systems affecting processing and/or other major business components will be accompanied by a plan which includes a timeline, milestones to include adequate testing before implementation. At least six (6) months prior to the anticipated implementation date the contractor shall provide the system change plan to AHCCCS for review and comment.

10. AUDIT TRAIL REQUIREMENTS

The Contractor's MIS (Management Information Systems) shall provide a complete audit trail of all entries, changes, deletions, and adjustments.

11. CONTROL AND SECURITY REQUIREMENT

The Contractor shall provide adequate controls and security in accordance with HIPAA standards as approved by AHCCCS to maintain the integrity and confidentiality of computerized data. In addition, the Contractor shall provide documentation of its data control and security systems to enable AHCCCS to evaluate the adequacy of such systems, as evidenced by an annual audit (SSAE 16) by an outside firm, approved in advance by AHCCCS, of the security of its systems and stored data.

12. METROPOLITAN PHOENIX OFFICE



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The Contractor shall be required to have an office that is located in the metropolitan Phoenix, Arizona area and to be available to meet with AHCCCS staff in person as needed to address issues and opportunities. The Contractor's manager assigned to this contract must reside in Arizona. If the Contractor does not have an office in the metropolitan Phoenix area at the time of the contract award, the Contractor has up to six (6) months from the date of the contract award to establish and staff the office.

13. CONTRACTOR PERSONNEL

After contract award, the Contractor shall forward to AHCCCS a copy of the resume of any replacements of key personnel assigned to this contract. For personnel replacement purposes, the Contractor shall provide a training plan to AHCCCS. The training plan shall show the replacement is fully trained to assume the program responsibilities.

In the event of unsatisfactory performance (to be determined solely by AHCCCS) by a Contractor employee, the Contractor, upon request by AHCCCS, shall submit for AHCCCS approval of the professional resume of a proposed replacement employee within ten (10) days of receipt of the request from AHCCCS.

The Contractor shall maintain sufficient staff to satisfactorily perform the contract requirements and have in place a contingency staffing and training plan in the event of an unexpected or sudden loss of employees assigned to this contract.

The Contractor shall provide a current work schedule to include office telephone numbers and fax numbers of personnel working on AHCCCS cases. It will also provide cell phone numbers of local managers.

14. PICK-UP AND DELIVERY SERVICES; HOURS OF OPERATION

The Contractor shall provide and maintain a routine, systematic and reliable pick-up and delivery service for documents and recoveries transferred between the Contractor and AHCCCS. Even if this function is subcontracted, the Contractor shall remain entirely responsible for this contract requirement. The Contractor shall be open for business, at a minimum, Monday through Friday from 8 a.m. to 5 p.m. local (Arizona) time (except State recognized holidays), unless otherwise agreed to by AHCCCS. During the hours of operation, the Contractor shall ensure that qualified staff are readily available and knowledgeable to respond to and address programmatic and policy issues and to address questions from AHCCCS, AHCCCS Health Plan Contractors, insurers, members, and member representatives. The Contractor should have the ability to assist Spanish-speaking callers.

The Contractor shall respond to, or acknowledge, telephone calls and e-mails pertaining to AHCCCS cases no later than the next business day.

15. RELATIONS WITH THE PUBLIC

All personal contacts and written communications performed by the Contractor in connection with this contract shall be conducted in a manner which fosters and promotes cooperation and understanding, and which does not result in adverse publicity or loss of public support. The Contractor shall notify AHCCCS within five (5) days of receipt of any complaint, or threatened or actual legal action against the Contractor, pertaining to the Contractor's activities under this contract.

16. AHCCCS APPROVAL OF PROCESS, CORRESPONDENCE, FORMS

The Contractor shall only use procedures, correspondence, forms, legal documents and other related documents in conjunction with administering the recovery program processes that have been approved in writing by AHCCCS prior to their usage.

The Contractor shall review all legal documents within one business day of receipt and notify AHCCCS of the proposed action, including copies of related documents, within two (2) business days of receipt. Any future related documents shall be provided within two (2) business days of receipt.



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17. RETURN OF ERRONEOUS PAYMENTS OR REFUNDS

Within thirty (30) days of written request by AHCCCS, the Contractor shall forward to AHCCCS, with proper identifying information, any fees, recoveries or refunds paid to the Contractor, which are subsequently determined to be incorrect by AHCCCS or disallowed as a result of federal or state audit or successful appeal of a provider overpayment previously determined by the RAC contractor. Written request shall be deemed given upon mailing by certified mail, return receipt requested.

18. RECOVERY RESTRICTION

The Contractor shall not attempt TPL recovery for programs other than those described in Sections 5 through 7 of the Scope of Work without the written approval of AHCCCS.

19. PERIODIC REPORT REQUIREMENTS

AHCCCS requires periodic reports and other information from the Contractor. The submission of late, inaccurate, or otherwise incomplete reports shall constitute failure to report subject to the penalty provisions described in this contract. Standards applied for determining adequacy of required reports shall be applied as follows:

- 19.1 Timeliness: Reports or other required data shall be received on or before scheduled due dates.
- 19.2 Accuracy: Reports or other required data shall be prepared in strict conformity with appropriate authoritative sources and/or AHCCCS defined standards.
- 19.3 Completeness: All required information shall be fully disclosed in a manner that is both responsive and pertinent to report intent with no material omissions.

AHCCCS requirements regarding report format, report content, and frequency of submission of reports are subject to change at any time during the term of the contract. The Contractor shall comply with all changes specified by AHCCCS. The Contractor shall be responsible for continued reporting beyond the term of the contract for the finalization of cases, if any, retained by the Contractor beyond the transition to the new contractor. The Contractor shall comply with all reporting requirements summarized in Attachment A, "Periodic Report Requirements."

20. COMPENSATION

Compensation under this contract will be based upon the Compensation Schedule accepted by AHCCCS contained herein, and is subject to the review and approval of CMS. All Contingency fees calculations shall be based upon the Net Recovery. The RAC's compensation for overpayments will be based on the actual amount recovered and the RAC will be paid a contingency fee percentage of the amount recovered. The amount will be considered recovered only after AHCCCS receives the payments from the providers and after any or all appeals are resolved. The RAC's compensation for underpayments will be based on the amount of the actual underpayment amounts paid to providers identified from the improper payment recovery review process and the Contractor will be paid a contingency fee percentage of the underpayments actually paid to providers. AHCCCS shall make payments to the Contractor in accordance with the terms of this contract provided that the Contractor's performance is in compliance with the terms and conditions of this contract. Payments to the Contractor will be made after all appropriate documentation and/or required data has been received and approved by AHCCCS.

AHCCCS is not exempt from county fees for the filing of Liens. The Contractor shall pay such fees in the course of performing the contract requirements and AHCCCS will reimburse the full amount of the fees. In addition, if the Contractor has expended money for an "expert witness," the reasonable fees and costs of the expert witness will be paid to the Contractor from AHCCCS' settlement amount.



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Only recoveries attributable to the Contractor's activities shall be reimbursable on a contingency basis. AHCCCS will not make payment to the Contractor for recoveries that require no action by the Contractor. The following, while not all inclusive, are examples of non-reimbursable activities:

- 20.1 Third party payments shown on a claim as collected by the provider's action;
- 20.2 Overpayments refunded voluntarily by a provider that are not part of the Credit Balance recovery effort;
- 20.3 Cost avoidance from third party resources previously identified in AHCCCS files;
- 20.4 Claims cost avoided subsequent to the Contractor's initial identification of a third party source; and,
- 20.5 Recoveries from adjustments to future claims.

Payments may be made by electronic funds transfer, and AHCCCS shall not be liable for any error or delay in transfer or for indirect or consequential damages arising from the use of the electronic funds transfer process. Any charges or expenses imposed by the bank for transfers or related actions shall be borne by the Contractor. All funds received by Contractor pursuant to this contract shall be separately accounted for in accordance with generally accepted accounting principles.

At the beginning of the contract term, the Contractor may be assigned cases in progress that have been partially developed by the previous TPL recovery contractor. These will be identified by AHCCCS at the time of assignment to the Contractor and will be reimbursed the negotiated contracted contingency fee.

21. TRANSITION TO NEW CONTRACTOR

In the event this contract expires or is terminated, the Contractor shall cooperate fully in the transition of contract related activities to the successor contractor. All data, reports and records shall be returned within ninety (90) days of contract termination to AHCCCS in the same format in which it was received, unless AHCCCS approves the destruction of specific data, reports, or records. On or before the date of termination, the Contractor shall identify all open recovery cases and provide copies of each case file including but not limited to correspondence, claims and case notes. Before the date of termination, the Contractor shall also provide copies of all closed cases that have not been previously archived, as well as a download of all closed cases where a file had not been created.

Upon review and approval by AHCCCS, the Contractor may have six (6) months from the date of contract termination to finalize and close casualty, estate, TEFRA, trust, health insurance, credit balance, probate, and RAC cases that meet the criteria outlined below on behalf of AHCCCS. Restitution and annuity cases will be transitioned to the successor contractor at the contract end date.

- 21.1 Casualty: A compromise request has been received prior to contract end date;
- 21.2 Estate: An estate settlement statement has been received prior to contract end date;
- 21.3 TEFRA Lien: The lien property has been sold prior to contract end date;
- 21.4 Probate: The Probate has been opened in Superior Court prior to contract end date;
- 21.5 Trust: Member is deceased or ineligible for ALTCS prior to contract end date;
- 21.6 Health Insurance/Tricare: Claims billed to carriers prior to contract end date;
- 21.7 Credit Balance: Claims that have been identified and submitted to the provider prior to contract end date; and
- 21.8 RAC overpayments or underpayments that are actively in process at the time of the transition.



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The six (6) month period on any recovery program may be reduced if mutually agreed upon by AHCCCS and the Contractor. AHCCCS reserves the right to recall any cases from the Contractor if AHCCCS determines that the case is not being actively pursued.

22. FINANCIAL STATEMENT

Upon request, the Contractor shall submit to AHCCCS an annual audited financial statement, for itself and parent company, if applicable.

23. PERFORMANCE BOND OR BOND SUBSTITUTE

Within ten (10) business days after contract award, and annually thereafter by no later than September 30, the Contractor shall submit to AHCCCS (Contracts and Purchasing) a performance bond of standard commercial scope issued by a surety company doing business in this State or a cash deposit in the amount of \$1,000,000 for the performance period of this contract to guarantee performance by the Contractor of its obligations under this contract. The performance bond shall be in a form acceptable to AHCCCS and shall be payable to the Arizona Health Care Cost Containment System, an agency of the State of Arizona.

In the event of a default by the Contractor, AHCCCS shall, in addition to any other remedies it may have under this contract, obtain payment under the performance bond or substitute security for the purposes of any of the following:

- 23.1 Paying any damages sustained by reason of non-performance or other breach of Contractor's obligations under this contract;
- 23.2 Reimbursing AHCCCS for any administrative expenses incurred by reason of a breach of Contractor's obligations under this contract, including, but not limited to, legal fees and expenses incurred after termination of this contract by AHCCCS for cause;
- 23.3 Covering a transition period, if any, where the Contractor does not cooperate fully with AHCCCS or a successor Contractor; and
- 23.4 Use by AHCCCS in the event the Contractor becomes insolvent.

In the event AHCCCS agrees to accept a cash deposit in lieu of a performance bond, the Contractor shall execute any and all documents and perform any and all acts necessary to secure and enforce AHCCCS' security interest in such substitute security including, but not limited to, security agreements and necessary UCC filings pursuant to the Arizona Uniform Commercial Code. In the event such security is agreed to and accepted by AHCCCS, the Contractor shall grant AHCCCS a security interest in the substitute security in order to secure performance of its obligations under this contract.

Personnel Bonding Requirements: The Contractor shall provide evidence of a fidelity bond in the amount of \$1,000,000 covering any loss to AHCCCS or the State due to any fraudulent or dishonest act on the part of any officer, agent, subcontractor, or employee of the Contractor.



DEFINITION OF TERMS

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1. **AAC:** Arizona Administrative Code.
2. **AHCCCS:** The Arizona Health Care Cost Containment System – a managed health care program which pertains to health care services provided pursuant to A.R.S. 36-2903 et seq., and is also the name of the State agency.
3. **ATTACHMENT:** Any item the Solicitation requires an Offeror to submit as part of the Offer.
4. **BEST AND FINAL OFFER:** A revision to an Offer submitted after negotiations are completed that contains the Offeror’s most favorable terms for price, service and products to be delivered. Sometimes referred to as a Final Proposal Revision.
5. **CMS:** Centers for Medicare and Medicaid Services, an organization within the U.S. Department of Health and Human Services, which administers the Medicare and Medicaid programs and the State Children’s Health Insurance Program.
6. **CONTRACT:** The combination of the Solicitation, including the Instructions to Offerors, Contract Terms and Conditions, and Scope of Work; the Offer; any Best and Final Offers; any Solicitation Amendments or Contract Amendments; and any terms applied by law.
7. **CONTRACT AMENDMENT:** A written document signed by the Procurement officer that is issued for the purpose of making changes in the contract.
8. **CONTRACTOR:** A person who has a contract with AHCCCS.
9. **DAYS:** Calendar days unless otherwise specified.
10. **EXHIBIT:** Any item labeled as an Exhibit in the Solicitation or placed in the Exhibits section of the Solicitation.
11. **FMAP (FEDERAL MEDICAL ASSISTANCE PERCENTAGE):** Defined in CFR 42 §433.10 Rates of FFP for Program Services, is the Federal matching assistance percentage used to calculate payment to the states for part of their expenditures for services under an approved State Plan.
12. **FIRST PARTY:** An individual, entity or program that is, or may be, liable to pay all or part of the expenditures for their own medical assistance furnished under a State plan.
13. **FIRST PARTY LIABILITY:** The legal obligation of first parties to pay part or all of the expenditures for medical assistance furnished under a Medicaid state plan.
14. **GRATUITY:** A payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.
15. **HEALTH PLAN:** An organization which contracts with the AHCCCS Administration to administer the provision of a comprehensive package of AHCCCS covered acute and behavioral health care services to AHCCCS members enrolled with the health plan.
16. **MASS TORT CASE:** A case where multiple plaintiffs or a class of plaintiffs have filed a lawsuit against the same tortfeasor(s) to recover damages arising from the same or similar set of circumstances (e.g. class action lawsuits) regardless of whether any reinsurance or Fee-For-Service payments are involved.
17. **MASTER CARRIER ID (MCID):** A unique AHCCCS assigned ID for commercial insurance carriers
18. **MATERIAL OMISSION:** A fact, data or other information excluded from a report, contract, etc. the absence of which could lead to erroneous conclusions following reasonable review of such report, contract, etc.
19. **MATERIALS:** All property, including equipment, supplies, printing, insurance and leases of property but does not include land, a permanent interest in land or real property or leasing space.
20. **MAY:** Indicates something that is not mandatory but permissible.
21. **OFFER:** A response to a solicitation.
22. **OFFEROR:** A vendor or person who responds to a Solicitation.
23. **PERSON:** Any corporation, business, individual, union, committee, club or other organization or group of individuals.
24. **PROCUREMENT OFFICER:** The person, or his or her designee, duly authorized by the State and AHCCCS to enter into and administer Contracts and made written determinations with respect to the Contract.
25. **RAC:** Recovery Audit Contractor.
26. **RFP:** Request For Proposal; document prepared by AHCCCS which describes the services required and which instructs a prospective Offeror how to prepare a response (proposal).
27. **SCOPE OF WORK:** Those provisions of this solicitation which specify the work and/or results to be achieved by the Contractor.
28. **SHALL, MUST:** Indicates a mandatory requirement. Failure to meet these mandatory requirements may result in the rejection of a proposal as non-responsive.



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29. **SHOULD:** Indicates something that is recommended but not mandatory. If the Offeror fails to provide recommended information, the State may, at its sole option, ask the Offeror to provide the information or evaluate the proposal without the information.
30. **SOLICITATION:** An Invitation for Bids (“IFB”), a Request for Proposals (“RFP”), or a Request for Quotations (“RFQ”).
31. **SOLICITATION AMENDMENT:** A written document that is authorized by the Procurement officer and issued for the purpose of making changes to the Solicitation.
32. **STATE:** The State of Arizona and Department or Agency of the State that executes the Contract.
33. **STATE FISCAL YEAR:** The period beginning with July 1 and ending June 30.
34. **SUBCONTRACT:** Any Contract, express or implied, between the Contractor and another party or between a subcontractor and another party delegating or assigning, in whole or in part, the making or furnishing of any material or any service required for the performance of the Contract.
35. **THIRD PARTY:** An individual, entity or program that is, or may be, liable to pay all or part of the expenditures for medical assistance furnished under a State plan.
36. **THIRD PARTY LIABILITY:** The legal obligation of third parties (e.g., certain individuals, entities, insurers, or programs) to pay part or all of the expenditures for medical assistance furnished under a Medicaid state plan.



UNIFORM INSTRUCTIONS TO OFFERORS

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Third Party Liability and Recovery Audit Services

1 **Definitions** – all definitions listed in the definition of terms.

2 **Inquiries:**

- 2.1 **Duty to Examine:** It is the responsibility of each Offeror to examine the entire Solicitation, seek clarification in writing (inquiries), and examine its Offer for accuracy before submitting an Offer. Lack of care in preparing an Offer shall not be grounds for modifying or withdrawing the Offer after the Offer due date and time.
- 2.2 **Solicitation Contact Person:** Any inquiry related to a Solicitation, including any requests for or inquiries regarding standards referenced in the Solicitation shall be directed solely to the Procurement Officer.
- 2.3 **Submission of Inquiries:** All inquiries related to the Solicitation are required to be submitted via email to the Procurement Officer listed on the front page of this solicitation and on the AHCCCS Q and A form. All responses to inquiries will be answered in the form of a solicitation amendment. Any inquiry related to a Solicitation shall refer to the appropriate Solicitation number, page and paragraph. Offerors are prohibited from contacting any State employee other than the Procurement Officer concerning the procurement while the solicitation and evaluation are in process.
- 2.4 **Timeliness:** Any inquiry or exception to the Solicitation shall be submitted as soon as possible and should be submitted no later than the date and time indicated on the Notice of Request for Proposal (RFP front page) for review and determination by AHCCCS. Failure to do so may result in the inquiry not being considered for a Solicitation Amendment.
- 2.5 **No Right to Rely on Verbal Responses:** Any inquiry that results in changes to the Solicitation shall be answered solely through a written Solicitation Amendment. An Offeror may not rely on verbal responses to its inquiries.
- 2.6 **Solicitation Amendments:** The Solicitation shall only be modified by a Solicitation Amendment.
- 2.7 **Pre-Offer Conference:** If a Pre-Offer Conference has been scheduled under this Solicitation, the date, time and location shall appear on the Solicitation cover sheet. Offerors should raise any questions they may have about the Solicitation at that time. An Offeror may not rely on any verbal responses to questions at the conference. Material issues raised at the conference that result in changes to the Solicitation shall be answered solely through a written Solicitation Amendment.
- 2.8 **Persons with Disabilities:** Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting the Solicitation Contact Person. Requests shall be made as early as possible to allow time to arrange the accommodation.

3 **Offer Preparation:**

- 3.1 **Electronic Documents:** The Solicitation is provided in an electronic format. Offerors are responsible for clearly identifying any and all changes or modifications to any Solicitation documents upon submission. Any unidentified alteration or modification to any Solicitation, attachments, exhibits, forms, charts or illustrations contained herein shall be null and void. Offeror's electronic files shall be submitted in a format acceptable to the State. Acceptable formats include .doc and .docx (Microsoft Word), .xls and .xlsx (Microsoft Excel), .ppt and .pptx (Microsoft PowerPoint) and .pdf (Adobe Acrobat). Offerors wishing to submit files in any other format shall submit an inquiry to the Procurement Officer.
- 3.2 **Evidence of Intent to be Bound:** The Offer and Acceptance form within the Solicitation shall be submitted with the Offer and shall include a signature by a person authorized to sign the Offer. The signature shall signify the Offeror's intent to be bound by the Offer and the terms of the Solicitation and that the information provided is



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true, accurate and complete. Failure to submit verifiable evidence of an intent to be bound, such as an original signature, may result in rejection of the Offer.

- 3.3 **Exceptions to Terms and Conditions:** All exceptions included with the Offer shall be submitted in a clearly identified separate section of the Offer in which the Offeror clearly identifies the specific paragraphs of the Solicitation where the exceptions occur. Any exceptions not included in such a section shall be without force and effect in any resulting Contract unless such exception is specifically accepted by the Procurement Officer in a written statement. The Offeror's preprinted or standard terms will not be considered by the State as a part of any resulting Contract.
- 3.3.1 Invitation for Bids. An Offer that takes exception to a material requirement of any part of the Solicitation, including terms and conditions, shall be rejected.
- 3.3.2 Request for Proposals. All exceptions that are contained in the Offer **may negatively impact an Offeror's susceptibility** for award. **An Offer that takes exception to any material requirement of the solicitation may (and most likely will) be rejected.**
- 3.4 **Subcontracts:** Offeror shall clearly list any proposed subcontractors and the subcontractor's proposed responsibilities in the Offer.
- 3.5 **Cost of Offer Preparation:** AHCCCS will not reimburse any Offeror the cost of responding to a Solicitation.
- 3.6 **Federal Excise Tax:** The State of Arizona is exempt from certain Federal Excise Tax on manufactured goods. Exemption Certificates will be provided by the State.
- 3.7 **Provision of Tax Identification Numbers:** Offerors are required to provide their Arizona Transaction Privilege Tax Number and/or Federal Tax Identification number, if applicable, in the space provided on the Offer and Acceptance Form.
- 3.7.1 **Employee Identification:** Offeror agrees to provide an employee identification number or social security number to the State for the purposes of reporting to appropriate taxing authorities, monies paid by the Department under this contract. If the federal identifier of the Offeror is a social security number, this number is being requested solely for tax reporting purposes and will be shared with only appropriate state and federal officials. This submission is mandatory under 26 U.S.C. § 6041A.
- 3.8 **Identification of Taxes in Offer.** The State of Arizona is subject to all applicable state and local transaction privilege taxes. All applicable taxes shall be identified as a separate item offered in the solicitation. When applicable, the tax rate and amount shall be identified on the price sheet.
- 3.9 **Disclosure:** If the firm, business or person submitting this Offer has been debarred, suspended or otherwise lawfully precluded from participating in any public procurement activity, including being disapproved as a subcontractor with any federal, state or local government, or if any such preclusion from participation from any public procurement activity is currently pending, the Offeror shall fully explain the circumstances relating to the preclusion or proposed preclusion in the Offer. The Offeror shall include a letter with its Offer setting forth the name and address of the governmental unit, the effective date of this suspension or debarment, the duration of the suspension or debarment, and the relevant circumstances relating to the suspension or debarment. If suspension or debarment is currently pending, a detailed description of all relevant circumstances including the details enumerated above shall be provided.
- 3.10 **Delivery:** Unless otherwise stated in the Contract, all prices shall be F.O.B. Destination and shall include all delivery and unloading at the destination.



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- 3.11 Federal Immigration and Nationality Act: By signing of the Offer, the Offeror warrants that both it and all proposed subcontractors are in compliance with federal immigration laws and regulations (FINA) relating to the immigration status of their employees. The State may, at its sole discretion, require evidence of compliance during the evaluation process. Should the State request evidence of compliance, the Offeror shall have 5 days from receipt of the request to supply the adequate information. Failure to comply with this instruction or failure to supply requested information within the timeframe specified shall result in the offer not being considered for contract award.
- 3.12 Offshore Performance of Work Prohibited: Any service that are described in the specifications or scope of work that directly serve the State of Arizona or its clients involve access to secure or sensitive data or personal client data shall be performed within the defined territories of the United States. Unless specifically stated otherwise in the specifications, this paragraph does not apply to indirect or “overhead” services, redundant back-up services or services that are incidental to the performance of the contract. This provision applies to work performed by subcontractors at all tiers. Offerors shall declare all anticipated offshore services in the Offer.

4 Submission of Offer:

- 4.1 Sealed Envelope or Package: Each Offer shall be submitted to the submittal location identified in this Solicitation. Offers should be submitted in a sealed envelope or container. The envelope or container should be clearly identified with name of the Offeror and Solicitation number. The State may open envelopes or containers to identify contents if the envelope or container is not clearly identified.
- 4.2 Offer and Acceptance: Offers shall include a signed Offer and Acceptance form. The Offer and Acceptance form shall be signed with a signature by the person authorized to sign the Offer, and shall be submitted no later than the Solicitation due date and time. Failure to return an Offer and Acceptance form may result in rejection of the Offer.
- 4.3 Solicitation Amendments: Each Solicitation Amendment shall be signed with an original signature by the person signing the Offer, and shall be submitted no later than the Offer due date and time. Failure to return a signed copy of a material Solicitation Amendment may result in rejection of the Offer.
- 4.4 Offer Amendment or Withdrawal: An Offer may not be amended or withdrawn after the Offer due date and time except as otherwise provided under applicable law.
- 4.5 (reserved)
- 4.6 Public Record: All Offers submitted and opened are public records and must be retained by the State for six (6) years. Offers shall be open and available to public inspection after Contract award, except for such Offers deemed to be confidential by the State.
- 4.7 Non-collusion, Employment, and Services: By signing the Offer and Acceptance Form or other official contract form, the Offeror certifies that:
 - 4.7.1 The Offeror did not engage in collusion or other anti-competitive practices in connection with the preparation or submission of its Offer; and
 - 4.7.2 The Offeror does not discriminate against any employee or applicant for employment or person to whom it provides services because of race, color, religion, sex, national origin, or disability, and that it complies with all applicable federal, state and local laws and executive orders regarding employment.



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5 Evaluation:

- 5.1 Unit Price Prevails: Where applicable, in the case of discrepancy between the unit price or rate and the extension of that unit price or rate, the unit price or rate shall govern.
- 5.2 Taxes: If the products and/or services specified require transaction privilege or use taxes, they shall be described and itemized separately on the offer. Arizona transaction privilege and use taxes shall not be considered for evaluation.
- 5.3 Late Offers: An Offer submitted after the exact Offer due date and time shall be rejected.
- 5.4 Disqualifications: An Offeror (including each of its principals) who is currently debarred, suspended or otherwise lawfully prohibited from any public procurement activity shall have its offer rejected.
- 5.5 Offer Acceptance Period: An Offeror submitting an Offer under this Solicitation shall hold its Offer open for the number of days from the Offer due date that is stated in the Solicitation. If the Solicitation does not specifically state a number of days for Offer acceptance, the number of days shall be one hundred and twenty (120). If a Best and Final Offer is requested pursuant to a Request for Proposals, an Offeror shall hold its Offer open for one hundred and twenty (120) days from the Best and Final Offer due date.
- 5.6 Waiver and Rejection Rights: Notwithstanding any other provision of the Solicitation, AHCCCS reserves the right to:
 - 5.6.1 Waive any minor informality;
 - 5.6.2 Reject any and all Offers or portions thereof; or
 - 5.6.3 Cancel the Solicitation.

6 Award:

- 6.1 Number or Types of Awards: AHCCCS reserves the right to make multiple awards or to award a Contract by individual line items or alternatives, by group of line items or alternatives, or to make an aggregate award, or regional awards, whichever is deemed most advantageous to AHCCCS and to the State.
- 6.2 Contract Inception: An Offer does not constitute a Contract nor does it confer any rights on the Offeror to the award of a Contract. A Contract is not created until the Offer is accepted in writing by the Procurement officer's signature on the Offer and Acceptance Form. A notice of award or of the intent to award shall not constitute acceptance of the Offer.
- 6.3 Effective Date: The effective date of this Contract shall be the date that the Procurement officer signs the Offer and Acceptance form or other official contract form, unless another date is specifically stated in the Contract.

- 7 Protests: Any protest shall comply with and be resolved according to A.R.S. § 36-2906 and rules adopted thereunder. Protests shall be in writing and be filed with the AHCCCS Procurement officer. Any protest of a solicitation shall be filed at least fourteen (14) days before the due date of receipt of proposals. Any protest of an award shall be filed no later than ten (10) days after the procurement officer makes the procurement file available for public inspection. A protest shall include:
 - 7.1 The name, email address and telephone number of the interested party;
 - 7.2 The signature of the interested party or its representative;
 - 7.3 Identification of the purchasing agency and the Solicitation or Contract number;
 - 7.4 A detailed statement of the legal and factual grounds of the protest including copies of relevant documents; and
 - 7.5 The form of relief requested.



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1. **Questions:** All questions concerning this solicitation shall be submitted **via email using the AHCCCS Q&A form found on the AHCCCS website** to the Procurement Officer identified on the first page of this solicitation document. Offerors may not contact other AHCCCS employees concerning this solicitation.
2. **Evaluation Criteria:** In accordance with the A.R.S. 36-2903 et seq., awards shall be made to the responsible Offeror(s) whose proposal is determined in writing to be the most advantageous to the State based upon the evaluation criteria listed below. The evaluation factors are listed in their relative order of importance.

Exceptions to the Terms and Conditions, as stated in the Uniform Instructions, will impact an Offeror's susceptibility for award.

- 2.1 Method of Approach
- 2.2 Experience and Expertise of the Firm and Key Personnel
- 2.3 Cost

3. **Proposal Information:** Offeror is to submit their proposal with **one (1) original and three (3) copies (for a total of four (4) sets)** in the format as contained in this RFP as well as **one (1) CD** or USB storage device with the same information. **The original copy of the proposal should be clearly labeled "ORIGINAL."** The material should be in sequence and related to the RFP. AHCCCS will not provide any reimbursement for the cost of developing or presenting proposals in response to this RFP. Failure to include the requested information may have a negative impact on the evaluation of the Offeror's proposal. The proposal should include at least the following information:

3.1 **Proposed Method of Approach:**

- 3.1.1 Proposals will be evaluated based on the Offeror's distinctive plan for providing these specialized services. Since the evaluators have already read the Scope of Work for the services described, it is not necessary for the Offeror to repeat the exact language, or to present a paraphrased version, as an original idea for a technical approach.
- 3.1.2 **Written Narrative:** The Offeror shall utilize a written narrative or any other printed technique to demonstrate the ability to satisfy the ENTIRE Scope of Work. When appropriate, the narrative should describe a logical progression of tasks and efforts starting with the initial steps or tasks to be accomplished and continuing until all proposed tasks are fully described. The language of the narrative should be straightforward and limited to facts, solutions to problems, and plans of proposed action. The usage of technical language should be minimized and used only to describe a technical process.
- 3.1.3 **Methodology Questionnaire:** In addition to the written narrative, the Offeror shall answer all questions on **EXHIBIT B: Methodology Questionnaire**. The Offeror may include its answers to these questions either separately (labeled as Attachment 2), or in the body of the Written Narrative, if logical to do so, as long as they are clearly marked as such. If the Offeror chooses to incorporate the answers into its Written Narrative, the Offeror shall list the location, including page number, of its answer to each question on Attachment 2. The usage of technical language should be minimized and used only to describe a technical process.

3.2 **Cost:**

- 3.2.1 The evaluation of the category of Cost shall be based on the contingency fees, as indicated on the **EXHIBIT A: Compensation Table** submitted with Offeror's proposal.

3.3 **Experience and Expertise of the Firm and Key Personnel:**



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- 3.3.1 Offeror shall submit information documenting successful and reliable experience in past performances as related to the services in this RFP. The Offeror's experience and past performance will be evaluated on the extent of its success in managing and integrating work relevant to that defined in the Scope of Work.
- 3.3.2 The qualifications of the key personnel proposed by the offeror to perform the requirements of this solicitation will be considered in the evaluation. Therefore, the offeror should submit detailed information related to the experience, technical expertise and qualifications for each key personnel proposed. Offeror should provide the names, titles, where currently located, and a resume for all proposed key personnel; clerical staff is not considered key personnel. The Offeror should also provide the estimated percentage of time each proposed key personnel will be dedicated to this contract.
- 3.3.3 The offeror may submit any other pertinent information which would substantiate each proposed key person possesses the experience, expertise and capability to provide the assigned services.
- 3.3.4 The offeror should provide an organizational chart which clearly shows the reporting and lines of authority; to include all proposed key personnel and any proposed subcontractors. The organizational chart should identify the prime point of contact between the offeror and the AHCCCS Project Manager.

4. **Intent to Provide Certificate of Insurance:** The Offeror should provide a statement that, if notified of contract award, will submit to AHCCCS for review and acceptance, the applicable certificate/s of insurance as required within this RFP document, within five (5) business days of such notification.

5. **Additional Information (OPTIONAL):** The Offeror may submit any other pertinent information which would substantiate the Offeror has the experience, expertise and capability to provide the required services.

6. **Additional Instructions for Submittal of Proposal:**

6.1 The material should be arranged and submitted in the sequence dictated on the "Offeror's Checklist" for this solicitation. AHCCCS will not provide any reimbursement for the cost of developing or presenting proposals in response to this RFP. Failure to include the requested information may have a negative impact on the evaluation of the Offeror's proposal.

6.2 When submitting your proposal, ensure your company name and AHCCCS solicitation number is clearly marked on the outside of the package. AHCCCS is not responsible for supplying boxes, envelopes, tape, etc. to Offerors at time of proposal delivery.

7. **Presentations and Demonstrations:** AHCCCS may request Offerors who are determined to be reasonably susceptible for award to give a presentation or show a demonstration of the product or service to the evaluation committee.

8. **Financial Stability** The Offeror must be financially stable and if requested shall be able to substantiate the financial stability of its company. Upon written request from AHCCCS, the Offeror shall submit an annual financial statement for itself, and parent company (if applicable) within five (5) business days of request. The State reserves the right to request additional documentation from the Offeror and to request reports on financial stability from independent financial rating services. The State reserves the right to reject any Offeror who does not demonstrate financial stability sufficient for the scope of this contract award.



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9. **Clarification of Offers:** AHCCCS may request clarification of an offer any time after receipt. Clarifications may be requested orally or in writing. If clarifications are requested orally, the Offeror shall confirm the request in writing. A request for clarifications shall not be considered a determination that the Offeror is susceptible for award.
10. **Negotiations:** Negotiations may be conducted orally or in writing at the discretion of AHCCCS. Negotiations may be conducted in order to improve offers in such areas of cost, price, specifications performance, or terms, to achieve best value for the State. Negotiations may include demonstrations (oral presentations). Award(s) may be made without negotiations; therefore, offers should be submitted on most favorable terms.
11. **Final Proposal Revisions / Best and Final Offers:** Written Final Proposal Revisions, or Best and Final Offers, will be requested from any Offeror with whom negotiations have been conducted, unless the Offeror has been determined not within the competitive range, not susceptible for award or non-responsible.
12. **Request for Confidential/Proprietary Determination:**
 - 12.1 If an Offeror believes that a specific portion of its bid, proposal, offer, specification, or protest contains information that should be withheld from public inspection due to confidentiality, the Offeror shall submit to the Procurement officer a detailed legal analysis, prepared by legal counsel, which sets forth the bases for the requested non-disclosure and the specific harm or prejudice which may arise if disclosed. The analysis shall be presented to the Procurement Officer at the same time as the bid, proposal, offer, specification or protest.
 - 12.2 An entire bid, proposal, offer, specification, or protest shall **not** be identified as confidential; only those very limited and distinct portions which are considered by the Offeror as confidential may be identified as such. **Pricing shall not be considered as confidential.**
 - 12.3 In the event that AHCCCS receives a request for disclosure of the information, AHCCCS shall disclose the information in accordance with law. Prior to disclosure, AHCCCS will inform the Offeror of such request and provide the Offeror a period of time to take action it deems appropriate to support non-disclosure. The Offeror shall be responsible for any and all costs associated with the nondisclosure of the information.
 - 12.4 In addition to the required detailed legal analysis, the Offeror shall summarize in their Submittal Letter the distinct portions, including exact page numbers, of their document is requested to be kept confidential.
 - 12.5 If any pieces of your proposal are being requested to be kept confidential, and withheld from public viewing, please submit an additional redacted copy of the proposal **ON A SEPARATE CD**. Our office does not require a hard copy of the redacted proposal, only an electronic copy. This will ensure that our office is crystal clear on which version of your proposal is acceptable for public viewing.
13. **Responsibility, Responsiveness and susceptibility**

In accordance with A.R.S. 41-2534(G), A.A.C. R2-7-C311, A.A.C. R2-7-C312, and A.A.C. R2-7-C316, the State shall consider, at a minimum the following criteria when determining and Offeror's responsibility, as well as the proposal's responsiveness and susceptibility for contract award.

 - 13.1 Whether the Offeror has had a contract within the last five (5) years that was terminated for cause due to breach or similar failure to comply with the terms of the contract;
 - 13.2 Whether the Offeror's record of performance includes factual evidence of failure to satisfy the terms of the Offeror's agreements with any party to a contract. Factual evidence may consist of documented vendor performance reports, customer complaints, and/or negative references;
 - 13.3 Whether the Offeror is legally qualified to contract with the State and the Offeror's financial, business, personnel, or other resources, including sub-contractors;



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- 13.3.1 Legally qualified includes if the vendor or if key personnel have been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to being disapproved as a subcontractor of any public procurement unit or other governmental body.
- 13.4 Whether the Offeror promptly supplied all requested information concerning its responsibility;
- 13.5 Whether the Offer was sufficient to permit evaluation by the State, in accordance with the evaluation criteria identified in this Solicitation or other necessary offer components. Necessary offer components include: attachments, documents or forms to be submitted with the offer, an indication of the intent to be bound, reasonable or acceptable approach to perform the Scope of Work, acknowledged Solicitation Amendments, references to include experience verification, adequacy of financial/business/personal or other resources to include a performance bond and stability including subcontractors and any other data specifically requested in the Solicitation;
- 13.6 Whether the Offer was in conformance with the requirements contained in the Scope of Work, Terms and Conditions, and Instructions for the Solicitation including its Amendments and all documents incorporated by reference;
- 13.7 Whether the Offer limits the rights of the State;
- 13.8 Whether the Offer includes or is subject to unreasonable conditions, to include conditions upon the State necessary for successful Contract performance. The State shall be the sole determiner as to the reasonableness of a condition;
- 13.9 Whether the Offer materially changes the contents set forth in the Solicitation, which includes the Scope of Work, Terms and Conditions, or Instructions; and,
- 13.10 Whether the Offeror provides misleading or inaccurate information.



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1. **DEFINITIONS** - All definitions listed in the definition of terms.

2. **Contract Interpretation**

- 2.1 Arizona Law. The Arizona law applies to this Contract including, A.R.S. § 36-2906 and its implementing rules.
- 2.2 Implied Contract Terms. Each provision of law and any terms required by law to be in this Contract are a part of this Contract as if fully stated in it.
- 2.3 Contract Order of Precedence. In the event of a conflict in the provisions of the Contract, as accepted by the State and as they may be amended, the following shall prevail in the order set forth below:
 - 2.3.1 HIPAA BAA
 - 2.3.2 Special Terms and Conditions;
 - 2.3.3 Uniform Terms and Conditions;
 - 2.3.4 Statement or Scope of Work;
 - 2.3.5 Specifications;
 - 2.3.6 Attachments;
 - 2.3.7 Exhibits;
 - 2.3.8 Documents referenced or included in the Solicitation.
- 2.4 Relationship of Parties. The Contractor under this Contract is an independent Contractor. Neither party to this Contract shall be deemed to be the employee or agent of the other party to the Contract.
- 2.5 Severability. The provisions of this Contract are severable. Any term or condition deemed illegal or invalid shall not affect any other term or condition of the Contract.
- 2.6 No Parole Evidence. This Contract is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms used in this document and no other understanding either oral or in writing shall be binding.
- 2.7 No Waiver. Either party's failure to insist on strict performance of any term or condition of the Contract shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.

3. **Contract Administration and Operation**

- 3.1 Records. Under A.R.S. § 35-214 and § 35-215, the Contractor shall retain and shall contractually require each subcontractor to retain all data and other "records" relating to the acquisition and performance of the Contract for a period of five years after the completion of the Contract. All records shall be subject to inspection and audit by the State at reasonable times. Upon request, the Contractor shall produce a legible copy of any or all such records.
- 3.2 Non-Discrimination. The Contractor shall comply with State Executive Order No. 2009-09 and all other applicable Federal and State laws, rules and regulations, including the Americans with Disabilities Act.
- 3.3 Audit. Pursuant to ARS § 35-214, at any time during the term of this Contract and five (5) years thereafter, the Contractor's or any subcontractor's books and records shall be subject to audit by the State and, where applicable, the Federal Government, to the extent that the books and records relate to the performance of the Contract or Subcontract.



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- 3.4 Facilities Inspection and Materials Testing. The Contractor agrees to permit access to its facilities, subcontractor facilities and the Contractor’s processes or services, at reasonable times for inspection of the facilities or materials covered under this Contract.

The State shall also have the right to test, at its own cost, the materials to be supplied under this Contract. Neither inspection of the Contractor’s facilities nor materials testing shall constitute final acceptance of the materials or services. If the State determines noncompliance of the materials, the Contractor shall be responsible for the payment of all costs incurred by the State for testing and inspection.

- 3.5 Notices. Notices to the Contractor required by this Contract shall be made by the State to the person indicated on the Offer and Acceptance form submitted by the Contractor unless otherwise stated in the Contract. Notices to the State required by the Contract shall be made by the Contractor to the Solicitation Contact Person indicated on the Solicitation cover sheet, unless otherwise stated in the Contract. An authorized Procurement Officer and an authorized Contractor representative may change their respective person to whom notice shall be given by written notice to the other and an amendment to the Contract shall not be necessary.

- 3.6 Advertising, Publishing and Promotion of Contract. The Contractor shall not use, advertise or promote information for commercial benefit concerning this Contract without the prior written approval of the Procurement Officer.

- 3.7 Property of the State. Any materials, including reports, computer programs and other deliverables, created under this Contract are the sole property of the State. The Contractor is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. The Contractor shall not use or release these materials without the prior written consent of the State.

- 3.8 Ownership of Intellectual Property. Any and all intellectual property, including but not limited to copyright, invention, trademark, trade name, service mark, and/or trade secrets created or conceived pursuant to or as a result of this contract and any related subcontract (“Intellectual Property”), shall be work made for hire and the State shall be considered the creator of such Intellectual Property. The agency, department, division, board or commission of the State of Arizona requesting the issuance of this contract shall own (for and on behalf of the State) the entire right, title and interest to the Intellectual Property throughout the world. Contractor shall notify the State, within thirty (30) days, of the creation of any Intellectual Property by it or its subcontractor(s). Contractor, on behalf of itself and any subcontractor(s), agrees to execute any and all document(s) necessary to assure ownership of the Intellectual Property vests in the State and shall take no affirmative actions that might have the effect of vesting all or part of the Intellectual Property in any entity other than the State. The Intellectual Property shall not be disclosed by Contractor or its subcontractor(s) to any entity not the State without the express written authorization of the agency, department, division, board or commission of the State of Arizona requesting the issuance of this contract.

- 3.9 Federal Immigration and Nationality Act. The Contractor shall comply with all federal, state and local immigration laws and regulations relating to the immigration status of their employees during the term of the contract. Further, the Contractor shall flow down this requirement to all subcontractors utilized during the term of the contract. The State shall retain the right to perform random audits of Contractor and subcontractor records or to inspect papers of any employee thereof to ensure compliance. Should the State determine that the Contractor and/or any subcontractors be found noncompliant, the State may pursue all remedies allowed by law, including, but not limited to; suspension of work, termination of the contract for default and suspension and/or debarment of the Contractor.



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3.10 E-Verify Requirements. In accordance with A.R.S. § 41-4401, Contractor warrants compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with A.R.S. § 23-214, Subsection A.

3.11 Offshore Performance of Work Prohibited. Any services that are described in the specifications or scope of work that directly serve the State of Arizona or its clients and involve access to secure or sensitive data or personal client data shall be performed within the defined territories of the United States. Unless specifically stated otherwise in the specifications, this paragraph does not apply to indirect or 'overhead' services, redundant back-up services or services that are incidental to the performance of the contract. This provision applies to work performed by subcontractors at all tiers.

4. Costs and Payments

4.1 Payments. Payments shall comply with the requirements of A.R.S. Titles 35 and 41, Net 30 days. Upon receipt and acceptance of goods or services, the Contractor shall submit a complete and accurate invoice for payment from the State within thirty (30) days.

4.2 Delivery. Unless stated otherwise in the Contract, all prices shall be F.O.B. Destination and shall include all freight delivery and unloading at the destination.

4.3 Applicable Taxes.

4.3.1 Payment of Taxes. The Contractor shall be responsible for paying all applicable taxes.

4.3.2 State and Local Transaction Privilege Taxes. The State of Arizona is subject to all applicable state and local transaction privilege taxes. Transaction privilege taxes apply to the sale and are the responsibility of the seller to remit. Failure to collect such taxes from the buyer does not relieve the seller from its obligation to remit taxes.

4.3.3 Tax Indemnification. Contractor and all subcontractors shall pay all Federal, state and local taxes applicable to its operation and any persons employed by the Contractor. Contractor shall, and require all subcontractors to hold the State harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under Federal, and/or state and local laws and regulations and any other costs including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.

4.3.4 IRS W9 Form. In order to receive payment the Contractor shall have a current I.R.S. W9 Form on file with the State of Arizona, unless not required by law.

4.4 Availability of Funds for the Next State fiscal year. Funds may not presently be available for performance under this Contract beyond the current state fiscal year. No legal liability on the part of the State for any payment may arise under this Contract beyond the current state fiscal year until funds are made available for performance of this Contract.

4.5 Availability of Funds for the current State fiscal year. Should the State Legislature enter back into session and reduce the appropriations or for any reason and these goods or services are not funded, the State may take any of the following actions:

4.5.1 Accept a decrease in price offered by the Contractor;

4.5.2 Cancel the Contract; or

4.5.3 Cancel the contract and re-solicit the requirements.



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5. Contract Changes

- 5.1 Amendments. This Contract is issued under the authority of the Procurement Officer who signed this Contract. The Contract may be modified only through a Contract Amendment within the scope of the Contract. Changes to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by a person who is not specifically authorized by the procurement officer in writing or made unilaterally by the Contractor are violations of the Contract and of applicable law. Such changes, including unauthorized written Contract Amendments shall be void and without effect, and the Contractor shall not be entitled to any claim under this Contract based on those changes.
- 5.2 Subcontracts. The Contractor shall not enter into any Subcontract under this Contract for the performance of this contract without the advance written approval of the Procurement Officer. The Contractor shall clearly list any proposed subcontractors and the subcontractor's proposed responsibilities. The Subcontract shall incorporate by reference the terms and conditions of this Contract.
- 5.3 Assignment and Delegation. The Contractor shall not assign any right nor delegate any duty under this Contract without the prior written approval of the Procurement Officer. The State shall not unreasonably withhold approval.

6. Risk and Liability

- 6.1 Risk of Loss. The Contractor shall bear all loss of conforming material covered under this Contract until received by authorized personnel at the location designated in the purchase order or Contract. Mere receipt does not constitute final acceptance. The risk of loss for nonconforming materials shall remain with the Contractor regardless of receipt.
- 6.2 Indemnification.
 - 6.2.1 Contractor/Vendor Indemnification The parties to this contract agree that the State of Arizona, its departments, agencies, boards and commissions shall be indemnified and held harmless by the Contractor for the vicarious liability of the State as a result of entering into this contract. However, the parties further agree that the State of Arizona, its departments, agencies, boards and commissions shall be responsible for its own negligence. Each party to this contract is responsible for its own negligence.
- 6.3 Indemnification - Patent and Copyright. The Contractor shall indemnify and hold harmless the State against any liability, including costs and expenses, for infringement of any patent, trademark or copyright arising out of Contract performance or use by the State of materials furnished or work performed under this Contract. The State shall reasonably notify the Contractor of any claim for which it may be liable under this paragraph. If the Contractor is insured pursuant to A.R.S. § 41-621 and § 35-154, this section shall not apply.
- 6.4 Force Majeure.
 - 6.4.1 Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of force majeure. The term "*force majeure*" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes acts of God; acts of the public enemy; war; riots; strikes; mobilization; labor disputes; civil disorders; fire; flood; lockouts; injunctions-intervention-acts; or failures or refusals to act by government authority; and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence.



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

7. Warranties

- 7.1 Liens. The Contractor warrants that the materials supplied under this Contract are free of liens and shall remain free of liens.
- 7.2 Quality. Unless otherwise modified elsewhere in these terms and conditions, the Contractor warrants that, for one year after acceptance by the State of the materials, they shall be:
- 7.2.1 Of a quality to pass without objection in the trade under the Contract description;
 - 7.2.2 Fit for the intended purposes for which the materials are used;
 - 7.2.3 Within the variations permitted by the Contract and are of even kind, quantity, and quality within each unit and among all units;
 - 7.2.4 Adequately contained, packaged and marked as the Contract may require; and
 - 7.2.5 Conform to the written promises or affirmations of fact made by the Contractor.
- 7.3 Fitness. The Contractor warrants that any material supplied to the State shall fully conform to all requirements of the Contract and all representations of the Contractor, and shall be fit for all purposes and uses required by the Contract.
- 7.4 Inspection/Testing. The warranties set forth in subparagraphs 7.1 through 7.3 of this paragraph are not affected by inspection or testing of or payment for the materials by the State.
- 7.5 Compliance With Applicable Laws. The materials and services supplied under this Contract shall comply with all applicable Federal, state and local laws, and the Contractor shall maintain all applicable license and permit requirements.
- 7.6 Survival of Rights and Obligations after Contract Expiration or Termination.



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- 7.6.1 Contractor's Representations and Warranties. All representations and warranties made by the Contractor under this Contract shall survive the expiration or termination hereof. In addition, the parties hereto acknowledge that pursuant to A.R.S. § 12-510, except as provided in A.R.S. § 12-529, the State is not subject to or barred by any limitations of actions prescribed in A.R.S., Title 12, Chapter 5.
- 7.6.2 Purchase Orders. The Contractor shall, in accordance with all terms and conditions of the Contract, fully perform and shall be obligated to comply with all purchase orders received by the Contractor prior to the expiration or termination hereof, unless otherwise directed in writing by the Procurement Officer, including, without limitation, all purchase orders received prior to but not fully performed and satisfied at the expiration or termination of this Contract.

8. State's Contractual Remedies

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

9. Contract Termination

- 9.1 Cancellation for Conflict of Interest. Pursuant to A.R.S. § 38-511, the State may cancel this Contract within three (3) years after Contract execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of the State is or becomes at any time



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while the Contract or an extension of the Contract is in effect an employee of or a consultant to any other party to this Contract with respect to the subject matter of the Contract. The cancellation shall be effective when the Contractor receives written notice of the cancellation unless the notice specifies a later time. If the Contractor is a political subdivision of the State, it may also cancel this Contract as provided in A.R.S. § 38-511.

- 9.2 Gratuities. The State may, by written notice, terminate this Contract, in whole or in part, if the State determines that employment or a Gratuity was offered or made by the Contractor or a representative of the Contractor to any officer or employee of the State for the purpose of influencing the outcome of the procurement or securing the Contract, an amendment to the Contract, or favorable treatment concerning the Contract, including the making of any determination or decision about contract performance. The State, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three times the value of the Gratuity offered by the Contractor.
- 9.3 Suspension or Debarment. The State may, by written notice to the Contractor, immediately terminate this Contract if the State determines that the Contractor has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body. Submittal of an offer or execution of a contract shall attest that the Contractor is not currently suspended or debarred. If the Contractor becomes suspended or debarred, the Contractor shall immediately notify the State.
- 9.4 Termination for Convenience. The State reserves the right to terminate the Contract, in whole or in part at any time when in the best interest of the State, without penalty or recourse. Upon receipt of the written notice, the Contractor shall stop all work, as directed in the notice, notify all subcontractors of the effective date of the termination and minimize all further costs to the State. In the event of termination under this paragraph, all documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the State upon demand. The Contractor shall be entitled to receive just and equitable compensation for work in progress, work completed and materials accepted before the effective date of the termination. The cost principles and procedures provided in A.A.C. R2-7-701 shall apply.
- 9.5 Termination for Default.
- 9.5.1 In addition to the rights reserved in the contract, the State may terminate the Contract in whole or in part due to the failure of the Contractor to comply with any term or condition of the Contract, to acquire and maintain all required insurance policies, bonds, licenses and permits, or to make satisfactory progress in performing the Contract. The Procurement Officer shall provide written notice of the termination and the reasons for it to the Contractor.
- 9.5.2 Upon termination under this paragraph, all goods, materials, documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the State on demand.
- 9.5.3 The State may, upon termination of this Contract, procure, on terms and in the manner that it deems appropriate, materials or services to replace those under this Contract. The Contractor shall be liable to the State for any excess costs incurred by the State in procuring materials or services in substitution for those due from the Contractor.
- 9.6 Continuation of Performance Through Termination. The Contractor shall continue to perform, in accordance with the requirements of the Contract, up to the date of termination, as directed in the termination notice.

10. Arbitration



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The parties to this Contract agree to resolve all disputes arising out of or relating to this contract through arbitration, after exhausting applicable administrative review, to the extent required by A.R.S. § 12-1518, except as may be required by other applicable statutes (Title 41).



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1. **Assignment of Contract and Bankruptcy:** This contract is voidable and subject to immediate cancellation by the Procurement officer upon Contractor becoming insolvent or filing proceedings in bankruptcy or assigning rights or obligations under this contract without the prior written consent of the Procurement officer.
2. **Choice of Forum:** The parties agree that jurisdiction over any action arising out of or relating to this contract shall be brought or filed in a court of competent jurisdiction located in the State of Arizona.
3. **Conflict of Interest:** The Contractor shall not undertake any work that represents a potential conflict of interest, or which is not in the best interest of AHCCCS or the State without prior written approval by AHCCCS. The Contractor shall fully and completely disclose any situation that may present a conflict of interest. If the Contractor is now performing or elects to perform during the term of this contract any services for any AHCCCS health plan, provider or Contractor or an entity owning or controlling same, the Contractor shall disclose this relationship prior to accepting any assignment involving such party.
4. **Contract Cancellation (Immediate):** This contract is critical to AHCCCS and the agency reserves the right to immediately cancel the whole or any part of this contract due to failure of the Contractor to carry out any material obligation, term or condition of the contract. The Procurement officer shall issue a written notice of default effective at once and not deferred by any interval of time. Default shall be for acting or failing to act in any of the following:
 - 4.1 The Contractor provides material that does not meet the specifications of the contract;
 - 4.2 The Contractor fails to adequately perform the services set forth in the specifications of the contract;
 - 4.3 The Contractor fails to complete the work required or furnish the materials required within the time stipulated in the contract;
 - 4.4 The Contractor fails to make progress in the performance of the contract and/or gives the Procurement officer reason to believe that the Contractor will not or cannot perform to the requirements of the contract.
 - 4.5 The Procurement officer may resort to any single or combination of the following remedies:
 - 4.5.1 Cancel any contract;
 - 4.5.2 Reserve all rights or claims to damage for breach of any covenants of the contract;
 - 4.5.3 Perform any test or analysis on materials for compliance with the specifications of the contract. If the result of any test confirms a material non-compliance with the specifications, any reasonable expense of testing shall be borne by the Contractor.
 - 4.5.4 In case of default, the Procurement officer reserves the right to purchase materials or to complete the required work in accordance with the Arizona Procurement Code. The Procurement officer may recover reasonable excess costs from the Contractor by:
 - 4.5.4.1 Deduction from an unpaid balance;
 - 4.5.4.2 Collection against the bid and/or performance bond; or
 - 4.5.4.3 Any combinations of the above or any other remedies as provided by law.
5. **Contract Cancellation (Minimum 10 Day):** The Procurement officer reserves the right to cancel the whole or any part of this contract due to failure by the Contractor to carry out any material obligation, term or condition of the contract. The Procurement officer shall issue written notice to the Contractor for acting or failing to act as in any of the following
 - 5.1 The Contractor provides material that does not meet the specifications of the contract;
 - 5.2 The Contractor fails to adequately perform the services set forth in the specifications of the contract;
 - 5.3 The Contractor fails to complete the work required or furnish the materials required within the time stipulated by the contract;
 - 5.4 The Contractor fails to make progress in the performance of the contract and/or gives the Procurement officer reason to believe that the Contractor will not or cannot perform to the requirements of the contract;
 - 5.5 Upon receipt of the written notice of concern, the Contractor shall have a minimum of ten (10) days (Procurement officer may determine a longer period) to provide a satisfactory response to the Procurement



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officer. Failure on the part of the Contractor to adequately address all issues of concern may result in the Procurement officer resorting to any single or combinations of the following remedies.

- 5.5.1 Cancel any contract;
- 5.5.2 Reserve all rights or claims to damage for breach of any covenant of the contract;
- 5.5.3 Perform any test or analysis on materials for compliance with the specifications of the contract. If the result of any test confirms a material no-compliance with the specifications, any reasonable expense of testing shall be borne by the Contractor;
- 5.5.4 In case of default, the Procurement officer reserves the right to purchase materials, or to complete the required work in accordance with the Arizona Procurement Code. The Procurement officer may recover reasonable excess costs from the Contractor by:
 - 5.5.4.1 Deduction from an unpaid balance;
 - 5.5.4.2 Collection against the bid and/or performance bond; or
 - 5.5.4.3 Any combination of the above or any other remedies as provided by law.

6. Contract Disputes: Contract claims and disputes shall be adjudicated in accordance with State Law, AHCCCS Rules and this contract. Except as provided by 9 A.A.C. Chapter 22, Article 6, the exclusive manner for the Contractor to assert any dispute against AHCCCS shall be in accordance with the process outlined in 9 A.A.C. Chapter 34 and A.R.S. §36-2932.

- 6.1 All disputes except as provided under 9 A.A.C. Chapter 22, Article 6 shall be filed in writing and be received by AHCCCS no later than 60 days from the date of the disputed notice. All disputes shall state the factual and legal basis for the dispute.
- 6.2 Pending the final resolution of any disputes involving this contract, the Contractor shall proceed with performance of this contract in accordance with AHCCCS' instructions, unless AHCCCS specifically, in writing, requests termination or a temporary suspension of performance.

7. Cooperation with other Contractors: AHCCCS may award other contracts for additional or related work and the Contractor shall fully cooperate with such other contractors and AHCCCS employees or designated agents, and carefully fit its own work to such other contractors' work. Contractor shall not commit or permit any act which will interfere with the performance of work by any other contractor or by AHCCCS employees. AHCCCS shall equitably enforce this section to all contractors to prevent the imposition of unreasonable burdens on any contractor.

8. Confidentiality of Records and Disclosure of Confidential Information:

- 8.1 The Contractor shall not, without prior written approval from AHCCCS, either during or after the performance of the services required by this contract, use, other than for such performance, or disclose to any person other than AHCCCS personnel with a need to know, any information, data, material, or exhibits created, developed, produced, or otherwise obtained during the course of the work required by this contract. This nondisclosure requirement shall also pertain to any information contained in reports, documents, or other records furnished to the Contractor by AHCCCS.
- 8.2 The Contractor shall establish and maintain written policies procedures and controls, approved by AHCCCS, governing access to, duplication of, and dissemination of all such information for the purpose of assuring that no information contained in its records or obtained from AHCCCS or others carrying out its functions under the contract, is used or disclosed by it, its agents, officers or employees, except as required to efficiently perform duties under the contract. Persons requesting such information shall be referred to AHCCCS. The Contractor's data safeguard program shall further conform to the data confidentiality and security requirements of AHCCCS policy and procedures, and all-relevant state and federal requirements, including HIPAA standards.



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- 8.3 The disclosure of information in summary, statistical, or other form that does not identify particular individuals is permitted only with prior AHCCCS approval. The use or disclosure of information concerning Members will be limited to purposes directly connected with the scope of this contract.
- 8.4 The Contractor shall advise its employees, agents and subcontractors, if any, that they are subject to these confidentiality requirements. A signed confidentiality statement containing language approved by AHCCCS will be obtained from all employees, agents and subcontractors, if any, and maintained in the individual's personnel file with a copy sent to AHCCCS upon request.
9. **Covenant against Contingent Fees:** The Contractor warrants that no person or agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee. For violation of this warranty, the Procurement officer shall have the right to annul this contract without liability.
10. **Contract:**
- 10.1 The contract between AHCCCS and the Contractor shall consist of (1) the Request for Proposal (RFP) including AHCCCS policies and procedures incorporated by reference as part of the RFP and (2) the proposal submitted by the Contractor in response to the RFP including any Best and Final Offers. In the event of a conflict in language between the proposal (including any Best and Final Offers) and the RFP (including AHCCCS policies and procedures incorporated by reference), the provisions and requirements set forth and/or referenced in the RFP (including AHCCCS policies and procedures incorporated by reference) shall govern.
- 10.2 The contract shall be construed according to the laws of the State of Arizona. The State of Arizona is not obligated for the expenditures under the contract until funds have been encumbered.
11. **Fraud and Abuse:**
- 11.1 It shall be the responsibility of the Contractor to report all cases of suspected fraud and abuse by subcontractors, members or employees. The Contractor shall provide written notification of all such incidents to the Procurement officer.
- 11.2 As stated in A.R.S. § 13-2310, incorporated herein by reference, any person who knowingly obtains any benefit by means of false or fraudulent pretenses, representations, promises or material omissions is guilty of a class 2 felony.
- 11.3 Contractors are required to research potential overpayments identified by a fraud and abuse investigation or audit conducted by AHCCCS. After conducting a cost benefit analysis to determine if such action is warranted, the Contractor should attempt to recover any overpayments identified due to erroneous, false or fraudulent billings.
12. **Independent Contractor and Employees of Contractor:** The Contractor represents himself/herself to be an independent contractor offering such services to the general public and shall not represent himself/herself or his/her employees to be an employee of the State of Arizona and/or AHCCCS. Therefore, the Contractor shall assume all legal and financial responsibility for taxes, FICA, employee fringe benefits, workers compensation, employee insurance, etc. All employees of the Contractor employed or in performance of work under this Contract shall be employees of the Contractor at all times and not of AHCCCS. The Contractor shall comply with the Social Security Act, Workers' Compensation laws and unemployment laws of the State of Arizona as well as federal, state and local legislation relevant to the Contractor's business.
13. **Licenses:** Contractor shall maintain in current status all federal, state and local licenses and permits required for the operation of the business conducted by the Contractor.
14. **Lobbying:** No funds paid to the Contractor by AHCCCS, or interest earned thereon, shall be used for the purpose of influencing or attempting to influence an officer or employee of any federal or State agency, a member of the United States Congress or State Legislature, an officer or employee of a member of the United States Congress or State Legislature in connection with awarding of any federal or State contract, the making of any federal or State grant, the making of any



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federal or State loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any federal or State contract, grant, loan, or cooperative agreement. The Contractor shall disclose if any funds other than those paid to the Contractor by AHCCCS have been used or will be used to influence the persons and entities indicated above and will assist AHCCCS in making such disclosures to CMS.

15. **No Guaranteed Quantities:** AHCCCS does not guarantee the Contractor any minimum or maximum quantity of services or goods to be provided under this contract.
16. **Non-exclusive Contract:** Any contract resulting from this solicitation shall be awarded with the understanding and agreement that it is for the sole convenience of AHCCCS. The state reserves the right to obtain like goods or services from another source when necessary.
17. **Notice to Cure:** AHCCCS may provide a written Notice to Cure to the Contractor outlining the details of the non-compliance and timeframe to remedy the Contractor's performance. If, at the end of the specified time period, the Contractor has complied with the Notice to Cure requirements, AHCCCS may choose not to impose a sanction.
18. **Ownership of Information and Data:**
 - 18.1 Any data or information system, including all software, documentation and manuals, developed by Contractor pursuant to this contract, shall be deemed to be owned by AHCCCS. The federal government reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use and to authorize others to use for federal government purposes, such data or information system, software, documentation and manuals. Proprietary software which is provided at established catalog or market prices and sold or leased to the general public shall not be subject to the ownership or licensing provisions of this section.
 - 18.2 Data, information and reports collected or prepared by Contractor in the course of performing its duties and obligations under this contract shall be deemed to be owned by AHCCCS. The ownership provision is in consideration of Contractor's use of public funds in collecting or preparing such data, information and reports. These items shall not be used by Contractor for any independent project of Contractor or publicized by Contractor without the prior written permission of the Procurement officer. Subject to applicable state and federal laws and regulations, AHCCCS shall have full and complete rights to reproduce, duplicate, disclose and otherwise use all such information. At the termination of the contract, Contractor shall make available all such data to the Procurement officer within thirty (30) days following termination of the contract or such longer period as approved by the Procurement officer. For purposes of this subsection, the term "data" shall not include member medical records.
 - 18.3 Except as otherwise provided in this section, if any copyrightable or patentable material is developed by Contractor in the course of performance of this contract, the federal government, AHCCCS and the State of Arizona shall have a royalty-free, nonexclusive, and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the work for state or federal government purposes. Contractor shall additionally be subject to the applicable provisions of 45 CFR Part 74 and 45 CFR Parts 6 and 8.
19. **Records:**
 - 19.1 In addition to the requirements set forth in this contract under the Uniform Terms and Conditions, all books and records shall be maintained to the extent and in such detail as required by AHCCCS Rules and Policies. The AHCCCS records management guidelines are located at: <http://www.azahcccs.gov>. Records shall include, but not be limited to, financial statements, case files (both hard copy and stored data), and other records specified by AHCCCS.
 - 19.2 The Contractor shall make available at its office at all reasonable times during the term of this contract and the period set forth in in this section, any of its records for inspection, audit or reproduction by any authorized representative of AHCCCS, State or Federal government.



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- 19.3 The Contractor shall preserve and make available all records for a period of five (5) years from the date of final payment under this contract except as provided below:
- 19.3.1 If this contract is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for a period of five years from the date of any such termination.
 - 19.3.2 Records that relate to grievances, disputes, litigation or the settlement of claims arising out of the performance of this contract, or costs and expenses of this contract to which exception has been taken by AHCCCS, shall be retained by the Contractor for a period of five years after the date of final disposition or resolution thereof.
 - 19.3.3 Completed case files shall be scheduled for archive shipment to AHCCCS, as defined by AHCCCS Policy and Procedures.
20. **Responsibility for Payments Indemnification:** The Contractor shall be responsible for issuing payment for services performed by the Contractor's employees and will indemnify and save AHCCCS harmless for all claims whatsoever growing out of the lawful demands of employees, subcontractors, suppliers or any other third party incurred in the furtherance of the performance of the contract. The Contractor shall, at AHCCCS' request, furnish satisfactory evidence that all obligations of the nature hereinabove designated have been paid, discharged or waived.
21. **Term of Contract and Option to Renew:**
- 21.1 The initial term of this contract shall be from **January 1, 2018 through September 30, 2018** with four (1) one-year options to extend, not to exceed a total contracting period of four (4) years and 9 months. The terms and conditions of any such contract extension shall remain the same as the original contract, as amended. All contract extensions shall be through contract amendment, and shall be at the sole option of AHCCCS.
 - 21.2 If the Contractor chooses not to renew this contract, the Contractor may be liable for certain costs associated with the transition of its members to a different Contractor. If the Contractor provides the Procurement officer written notice of its intent not to renew this contract at least 180 days before its expiration, this liability for transition costs may be waived by the Procurement officer.
22. **Warranty of Services:** The Contractor warrants that all services provided under this contract will conform to the requirements stated herein. AHCCCS' acceptance of services provided by the Contractor shall not relieve the Contractor from its obligations under this warranty. In addition to its other remedies, the Procurement officer may, at the Contractor's expense, require prompt correction of any services failing to meet the Contractor's warranty herein. Services corrected by the Contractor shall be subject to all of the provisions of this contract in the manner and to the same extent as the services originally furnished.
23. **FEDERAL REQUIREMENTS:**
- 23.1 Compliance with Federal Regulations: The Contractor understands and agrees to comply with all Federal Regulations that are outlined in title 42 Public Health [42 CFR] Part 495, Standards for the Electronic Health Record Technology Incentive Program, as may be amended.
 - 23.2 Compliance with the American Recovery and Reinvestment Act: This contract is funded under the American Recovery and Reinvestment Act of 2009 (ARRA) (Public Law 111-5), prime DHHS Award No. 90HT0023. Both parties to this contract will comply with the guidelines, provisions and reporting requirements of the ARRA, incorporated by reference into this contract as if fully set forth herein and may be accessed at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h1enr.pdf , as may be amended or supplemented from time to time.
 - 23.3 The Contractor shall follow all Federal Regulations as applicable.



INSURANCE REQUIREMENTS

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Service Contracts/Contractor Vehicles Limited to Commute

Indemnification Clause

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

This indemnity shall not apply if the contractor or sub-contractor(s) is/are an agency, board, commission or university of the State of Arizona.

1. Insurance Requirements

- 1.1 Contractor and subcontractors shall procure and maintain, until all of their obligations have been discharged, including any warranty periods under this Contract, insurance against claims for injury to persons or damage to property arising from, or in connection with, the performance of the work hereunder by the Contractor, its agents, representatives, employees or subcontractors.
- 1.2 The Insurance Requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The State of Arizona in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that arise out of the performance of the work under this Contract by the Contractor, its agents, representatives, employees or subcontractors, and the Contractor is free to purchase additional insurance.

Minimum Scope and Limits of Insurance

Contractor shall provide coverage with limits of liability not less than those stated below.

1.3 Commercial General Liability (CGL) – Occurrence Form

Policy shall include bodily injury, property damage, and broad form contractual liability coverage.

- General Aggregate \$2,000,000
- Products – Completed Operations Aggregate \$1,000,000
- Personal and Advertising Injury \$1,000,000
- Damage to Rented Premises \$50,000
- Each Occurrence \$1,000,000

1.3.1 The policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor.

1.3.2 b. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

1.4 Workers' Compensation and Employers' Liability

- Workers' Compensation Statutory
- Employers' Liability
 - o Each Accident \$1,000,000
 - o Disease – Each Employee \$1,000,000
 - o Disease – Policy Limit \$1,000,000

1.4.1 Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.



INSURANCE REQUIREMENTS

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- 1.4.2 This requirement shall not apply to each Contractor or subcontractor that is exempt under A.R.S. § 23-901, and when such Contractor or subcontractor executes the appropriate waiver form (Sole Proprietor or Independent Contractor).
- 1.4.3 Additional Insurance Requirements

- 2. The policies shall include, or be endorsed to include, as required by this written agreement, the following provisions:
 - 2.1 The Contractor's policies, as applicable, shall stipulate that the insurance afforded the Contractor shall be primary and that any insurance carried by the Department, its agents, officials, employees or the State of Arizona shall be excess and not contributory insurance, as provided by A.R.S. § 41-621 (E).
 - 2.2 Insurance provided by the Contractor shall not limit the Contractor's liability assumed under the indemnification provisions of this Contract.
- 3. Notice of Cancellation
Applicable to all insurance policies required within the Insurance Requirements of this Contract, Contractor's insurance shall not be permitted to expire, be suspended, be canceled, or be materially changed for any reason without thirty (30) days prior written notice to the State of Arizona. Within two (2) business days of receipt, Contractor must provide notice to the State of Arizona if they receive notice of a policy that has been or will be suspended, canceled, materially changed for any reason, has expired, or will be expiring. Such notice shall be sent directly to the Department and shall be mailed, emailed, hand delivered or sent by facsimile transmission to (State Representative's Name, Address & Fax Number).
- 4. Acceptability of Insurers
Contractor's insurance shall be placed with companies licensed in the State of Arizona or hold approved non-admitted status on the Arizona Department of Insurance List of Qualified Unauthorized Insurers. Insurers shall have an "A.M. Best" rating of not less than A- VII. The State of Arizona in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.
- 5. Verification of Coverage
Contractor shall furnish AHCCCS with certificates of insurance (valid ACORD form or equivalent approved by the State of Arizona) evidencing that Contractor has the insurance as required by this Contract. An authorized representative of the insurer shall sign the certificates.
 - 5.1 All such certificates of insurance and policy endorsements must be received by the State before work commences. The State's receipt of any certificates of insurance or policy endorsements that do not comply with this written agreement shall not waive or otherwise affect the requirements of this agreement.
 - 5.2 Each insurance policy required by this Contract must be in effect at, or prior to, commencement of work under this Contract. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.
 - 5.3 All certificates required by this Contract shall be sent directly to AHCCCS Procurement Office. The AHCCCS Contract number and project description shall be noted on the certificate of insurance. The State of Arizona reserves the right to require complete copies of all insurance policies required by this Contract at any time.
- 6. Subcontractors
Contractor's certificate(s) shall include all subcontractors as insureds under its policies or Contractor shall be responsible for ensuring and/or verifying that all subcontractors have valid and collectable insurance as evidenced by the certificates of insurance and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum Insurance Requirements identified above. The Department reserves the right to require, at any time throughout the life of the Contract, proof from the Contractor that its subcontractors have the required coverage.
- 7. Approval and Modifications
The Contracting Agency, in consultation with State Risk, reserves the right to review or make modifications to the insurance limits, required coverages, or endorsements throughout the life of this contract, as deemed necessary. Such action will not require a formal Contract amendment but may be made by administrative action.
- 8. Exceptions
In the event the Contractor or subcontractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a certificate of self-insurance. If the Contractor or subcontractor(s) is/are a State of Arizona agency, board, commission, or university, none of the above shall apply.



HIPAA BUSINESS ASSOCIATES ADDENDUM

SOLICITATION # YH18-0037

Third Party Liability and Recovery Audit Services

Amended 2016

This Addendum is made part of this Contract between the Arizona Health Care Cost Containment System ("AHCCCS") and the Contractor, referred to as "Business Associate" in this Addendum.

AHCCCS and Business Associate agree that the underlying Contract shall comply with the Administrative Simplification requirements of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), as set forth in Title 45, Parts 160 and 164 of the Code of Federal Regulations (the "CFR"), as amended. In the event of conflicting terms or conditions, this Addendum shall supersede the underlying Contract.

1. DEFINITIONS

The following terms used in this Addendum shall have the same meaning as those terms in the HIPAA rules set forth in Title 45, Parts 160 and 164 of the CFR: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required by Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

2. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

Business Associate agrees to:

- 2.1. Not use or disclose protected health information ("PHI") other than as permitted or required by this Addendum or as required by law;
- 2.2. Use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to electronic PHI, to prevent use or disclosure of protected health information other than as provided for by this Addendum;
- 2.3. Report to AHCCCS any use or disclosure of PHI not provided for by this Addendum of which it becomes aware, including breaches of unsecured protected health information as required at 45 CFR §164.410, and any security incident of which it becomes aware in the following manner:
 - 2.3.1. Reporting. Business Associate shall report to AHCCCS any use or disclosure of PHI that is not authorized by the Contract, by law, or in writing by AHCCCS. Business Associate shall make an initial report to the AHCCCS Privacy Official not more than twenty-four (24) hours after Business Associate learns of such unauthorized use or disclosure. The initial report shall include all of the following information to the extent known to the Business Associate at the time of the initial report:
 - A. A description of the nature of the unauthorized use or disclosure, including the number of individuals affected by the unauthorized use or disclosure;
 - B. A description of the PHI used or disclosed;
 - C. The date(s) on which the unauthorized use or disclosure occurred;
 - D. The date(s) on which the unauthorized use or disclosure was discovered;
 - E. Identify the person(s) who used or disclosed the PHI in an unauthorized manner;
 - F. Identify the person(s) who received PHI disclosed in an unauthorized manner;
 - G. A description of actions, efforts, or plans undertaken by the Business associate to mitigated the harm of the unauthorized disclosure;
 - H. A description of corrective actions undertaken or planned to prevent future similar unauthorized use or disclosure;



HIPAA BUSINESS ASSOCIATES ADDENDUM

SOLICITATION # YH18-0037

Third Party Liability and Recovery Audit Services

- I. An assessment of whether a breach, as defined in 45 CFR 164.402, including, if necessary, an assessment of the probability of harm, and
- J. Such other information, as may be reasonably requested by the AHCCCS Privacy Official.

Business Associate shall provide AHCCCS with supplemental reports promptly as new information becomes available, as assessments and action plans are developed, and as action plans are implemented. In any event, Business Associate shall provide a comprehensive written report including all of the information listed above no later than twenty (20) days after discovery of the unauthorized use or disclosure.

- 2.3.2. Mitigation. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of the Contract.
- 2.3.3. Sanctions. Business Associate shall have and apply appropriate sanctions against any employee, subcontractor or agent who uses or discloses AHCCCS PHI in violation of this Addendum or applicable law.
- 2.4. In accordance with 45 CFR §164.502(e)(1)(ii) and §164.308(b)(2), if applicable, ensure that any subcontractors that create, receive, maintain or transmit PHI on behalf of the Business Associate agree to the same restrictions, conditions and requirements that apply to the Business Associate with respect to such information;
- 2.5. Make available PHI in a designated record set to AHCCCS as necessary to satisfy AHCCCS' obligations under 45 CFR §164.524;
- 2.6. Make any amendment(s) to PHI in a designated record set as directed or agreed to by AHCCCS pursuant to 45 CFR §164.526, or take other measures as necessary to satisfy AHCCCS' obligations under 45 CFR §164.526;
- 2.7. Maintain and make available the information required to provide an Accounting of Disclosures to AHCCCS as necessary to satisfy AHCCCS' obligations under 45 CFR §164.528;
- 2.8. To the extent Business Associate is to carry out one or more of AHCCCS' obligations under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to AHCCCS in the performance of such obligation(s); and
- 2.9. Make its internal practices, books and records available to AHCCCS and the Secretary for purposes of determining compliance with the HIPAA rules.

3. PERMITTED USES AND DISLOSURES BY BUSINESS ASSOCIATE

- 3.1. Business Associate may only use or disclosure PHI as necessary to perform the services and obligations set forth in the underlying Contract;
- 3.2. Business Associate may use or disclose protected health information as required by law;
- 3.3. Business Associate agrees to make uses and disclosures and requests for protected health information consistent with AHCCCS' Minimum Necessary Policy, located at www.azahcccs.gov ;



HIPAA BUSINESS ASSOCIATES ADDENDUM

SOLICITATION # YH18-0037

Third Party Liability and Recovery Audit Services

- 3.4. Business Associate may not use or disclose protected health information in a manner that would violate Subpart E of 45 CFR Part 164 if done by AHCCCS, except for the specific uses and disclosures set forth below in (3.5 and 3.6);
- 3.5. Business Associate may use protected health information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate; and
- 3.6. Business Associate may provide data aggregation services relating to the health care operations of AHCCCS.

4. PROVISIONS FOR AHCCCS TO INFORM BUSINESS ASSOCIATE OF PRIVACY PRACTICES AND RESTRICTIONS

- 4.1. AHCCCS shall notify Business Associate of any limitation(s) in the AHCCCS Notice of Privacy Practices (found at www.azahcccs.gov) under 45 CFR §164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI;
- 4.2. AHCCCS shall notify Business Associate of any changes in, or revocation of, the permission by an individual to use or disclose his or her PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI; and
- 4.3. AHCCCS shall notify Business Associate of any restriction on the use or disclosure of PHI that AHCCCS has agreed to or is required to abide by under 45 CFR 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

5. TERM AND TERMINATION

- 5.1. Term: This Addendum is effective upon the effective date of the underlying Contract and shall terminate on the date AHCCCS terminates the contract for cause as authorized in paragraph (b) of this Section, or for any other reason permitted under the contract, whichever is sooner.
- 5.2. Termination for Cause: Business Associate authorizes termination of the Contract by AHCCCS if AHCCCS determines that Business Associate has breached a material term of this Addendum and Business Associate has not cured the breach or ended the violation within the time specified by AHCCCS.
- 5.3. Obligations of Business Associate Upon Termination: Upon termination, cancellation, expiration or other conclusion of the Contract, Business Associate, with respect to PHI received from AHCCCS, or created, maintained, or received by Business Associate on behalf of AHCCCS, shall:
 - 5.3.1. Retain only that PHI which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities;
 - 5.3.2. Destroy or return to AHCCCS all remaining PHI that the Business Associate still maintains in any form;
 - 5.3.3. Continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic PHI to prevent use or disclosure of the PHI, other than as provided for in this Section, for as long as Business Associate retains the PHI;
 - 5.3.4. Not use or disclose the PHI retained by Business Associate other than for the purposes for which such protected health information was retained and subject to the same conditions set out in this Addendum that applied prior to termination; and



HIPAA BUSINESS ASSOCIATES ADDENDUM

SOLICITATION # YH18-0037

Third Party Liability and Recovery Audit Services

5.3.5. Destroy or return to AHCCCS the PHI retained by Business Associate when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal and contractual responsibilities.

5.4. Survival: The obligations of Business Associate under this Section shall survive the termination of the Contract.

6. INDEMNIFICATION AND MISCELLANEOUS

6.1. Indemnification: Business Associate shall indemnify, hold harmless and defend AHCCCS from and against any and all claims, losses, liabilities, costs, civil and criminal penalties, and other expenses resulting from, or relating to, the acts or omissions of Business Associate, its employees, agents, and sub-contractors in connection with the representations, duties and obligations of Business Associate under this Addendum. The parties' respective rights and obligations under this Section shall survive termination of the Contract.

6.2. Regulatory References: A reference in this Addendum to a section in the HIPAA rules means the section as in effect or as amended.

6.3. Amendment: The parties agree to take such action as is necessary to amend this Addendum from time to time as is necessary for compliance with the requirements of the HIPAA rules or any other applicable law.

6.4. Interpretation: Any ambiguity in this Addendum shall be interpreted to permit compliance with the HIPAA rules.



EXHIBIT A: COMPENSATION TABLE

SOLICITATION # YH18-0037

Third Party Liability and Recovery Audit Services

1.0 CONTINGENCY BASED COMPENSATION

1.1 The Offeror shall propose contingency fees as a percentage of recoveries for their proposed method of approach. The fee shall be inclusive of all costs associated with the delivery of the service and includes staff time, mileage, insurance, and administrative cost. No additional fees will be paid by AHCCCS.

1.2 The Offeror's proposed contingency fees shall be broken down as follows:

1.2.1 **First Party Liability and Third Party Liability Recovery Programs and Commercial Insurance Coverage Verification / Data Match Services:** A percentage(s) of actual recoveries for the recovery programs described in paragraph 5 of the Scope of Work, which will constitute the total compensation for the services described in both paragraph 5 and 6 of the Scope of Work. The Offeror may, if it chooses, propose graduated percentages based on total amount of Net Recovery to AHCCCS.

1.2.2 **Optional add-on related service:** The Offeror may, at its option, submit a separate proposal (and a separate rate below) for providing other services not required by this solicitation. If the Offeror chooses to submit such a proposal, it will be considered only as an add-on to the TPL recovery services described herein. Whether the Offeror chooses or does not choose to submit this add-on proposal will have no effect on the evaluation of its TPL Recovery proposal and the add-on proposal itself will be negotiated only in conjunction with the award of the primary contract. If an add-on proposal is submitted, the Offeror must state so in its cover letter to the TPL proposal. The acceptance of any add-on service is at the sole option of AHCCCS.

1.2.3 **Medicaid Recovery Audit Contractor (RAC) Services:** A contingency fee for overpayments, and a separate percentage for underpayment, which will constitute the total compensation for the service described in paragraph 7 of the Scope of Work. Compensation for overpayments will be based on the actual amount recovered. The amount will be considered recovered only after AHCCCS receives the payments from the providers and all appeals are resolved. Compensation for underpayments will be based on the amount identified from the improper payment recovery review process and paid to the provider. The accepted percentage rates shall not exceed the highest contingency fee allowable for Medicare RACs services, as published in the Federal Register.

In accordance with federal requirements, the Offeror must include with its proposal sufficient documentation to show how it arrived at the proposed percentage rates.

1.3 The Offeror shall complete and submit the following table with their proposal:



EXHIBIT A: COMPENSATION TABLE

SOLICITATION # YH18-0037

Third Party Liability and Recovery Audit Services

CONTRACT PRICING – TPL Services:

First Party Liability and Third Party Liability Recovery Programs and Commercial Insurance Coverage Verification / Data Match Services described in paragraph 5 and 6 of the Scope of Work	Percentage Fee
Recovery, Verification and Data Match Services	
Optional Add On Services	

CONTRACT PRICING – Fee for Service RAC Services:

Medicaid Recovery Audit Contractor (RAC) Services as described in paragraph 7 of the Scope of Work	Percentage Fee
RAC Services - Overpayments	
RAC Services - Underpayments	

2.0 INVOICES

- 2.1 The successful Offeror shall submit a monthly invoice to the address listed below for the administrative fees associated with this contract.
- 2.2 Each invoice shall provide the following information, as applicable:
 - 2.2.1 AHCCCS' assigned contract number
 - 2.2.2 description of services performed for each fee
 - 2.2.3 name of AHCCCS contact person for this agreement
 - 2.2.4 date(s) services were performed
- 2.3 Each invoice shall have adequate supporting documentation attached to allow proper expense reimbursement.
- 2.4 Invoices shall be submitted to:
 - AHCCCS
 - Accounts Payable, MD 5400
 - 701 E. Jefferson Street
 - Phoenix, AZ 85034



EXHIBIT B: METHODOLOGY QUESTIONNAIRE

SOLICITATION # YH18-0037

Third Party Liability and Recovery Audit Services

In addition to written narrative, the Offeror shall complete the following methodology questionnaire:

1. Provide an implementation plan for this contract.
2. How will your staff be trained for the implementation of this contract?
3. What information or assistance would you need from AHCCCS for a successful implementation?
4. What work will be performed in your metropolitan Phoenix office(s) and what work will be performed at other locations? Please see in-person delivery and in-person decision makers attending meetings/reference it back to SOW.
5. Describe your quality management processes and controls related to the requirements of this contract.
6. How many commercial insurers do you have contracted for share eligibility file matchings?
7. Describe the processes and criteria used to verify commercial insurance coverage.
8. Describe the criteria used to conduct valid TPL record reverification and the processes used when the active valid records cannot be reverified. Please see SOW for this process and for 6 month requirement.
9. Describe the data elements required to facilitate the verification and reverification of commercial TPL leads.
10. Describe the criteria used to match AHCCCS eligible member information to commercial insurance coverage information.
11. Describe the processes used to ensure valid coverage records are not duplicated.
12. Include information about any coding used to indicate the reasons for returning TPL lead referrals as invalid.
13. Indicate which, if any, of the AHCCCS required TPL record fields (see Attachment C) cannot be provided and what alternative information might be provided.
14. What is the process used to correct TPL coverage record errors generated by the Contractor?
15. Describe the process for maintaining and mapping the AHCCCS proprietary Master Carrier ID number to the verified commercial TPL Lead records and TPL Match records submitted to AHCCCS.
16. How will the different recovery programs within the Scope of Work interact with each other to capture all potential recovery sources?
17. Describe your specific experience regarding RAC services in both the Medicaid and Medicare Programs, including any findings and results.
18. Describe the major national trends by other states seen regarding RAC overpayments.
19. Describe the tools and technologies utilized specific to RAC.
20. Provide pertinent policies and procedures addressing RAC.
21. Describe your protocol for notification and collection of RAC overpayments and underpayments.



EXHIBIT C: BOYCOTT OF ISRAEL ATTESTATION

SOLICITATION # YH18-0037

Third Party Liability and Recovery Audit Services

Recognizing legislation has been enacted to prohibit the State from contracting with companies currently engaged in a boycott of Israel, to ensure compliance with A.R.S. §35-393.01, this form must be completed and returned with the response to the solicitation and any supporting information to assist the State in making its determination of compliance.

As defined by A.R.S. §35-393.01:

1. "Boycott" means engaging in a refusal to deal, terminating business activities or performing other actions that are intended to limit commercial relations with Israel or with persons or entities doing business in Israel or in territories controlled by Israel, if those actions are taken either:
 - (a) In compliance with or adherence to calls for a boycott of Israel other than those boycotts to which 50 United States Code section 4607(c) applies.
 - (b) In a manner that discriminates on the basis of nationality, national origin or religion and that is not based on a valid business reason.
2. "Company" means a sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company or other entity or business association, and includes a wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate.
3. "Direct holdings" means all publicly traded securities of a company that are held directly by the state treasurer or a retirement system in an actively managed account or fund in which the retirement system owns all shares or interests.
4. "Indirect holdings" means all securities of a company that are held in an account or fund, including a mutual fund, that is managed by one or more persons who are not employed by the state treasurer or a retirement system, if the state treasurer or retirement system owns shares or interests either:
 - (a) together with other investors that are not subject to this section.
 - (b) that are held in an index fund.
5. "Public entity" means this State, a political subdivision of this STATE or an agency, board, commission or department of this state or a political subdivision of this state.
6. "Public fund" means the state treasurer or a retirement system.
7. "Restricted companies" means companies that boycott Israel.
8. "Retirement system" means a retirement plan or system that is established by or pursuant to title 38.

All Offerors must select one of the following:

_____ My company **does not** participate in, and agrees not to participate in during the term of the contract a boycott of Israel in accordance with A.R.S. §35-393.01.

_____ My company **does** participate in a boycott of Israel as defined by A.R.S. §35-393.01. :

By submitting this response, proposer agrees to indemnify and hold the State, its agents and employees, harmless from any claims or causes of action relating to the State’s action based upon reliance on the above representations, including the payment of all costs and attorney fees incurred by the State in defending such an action.

Company Name

Signature of Person Authorized to Sign

Address

Printed Name

City State Zip

Title



EXHIBIT D: OFFEROR'S CHECKLIST

SOLICITATION # YH18-0037

Third Party Liability and Recovery Audit Services

Note to Prospective Offerors: This page is added to the RFP as a convenience to Offerors. It is believed to be a complete listing of all submission requirements pursuant to this RFP. However, if a requirement is stated anywhere in the RFP text, yet does not appear in the Offeror's Checklist, the text statement takes precedence over the omission of that requirement in the Offeror's Checklist. **Provide the page number where this item is located within your proposal, in the right hand column.**

****** All submission requirements must be arranged in your proposal in this order******

Submission Requirement #	SUBMISSION REQUIREMENT Description	OFFEROR'S PROPOSAL Page #
1	Four (4) Hard Copies of the proposal <ul style="list-style-type: none"> • 1 marked ORIGINAL, 3 marked COPY, • 1 Electronic Copy on a CD 	na
2	Submittal Cover Letter	
3	Exhibit D: Offeror's Checklist (this page)	
4	Completed and Signed Offer and Acceptance page	
5	Signed Solicitation Amendments, if any	
6	Exceptions to the terms, conditions or scope of work (If any) <i>NOTE: Any exceptions may negatively impact an Offeror's susceptibility for award. <u>Exceptions to material requirements, or excessive exceptions, may (and most likely will) result in offer being rejected.</u></i>	
8	Experience and Expertise of the Firm and Key Personnel (pages 24 – 25) – Written Narrative <ul style="list-style-type: none"> • Successful and reliable experience in related past performance • Detailed related information and resumes of Key Personnel • Organizational Chart 	
9	Method of Approach (page 24) - Written narrative <i>plus</i> Exhibit B: Methodology Questionnaire	
10	Cost (page 24) – Submit Completed Exhibit A: Compensation Table	
11	Statement of Intent to provide Certificate of Insurance	
12	Exhibit C: Boycott of Israel Attestation	
13	Detailed Legal Analysis for Confidential treatment: If any pieces of your proposal are being requested to be kept confidential, and withheld from public viewing , please submit an additional redacted copy of the proposal ON A SEPARATE CD. Our office does not require a hard copy of the redacted proposal, only an electronic copy. This will ensure that our office is crystal clear on which version of your proposal is acceptable for public viewing. An Offeror may only request confidential treatment for LIMITED DISTINCT portions of their proposal. It is at the discretion of AHCCCS to allow such confidential treatment based upon the legal analysis submitted.	

END OF SOLICITATION

Intentionally left blank.