



# Notice of Request for Proposal

SOLICITATION # YH24-0004

Fee-For-Service Pharmacy Benefit Management Services

<b>Issue Date</b>	<b>Friday, October 20, 2023</b>
<b>AHCCCS Procurement Officer</b>	<b>Toni Cota, Senior Procurement Specialist</b> Email: <a href="mailto:procurement@azahcccs.gov">procurement@azahcccs.gov</a>
<b>Pre-Proposal Conference:</b>	<b>NONE</b>
<b>Questions Due:</b>	<b>Thursday, November 2, 2023</b> <b>by 3:00 PM Arizona Time</b>
<b>Intend to Bid Due:</b>	<b>November 24, 2013</b> <b>by 3:00 PM Arizona Time</b>
<b>Proposal Due Date:</b> Proposals shall be submitted in accordance with this solicitation proposal instructions prior to the time and date indicated here, or as may be amended through a solicitation amendment.	<b>Thursday, December 7, 2023</b> <b>by 3:00 PM ARIZONA TIME</b>
<b>Services Start Date (subject to change)</b>	<b>October 1, 2024</b>

Proposals will only be accepted as described in Special Instructions to Offerors found in Exhibit A, Solicitation Instructions to Offerors.

LATE PROPOSALS WILL NOT BE CONSIDERED. No extension or grace period will be given for delays or incomplete proposals caused by internet connectivity problems, file uploading difficulties, or misunderstanding of the submission requirements.

It is the responsibility of the Prospective Offeror to routinely check the AHCCCS website for Solicitation Amendments. Additional instructions for preparing an Offer are included in this solicitation. 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 for the accommodation.

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ATTACHMENTS and EXHIBITS BELOW ARE INCOPORATED INTO THIS SOLICITATION BY REFERENCE AND LOCATED WITH THE RFP HERE:

<https://www.azahcccs.gov/Resources/OversightOfHealthPlans/SolicitationsAndContracts/open.html>

Attachment 1: Pricing Schedule

Attachment 2: Offeror's State Medicaid References

Attachment 3: Performance Guarantees Matrix

Attachment 4: Offeror's Contracted Pharmacy Network

Attachment 5: Offeror's Maximum Allowable Cost (MAC) List

Attachment 6: Attestation of Boycott of Israel

Attachment 7: Attestation of Forced Labor of Ethnic Uyghurs Ban

Attachment 8: Offeror's Intent to Bid

Attachment 9: Offer and Acceptance

Exhibit A – Solicitation Instructions to Offerors

Exhibit B - AHCCCS Prescription Claims Utilization Data. This document will be made available in the AHCCCS Secure File Share (ASFS) and viewable to potential offerors after receipt of Offeror's signed Intent to Bid.

Questions and Answers Form

# SOLICITATION SUMMARY

## [Solicitation Summary](#)

### 1. What is AHCCCS Soliciting?

The Arizona Health Care Cost Containment System (“AHCCCS”) authorized under A.R.S. § 36-2906, and any rules adopted thereunder, to procure the following services: Fee-For-Service Pharmacy Benefit Management Services

The State reserves the right to accept any item or combination of items specified in the Solicitation, unless the Offeror expressly restricts an item or combination of items in its Offer, and conditions its response on receiving all items for which it provided a proposal. In the event of such a restriction, the State will evaluate if an award on such a basis will result in the best value and is in the best interest for the State. The State may otherwise determine, at its sole discretion, that such restriction is non-responsive and deem the Offeror ineligible for further evaluation.

### 2. HISTORICAL CONTRACT INFORMATION:

#### 2.1. Is this a re-solicitation or new contract?

This is a re-solicitation of an existing service. The incumbent Contractor is OptumRX, LLC.

### 3. What is in the Solicitation?

At the time of publication, the following documents are included in the Solicitation:

#### 3.1. Solicitation

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Special Terms and Conditions

Addendum A to the Special Terms and Conditions (Insurance)

Addendum B to the Special Terms and Conditions (IT Security)

Uniform Terms and Conditions

#### 3.2. Solicitation Attachments 1 through 10:

Attachment 1 - Pricing Schedule

Attachment 2 - Offeror’s State Medicaid References

Attachment 3 - Performance Guarantees Matrix

Attachment 4 - Offeror’s Contracted Pharmacy Network

Attachment 5 - Offeror’s Maximum Allowable Cost (MAC) List

Attachment 6 - Boycott of Israel

Attachment 7 - Forced Labor of Ethnic Uyghurs Ban

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Attachment 8 - Offeror's Intent to Bid

Attachment 9 - Offeror's Offer and Acceptance

### 3.3. **Solicitation Exhibits:**

Exhibit A: Solicitation Instructions: Special Instructions to Offerors and Uniform Instructions to Offerors

Exhibit B: AHCCCS Prescription Claims Utilization Data. This document will be made available in the AHCCCS Secure File Share (ASFS) after receipt of Offeror's signed Intent to Bid.

- 3.4. The State may issue a Solicitation Amendment at any time after Solicitation publication and before the Offer due date. It is the responsibility of the Prospective Offeror to routinely check the AHCCCS website for any Solicitation Amendments and revised documents.

# SCOPE OF WORK

## [Scope of Work](#)

### 1. Purpose and Background

The purpose of this procurement is to secure an experienced, responsible, and financially sound pharmacy benefit management (PBM) contractor to manage several program populations with unique programming parameters and reimbursement methodologies. The current programs and reimbursement methodologies include but are not limited to:

- 1.1 **Acute Care:** The Acute Care pharmacy benefit serves the AHCCCS Fee-For-Service (FFS) Medicaid Title XIX population. A person enrolled in FFS Acute Care may also be eligible for benefits under the T/RBHA Behavioral Health Plan. Acute Care members are identified on the 834 eligibility file and require a specific drug list for this population.
- 1.2 **Long Term Care:** The Long-Term Care pharmacy benefit serves AHCCCS FFS members. A person enrolled in the FFS Long Term Care program receives both physical health care and behavioral health care medications under this plan. Long Term Care members are identified on the 834 eligibility file and the PBM plan set up utilizes a specific drug list for this population.
- 1.3 **Tribal Regional Behavioral Health Authority (TRBHA):** AHCCCS Acute Care and Kids Care members may be enrolled with a T/RBHA, which includes the FFS pharmacy benefit for behavioral health medications. Members enrolled in T/RBHA have a specific drug list of behavioral health medications, a closed psychiatric provider file and are identified on the eligibility 834 file. These members may also be enrolled in the Acute Care or Kids Care program and simultaneously be enrolled in the T/RBHA.
- 1.4 **Dual Eligibles:** The Dual Eligible pharmacy benefit serves members who are eligible for Medicare and enrolled in AHCCCS as Title XIX or Title XXI. Dual Eligibles are flagged on the 834 eligibility file.
  - 1.4.1 **Medicare Part D:** AHCCCS and its Contractors are prohibited from using federal or state dollars to pay for copayments or any cost sharing for medications eligible for coverage under Medicare Part D.
  - 1.4.2 **Medicare Part B:** FFS is the secondary payer for Medicare Part B claims. The Contractor is responsible for coordination of Medicare Part B claims and reimbursing the pharmacy up to 20% of the Part B drug claim in accordance with AHCCCS policies and procedures. The primary payer reimbursement plus the secondary payer reimbursement shall not be greater than the total reimbursement as if AHCCCS was the sole source primary payer.
  - 1.4.3 **Dual Eligible Pharmacy Benefit:** The Dual Eligible pharmacy benefit includes Over-the-Counter medications and, in some instances, medications that are excluded by CMS from coverage under Medicare Part D Plans. The PBM Plan set up shall utilize a specific drug list for this population.
  - 1.4.4 **Federal Emergency Services Program:** AHCCCS provides emergency health care services through the Federal Emergency Services Program (FES) for qualified and nonqualified aliens, as specified in 8 USC 1611 et seq. who meet all requirements for Title XIX eligibility as specified in the State Plan except for citizenship. For the purpose of this RFP, emergency services include medications for FES patients who are only receiving outpatient dialysis as defined in the AHCCCS Medical Policy Manual, Chapter 1100 - Federal Emergency Services Program Overview. These patients are identified in the 834

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eligibility file. The FES pharmacy benefit is a very limited drug list of medications only associated with dialysis treatment. The PBM Plan set up shall utilize a specific drug list for this population.

- 1.5 **KidsCare:** This program is the Arizona Children's Health Care Program (CHIP) and provides health care benefits to children under the age of 19 who are not eligible to receive AHCCCS benefits.
- 1.6 **Prior Quarter Coverage:** A new AHCCCS member may be eligible for coverage in the prior quarter time period occurring before the date of their enrollment. After a review of the completed enrollment paperwork, the member may be eligible for the prior quarter (3 months) or for just 1 month, 2 of the 3 months, or all 3 months of the quarter. Prescription claims that were filled at a pharmacy that has an AHCCCS ID for the prior quarter of the member's eligibility, shall be refunded to the member and adjudicated under the Prior Quarter Coverage PBM plan set-up. Members are identified on the 834 eligibility file and the drug list includes all federally reimbursable drugs. There are no PA requirements or other utilization management parameters. The pharmacy must have an AHCCCS ID and the claims cannot be for drugs that were eligible for coverage under a Medicare Part D Plan; AHCCCS and its Contractors are prohibited from using any federal and state monies to pay for these Medicare Part D prescriptions. We manually manage this process; however, the plan benefit must be set-up in the PBM's system.
- 1.7 **Hemophilia:** Specialty Pharmacy Services for Anti-Hemophilic and Other Blood Disorder Medications are provided by CVS Specialty Pharmacy. CVS Specialty Pharmacy is the awarded specialty pharmacy Contractor for Hemophilia and claims shall be paid in accordance with the terms of the contractual agreement between AHCCCS and the awarded vendor. The PBM shall ensure that reimbursement to the awarded Hemophilia and Blood Disorders contractor is the agreed upon payment methodology between AHCCCS and the awarded vendor. The awarded vendor is the sole provider for hemophilia factor, Hemlibra, Ceprotin and any other medications identified for coverage by AHCCCS. AHCCCS will provide a monthly pricing file to the awarded PBM to use for claims adjudication of hemophilia factor, Hemlibra and Ceprotin claims and others as identified by AHCCCS.
- 1.8 **AHCCCS 340B Rule for reimbursement to FQHC/FQHC Look-Alike Pharmacies:** FQHC/FQHC Look-Alike Pharmacies are reimbursed for prescription drugs in accordance with the AHCCCS 340B Rule. The 340B Rule requires the FQHC and FQHC Look-Alike Pharmacies to submit prescription claims at the Actual Acquisition Cost (AAC) of the drug and the rule instructs AHCCCS and its Contractors to pay these claims at the AAC or the 340B Ceiling Price, whichever is less plus a dispensing fee which is listed on the AHCCCS website. The current dispensing fee/professional fee is posted in the pharmacy section on the AHCCCS website <https://www.azahcccs.gov/PlansProviders/RatesAndBilling/FFS/pharmacy.htm> and shall be adjusted in accordance with any future changes by AHCCCS. AHCCCS will identify the FQHC and FQHC Look Alike Pharmacies and provide the PBM Contractor with the 340B Drug Unit Pricing file quarterly. The Contractor shall place the FQHC and FQHC Look Alike Pharmacies in their own pharmacy network and reimburse submitted prescription claims using the 340B Drug Unit Pricing file provided by AHCCCS to adjudicate claims. Other 340B pharmacies that are not FQHC/FQHC Look Alikes Pharmacies shall be added to the 340B plan set-up when requested by AHCCCS. The addition of a 340B pharmacy shall be completed expeditiously and if urgent within 2 hours. 340B contract pharmacies are not permitted to submit claims to AHCCCS using drugs

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purchased from the 340B drug pricing program or submit claims as part of any back end arrangements between the pharmacy and the 340B entity.

- 1.9 **340B Claims:** The awarded Contractor must be able to adjudicate prescription claims electronically using the 340B Unit Pricing File, provided by AHCCCS, for identified 340B entity pharmacies. The file is provided generally two to four weeks in advance of the effective quarter, for use beginning on January 1<sup>st</sup>, April 1<sup>st</sup>, July 1<sup>st</sup>, and October 1<sup>st</sup>.
- 1.10 **Indian Health Services (IHS) / 638 Tribal Pharmacies Reimbursement:**
- 1.10.1 **All Inclusive Rate (AIR)** - The AIR is a reimbursement rate that is developed by the Office of Management and Budget and is used to reimburse IHS and 638 Tribal Facilities for various services delivered to AHCCCS members. The AIR is a set rate and the amount reimbursed is the same regardless of what type of service is being delivered. The IHS/638 Facilities may be reimbursed up to 5 AIRs per day per member per facility. Only one of the 5 AIRs eligible for daily reimbursement can be for a pharmacy prescription. For the purposes of this RFP, the AIR shall be paid to the IHS/638 Facility Pharmacies for medications dispensed to any Title XIX member eligible for enrollment in the American Indian Health Plan (AIHP) and any Title XIX member enrolled with an AHCCCS Managed Care Contractor when the prescription(s) is filled by an IHS/638 Tribal Pharmacy. AHCCCS shall provide an eligibility file to the awarded Contractor that includes all eligible Title XIX AHCCCS members. The number of eligible members enrolled in AHCCCS is greater than the number of members enrolled in the AIHP program. There are specific requirements when reimbursing the IHS/638 Pharmacy which include:
- 1.10.1.1 The AIR shall only be paid to an IHS/638 Pharmacy once daily per member per pharmacy, for the first drug NDC, that is a federal and state reimbursable CMS covered outpatient drug. A lesser of logic reimbursement methodology does not apply when the reimbursement is the AIR.
- 1.10.1.2 Prescriptions claims filled in addition to the first AIR reimbursable claim and submitted on the same day shall be adjudicated for inclusion in the member's profile if the drug is a federal and state reimbursable CMS covered outpatient drug. The claim shall be adjudicated as an accepted claim with a zero payment to the IHS/638 Pharmacy. A lesser of logic reimbursement methodology does not apply when the reimbursement is the AIR.
- 1.10.1.3 If the member is a Dual Eligible, or eligible for Medicare, the AIR shall only be paid for Over-the-Counter medications that are listed on the AHCCCS FFS Dual Eligible Drug List and all other legend drugs shall reject. If multiple claims are submitted on the same day for medications on the Dual Eligible Drug List, only the first drug that is a federal and state reimbursable covered outpatient drug shall be reimbursed the AIR and all subsequent medications eligible for reimbursement shall adjudicate as an accepted claim with a zero payment to the IHS/638 Pharmacy. See section 8.16 for Dual eligible.
- 1.10.1.4 For Medicare Part B secondary claims, IHS and 638 Tribal Facilities, as well as other network pharmacies, shall coordinate the benefit to be reimbursed up to 20% of the Part B claim.
- 1.10.1.5 The Federal Office of Management and Budget issues a new AIR annually, usually between January and May. When the rate is updated, the effective

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date is January 1st of the current calendar year that the new AIR has been issued. The awarded PBM shall:

- 1.10.1.5.1 Update the new AIR in the pharmacy claims adjudication system within 48 hours of receipt of the new AIR.
- 1.10.1.5.2 Update the new cost required to adjudicate claims for medications exceeding the AIR rate within 48 hours of receipt of the new AIR. The minimum cost is the AIR plus one cent.
- 1.10.1.5.3 Identify all prescription claims affected by the new AIR rate.
- 1.10.1.5.4 Re-adjudicate all identified prescription claims to reconcile the new AIR versus the old rate that was paid during the current year of the new AIR.
- 1.10.1.5.5 Re-adjudicate and reconcile all prescriptions identified that were paid the old AIR rate within 60 days of receiving notification of the new AIR rate.
- 1.10.1.5.6 Only re-adjudicate claims that were previously reimbursed for AIR.

1.11 **Medications Exceeding the AIR Rate:** The IHS and 638 Tribal Facility Pharmacies shall be reimbursed the actual acquisition cost of specialty medications dispensed to any Title XIX member eligible for enrollment in the AIHP or enrolled in a MCO as determined by AHCCCS. AHCCCS shall provide an 834 eligibility file to the Contractor that includes all eligible Title XIX AHCCCS members. The number of Title XIX AHCCCS eligible members is greater than the number of members enrolled in the AIHP program. Specialty medications are drugs whose actual acquisition cost exceeds the current AIR. The reimbursement of these medications shall be at the Actual Acquisition Cost (AAC) which for the purposes of this contract is defined as the Federal Supply Schedule (FSS) or the Wholesale Acquisition Cost. The reimbursement shall be the lesser of the FSS or WAC of the drug plus a Professional/Dispensing Fee. The amount of the Professional/Dispensing Fee shall be determined by AHCCCS. Drugs purchased under the 340B Drug Pricing Program shall not be used to fill prescriptions for drugs exceeding the cost of the AIR. The awarded contractor shall be responsible for obtaining, uploading, and updating the FSS.

1.12 **Coordination of Benefits for Alternate Insurance - Non-Medicare Drugs:** AHCCCS is the payer of last resort with the exception of the Indian Health Service. Members with primary insurance are identified on the 834 eligibility file as having alternate insurance, Third Party Liability (TPL). The PBM Contractor must ensure that AHCCCS, at a maximum, is the secondary payer for any member with one or more alternate insurances.

1.13 **Sister Agencies** – See Paragraph 16 “Sister Agencies” below for additional programs served by this contract.

## 2. AHCCCS Overview:

2.1. 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, 2023, AHCCCS provides coverage to approximately 2.3 million members in Arizona.



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- 2.2. The program has a total fund budget for SFY 2023 of approximately \$19 billion. AHCCCS has over 121,000 active providers in Arizona, such as individual medical and behavioral health practitioners, therapy disciplines, institutions, durable medical equipment companies and transportation entities. AHCCCS contracts with Managed Care Organizations (MCO) 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>
- 2.3. The Fee-For-Service Program (FFS) is comprised mainly of American Indians, enrolled in the American Indian Health Plan (AIHP), living throughout the State. As of January 1, 2023, the total Fee-For-Service (FFS) enrollment for American Indians was approximately 147,000. American Indian members have a choice of receiving their care through the FFS Program from Indian Health Services (IHS) or tribally operated 638 facilities or by enrolling in an AHCCCS Contracted Managed Care Organization (MCO).
- 2.4. The awarded Contract will be between two (2) parties, the Arizona Health Care Cost Containment System (“AHCCCS”) and the awarded Contractor. The Contractor shall enter into subcontractor agreements with Arizona State Sister Agencies under this AHCCCS PBM contract.
- 2.5. At present, the Department of Economic Security (DES) intends to utilize this contract for the Division of Developmental Disability (DDD) and State-Operated Facilities members. The offeror shall prepare and submit the encounter file to DDD in the format as specified by AHCCCS. The offeror shall provide the encounter file at no additional charge. The offeror shall update the encounter file for no additional charge when requested by AHCCCS. The encounter file shall be submitted to DDD monthly or as required by DDD.
- 2.6. Other populations may be added and agreed to by both the Contractor and the individual State Agency. Each subcontractor agreement with another State Agency shall be sent to the AHCCCS Procurement Officer after execution for the file.

### 3. Scope of Work Definitions

- 3.1 **AAC:** Actual Acquisition Cost.
- 3.2 **ADMINISTRATION FEE / TRANSACTION FEE:** The Administration/Transaction Fee is one fee that may be charged when a claim is adjudicated as a paid/accepted claim. The Fee is not paid for rejected or denied claims. The Administration/Transaction Fee is the only Fee that may be billed under this contract.
- 3.3 **ALL INCLUSIVE RATE (AIR):** The AIR is a reimbursement rate that is developed by the Office of Management and Budget and is used to reimburse IHS and 638 Tribal Facilities for various services delivered.

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- 3.4 **ALTCS:** Arizona Long Term Care System, a program under AHCCCS that delivers long term, acute/ambulatory health, behavioral health and case management services to eligible members, authorized by A.R.S. § 36-2932.
- 3.5 **ATTACHMENTS AND EXHIBITS:** For clarity of intent, if an item was an Attachment in the Solicitation Documents or an Offer (either Initial, Revised, Best and Final, or Accepted) and was subsequently made into an Exhibit, or its content was incorporated into one of the other Contract documents, then that Attachment no longer exists contractually as an “Attachment” since it has at that point been made into some other Contract document. In every other case, an Attachment and the Offeror data therein remain part of the Accepted Offer for purposes of precedence and contractual effect.
- 3.6 **AVERAGE MANUFACTURER PRICE (AMP):** The manufacturer’s price for a specific drug as reported to the Centers for Medicare and Medicaid (CMS).
- 3.7 **AVERAGE WHOLESALE PRICE (AWP):** The average wholesale price of a prescription drug, as determined by the current edition of the First Databank or MediSpan, including supplements and ad hoc updates, on the day the drug is dispensed or filled to the Member. The price must be based on the actual 11-digit National Drug Code Number of the drug dispensed.
- 3.8 **BRAND NAME DRUG:** A drug that has a trade name and may only be produced and sold by the pharmaceutical company holding the patent or a pharmaceutical company that has been licensed and authorized by the patent holder to produce and sell the drug.
- 3.9 **CLEAN CLAIMS:** As defined by ARS § 36-2904 (G)(1) is a claim that may be processed without obtaining additional information from the provider of service or from a third party but does not include claims under investigation for fraud or abuse or claims under review for medical necessity.
- 3.10 **CO-PAYMENT (CO-PAY):** A dollar amount or percentage of cost that a Member is responsible for paying for a specific prescription medication, over-the-counter (OTC) medication or other supply or service based on AHCCCS Prescription Plan.
- 3.11 **DISPENSING FEE (PROFESSIONAL FEE):** The amount paid to the participating pharmacy for filling a prescription.
- 3.12 **DRUG UTILIZATION REVIEW (DUR):** A program designed to measure and to assess on a concurrent, prospective and retrospective basis the clinically appropriate use of medication.
- 3.13 **DRUG LISTS:** Contractor’s drug lists developed in conjunction with AHCCCS.
- 3.14 **ESRD:** End Stage Renal Disease.
- 3.15 **FEE-FOR-SERVICE (FFS):** A method of payment to an AHCCCS registered provider on an amount-per-service basis for services reimbursed directly by AHCCCS for members not enrolled with a managed care Contractor.

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- 3.16 **FFP (FEDERAL FINANCIAL PARTICIPATION):** The Federal share of reimbursement for services provided in accordance with Federal requirements for school-based Medicaid services.
- 3.17 **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.
- 3.18 **FSS:** Federal Supply Schedule: A pricing schedule provided by the federal government that includes negotiated prices for brand-name drugs, generic drugs and biosimilars.
- 3.19 **GENERIC DISPENSING RATE GUARANTEE (GDR):** The percentage of generic prescriptions as compared to the total number of all prescriptions and is defined as the  $[(\text{Number of Generic Rx Claims}) / (\text{Number of Total Rx Claims})]$ .
- 3.20 **GENERIC DRUG:** A drug that is identical to a brand-name drug in dosage, strength, safety, how it is taken, quality, performance, and the intended use.
- 3.21 **GUARANTEED EFFECTIVE BRAND DISCOUNT RATE:** The discount off of AWP, in aggregate, overall, for all retail brand name prescription drug claims including usual and customary (U&C) claims using the following formula:  $[(\text{Total Retail Brand AWP} - \text{Discounted Retail Brand AWP}) / (\text{Total Retail Brand AWP})]$ . The AWP is based on the 11-digit NDC of the drug dispensed on the day the drug is dispensed. The discount off of AWP, in aggregate, overall, for all retail brand name prescription drug claims including usual and customary (U&C) claims using the following formula:  $[(\text{Total Retail Brand AWP} - \text{Discounted Retail Brand AWP}) / (\text{Total Retail Brand AWP})]$ . The AWP is based on the 11-digit NDC of the drug dispensed on the day the drug is dispensed.
- 3.22 **GUARANTEED EFFECTIVE GENERIC DISCOUNT RATE:** The discount off of AWP, in aggregate, overall, for retail generic prescription drug claims including MAC, non-MAC, Single Source Generic Drugs and U&C claims. The guarantee will be calculated using the following formula:  $[(\text{Total Retail Generic AWP} - \text{Discounted Retail Generic AWP}) / (\text{Total Retail Generic AWP})]$ .
- 3.23 **MAXIMUM ALLOWABLE COST (MAC):** The upper limit price per unit charged to AHCCCS for most generic drugs based on a pricing schedule developed and maintained by the Contractor.
- 3.24 **NET PAID CLAIM:** All paid claims where Claims minus reversals for a single prescription fill equals a payment to the pharmacy.
- 3.25 **NON-MAC GENERICS:** See Single Source Generics or as specified by AHCCCS.
- 3.26 **PARTICIPATING PHARMACY:** A pharmacy that is contracted with the Contractor and has agreed to provide prescription drug services to members.
- 3.27 **PROGRAM CONTRACTOR:** An organization which contracts with the AHCCCS Administration to execute the provision of a comprehensive package of ALTCS covered acute care, behavioral health services and long term care services to ALTCS members enrolled with the program Contractor.

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- 3.28 **QUALIFYING PROVIDER:** A pharmacy that provides qualifying covered services and meets all the applicable licensure/certification requirements, is registered with AHCCCS and has obtained an AHCCCS provider ID number..
- 3.29 **READJUDICATION:** To correct a claim paid the incorrect amount the contractor will submit a void to AHCCCS and then send a replacement claim with the correct billed amount.
- 3.30 **REBATE:** A monetary amount returned to a payer from a drug manufacturer based on drug utilization by a member or purchases by a provider.
- 3.31 **SINGLE SOURCE GENERICS:** Generic drugs that have either recently come off patent and do not generate discounts traditionally delivered by generic drugs, or have an exclusive pharmaceutical manufacturer. For purposes of pricing, drugs, unless otherwise specified above. Single source generics will be included in the overall generic drug guarantee.
- 3.32 **SPECIALTY DRUG:** Injectable, non-injectable, infused, oral, transdermal and inhaled drugs used in the management of chronic and/or complex conditions with characteristics including: significant patient proficiency in self-management or administration; a high potential for severe side effects and/or diminished outcomes absent concurrent clinical oversight; frequent dosing adjustments and intensive clinical monitoring to decrease the potential for drug toxicity and increase the probability for beneficial treatment outcomes; may require intensive patient training and compliance assistance to facilitate therapeutic goals; limited or exclusive product availability (refrigerated, frozen, cytotoxic, etc.) and distribution per a manufacturer's designated pharmacy network; specialized product handling and/or administration requirements (syringes, pumps, tubing, nebulizers, supplies); may be subject to Risk Evaluation and Mitigation Strategies ("REMS") per the FDA.
- 3.33 **STATE MATCHING FUNDS:** Non-federal funds, as specified in the Arizona Medicaid State Plan that serves as the Title XIX state match for qualifying covered services provided by the LEAs. This rate is determined annually by the Federal Medical Assistance Percentage and is subject to change.
- 3.34 **THIRD PARTY:** An individual, entity or program that is or may be liable to pay all or part of the medical cost of injury, disease or disability of an AHCCCS applicant, eligible person or member (including a qualified child), as defined A.A.C. R9-22, Article 10.
- 3.35 **THIRD PARTY LIABILITY:** The resources available from an individual, entity program that is or may be, by agreement, circumstance or otherwise, liable to pay all or part of the medical expenses incurred by an applicant, eligible person or member (including a qualified child) as defined in A.A.C. R9-22, Article 10.
- 3.36 **WAC:** The Wholesale Acquisition Cost of the drug as reported to MediSpan or First Databank.

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### 4. CONTRACTOR REQUIREMENTS

- 4.1. The Contractor shall capture, store, program systems and maintain data necessary to:
  - 4.1.1. Correctly adjudicate pharmacy claims and prepare encounters when requested.
  - 4.1.2. Perform online pharmacy claim and encounter correction.
  - 4.1.3. Maintain and perform administrative and clinical edits and audits.
  - 4.1.4. Allow online access to pharmacy claims history.
  - 4.1.5. Accurately price all pharmacy claims at the detail service line and header level.
  - 4.1.6. Provide and allow online access to the pharmacy claims adjudication system.
  - 4.1.7. Maintain pharmacy claims history for the life of the contract.
- 4.2. Provide pharmacy benefit administrative services and account management in accordance with the provisions and requirements specified in this RFP.
- 4.3. Provide and support an online Point-of-Sale (POS) pharmacy claims adjudication system that is compliant with the National Council for Prescription Drug Programs (NCPDP) standards setting organization (with the version currently required by AHCCCS), HIPAA compliant, and available 24 hours per day, 7 days per week, 365 days per year for:
  - 4.3.1. AHCCCS Fee-for-Service Acute & Long-Term Care Programs, Title XIX members
  - 4.3.2. AHCCCS KidsCare Title XXI members
  - 4.3.3. TRBHA Behavioral Health Members
  - 4.3.4. Dual Eligibles Medication Coverage for:
    - 4.3.4.1. Over-the-Counter Drugs; and
    - 4.3.4.2. Drugs Excluded from Medicare Part D Coverage by CMS and covered under AHCCCS; and
    - 4.3.4.3. Medicare Part B Secondary Coverage
  - 4.3.5. Federal Emergency Services (FES) Dialysis Patients.
  - 4.3.6. Hemophilia/Blood Disorders Pharmacy Reimbursement Requirements as required by AHCCCS.
  - 4.3.7. IHS/638 Facility Pharmacy AIR Reimbursement for prescription drugs.
  - 4.3.8. IHS/638 Facility Pharmacy Reimbursement for prescription drugs whose cost exceeds the AIR. The reimbursement methodology shall be the lesser of the Federal Supply Schedule Unit Price or the Wholesale Acquisition Cost Unit Price plus a dispensing fee to be determined by AHCCCS. Drugs purchased under the 340B Drug Pricing Program shall not be submitted for reimbursement and the PBM shall not reimburse drugs purchased under the 340B program for these claims.
  - 4.3.9. Federally Qualified Health Centers (FQHCs) & FQHC Look-Alike Pharmacies prescription claims shall be adjudicated at the submitted actual acquisition cost or the 340B ceiling price whichever is less. AHCCCS will determine the dispensing fee.
  - 4.3.10. 340B Reimbursement methodology shall be utilized for all 340B entities identified by AHCCCS currently and future 340B entities.
  - 4.3.11. Prior Quarter Coverage – All AHCCCS eligible persons with any coverage during any of the three (3) months prior to the month of application acceptance.
  - 4.3.12. Sister State Agencies- See Paragraph 16 “Sister Agencies” below.
- 4.4. Adjudicate claims accurately for all identified AHCCCS members in accordance with AHCCCS’ coverage policies, reimbursement policies, and pharmacy program plan designs.

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- 4.5. Develop and program the pharmacy claims processing system for new plans, which may be added at AHCCCS' discretion.
- 4.6. Maintain and administer the Generic Drug Maximum Allowable Cost (MAC) Program.
  - 4.6.1. Make changes including adding drugs and price changes to the MAC Program Drug List at the request of AHCCCS and within 5 days.
- 4.7. Provide a comprehensive Drug Utilization Review Program that includes Concurrent, Prospective Drug Utilization Review (ProDUR) and Retrospective Drug Utilization Review (RetroDUR) on all pharmacy claims processed on the PBM's adjudication platform. At a minimum the Concurrent and ProDUR program shall include:
  - 4.7.1. Prior Authorization:
    - 4.7.1.1. An Electronic Prior Authorization program with ability to perform electronic step edits and an approval process using ICD-10 diagnostic codes for approvals in lieu of manual prior authorization requests.
    - 4.7.1.2. Processing of prior authorization requests shall be available by telephone, fax and web based prior authorization programs as requested by AHCCCS.
    - 4.7.1.3. Respond to urgent and non-urgent requests within 24 hours of the receipt of the prior authorization in accordance with AHCCCS requirements and [42 CFR 438.3(s)(6).[1].
      - 4.7.1.3.1. Render a decision for a submitted drug prior authorization request when all medically necessary information has been received by telephone, fax, electronically or other telecommunication device within 24 hours of receipt of the submitted prior authorization request.
      - 4.7.1.3.2. A request for additional information is sent to the prescriber by telephone, fax, electronically or other telecommunication device within 24 hours of receipt of the PA when the submitted request lacks sufficient information to render a decision. A final decision shall be rendered within seven (7) business days from the initial date of the request;
      - 4.7.1.3.3. Reimburse the pharmacy for up to a 10-day supply of a covered outpatient prescription drug that is ordered for the member in an emergent situation [42 CFR 438.3(s)(6).[1], hospital discharges or when a member is transitioning from once level of care to another;
      - 4.7.1.3.4. Issue the Notice of Adverse Determination and the Grievance and Appeals process to the member and prescribing clinician when a requested prior authorization is denied.
      - 4.7.1.3.5. Supply a toll-free number for inquiries from pharmacists regarding network and pharmacy claims issues and for prescribers regarding prior-authorization as part of the base administrative fees with no additional cost to AHCCCS. The call center must be accessible 24 hours per day, 7 days per week, 365 days per year, including access to pharmacists for immediate responses to urgent PA requests.
      - 4.7.1.3.6. Prior authorization requests submitted and denied shall be effective immediately.

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- 4.7.1.3.7. Prior Authorization criteria shall be developed, updated and maintained by a full time dedicated clinical pharmacist to this contract. The clinical pharmacist shall track all of the following:
  - 4.7.1.3.7.1. FDA New drugs that enter the market.
  - 4.7.1.3.7.2. Request for changes submitted by the AHCCCS Contractors.
  - 4.7.1.3.7.3. Changes made to the current prior authorization criteria and the development of new prior authorization criteria.
- 4.7.1.3.8. The clinical pharmacist shall:
  - 4.7.1.3.8.1. Review new drugs and current drug changes for new criteria or the updating of current criteria.
  - 4.7.1.3.8.2. Develop criteria and process submitted prior authorization for physician administered drugs as requested by AHCCCS.
  - 4.7.1.3.8.3. Meet monthly with the AHCCCS Pharmacy Department.
  - 4.7.1.3.8.4. Meet Monthly with the AHCCCS Pharmacy Department and AHCCCS MCO Contractors' Pharmacy Directors to review all prior authorization criteria changes, new criteria and questions from the MCOs.
  - 4.7.1.3.8.5. Ensure that the prior authorization criteria aligns with the AHCCCS P&T recommendations approved by AHCCCS.
  - 4.7.1.3.8.6. The PA criteria shall be:
    - 4.7.1.3.8.6.1. Provided to AHCCCS in the format requested by AHCCCS for the AHCCCS website, [www.azahcccs.gov](http://www.azahcccs.gov).
    - 4.7.1.3.8.6.2. Provided to AHCCCS Contractors in the format requested by AHCCCS.
    - 4.7.1.3.8.6.3. Posted on the PBM's website if requested by AHCCCS.
- 4.7.2. Dose Optimization Program
  - 4.7.2.1. Quantity Limits by specific drug or therapeutic class.
  - 4.7.2.2. Perform the Morphine Equivalent Daily Dosing (MEDD) Calculation and utilize Maximum Dose Edits as requested by AHCCCS.
  - 4.7.2.3. Provide MMED reports in conjunction with CMS Drug Utilization Review Survey requirements and The Support Act.
  - 4.7.2.4. Comply with Opioid Initiatives and requirements as defined in the AHCCCS Medical Policy Manual Policy 310-V Prescription Medications - Pharmacy Services at <https://www.azahcccs.gov/shared/Downloads/MedicalPolicyManual/300/310-V.pdf>
- 4.8. Coordination of Benefits (COB) / Third Party Liability (TPL) Administration:
  - 4.8.1. Program and maintain a database of identified members with Third Party Liability (TPL) data as provided by AHCCCS.

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- 4.8.2. Administer a coordination of benefits (COB) program using cost avoidance logic and messaging technology during the claims adjudication process.
- 4.9. Coordinate electronic transactions for the SureScripts medication history and eligibility provider request at no additional cost to AHCCCS.
- 4.10. Establish a dedicated and secure file transfer protocol (SFTP) line to send and receive files to/from the AHCCCS FFS Program's Medicaid Management Information System (MMIS).
- 4.11. Maintain a database of all approved AHCCCS pharmacy providers, which shall be considered the AHCCCS FFS Pharmacy Network.
  - 4.11.1. Provide quarterly or upon request an updated pharmacy network report to AHCCCS in the format requested by AHCCCS.
- 4.12. Maintain a database of all AHCCCS registered pharmacies and AHCCCS registered prescribers by NPI, that shall be used to adjudicate claims in accordance with the 21st Century Cures Act.
  - 4.12.1. Incorporate and utilize the additional provider exception file provided by AHCCCS that contains pharmacists, residents, and interns as prescribers on claims for the adjudication process.
- 4.13. Create and maintain a web portal for access by FFS AHCCCS members which includes PBM plan information. At a minimum, the portal shall contain Customer Service Contact Information, the AHCCCS Drug Lists alphabetically and by condition and/or disease state, the Pharmacy Network Provider Listing, Prior Authorization Procedures, and various Provider Alerts/Notices, and bulletins.
- 4.14. Offer comprehensive onsite or web-based training and access to an online querying and reporting tool for AHCCCS as part of the base administrative fees.
- 4.15. Upon AHCCCS' Request assist AHCCCS in the operation of a comprehensive and competitive supplemental rebate program rebates, including the management of all supplemental rebate management functions (e.g., rebate calculation, program accounting and reporting).
- 4.16. Provide AHCCCS with outcome-based contracts for review and use if requested by AHCCCS.
- 4.17. Assist AHCCCS in obtaining information from network pharmacies and prescribers for any value-based outcome-based contracts that AHCCCS has entered into and signed.
- 4.18. Upon request, support the AHCCCS Pharmacy and Therapeutic Committee, which meets virtually, by providing therapeutic class and individual drug reviews and maintenance and support of the AHCCCS Drug Lists. The Contractor shall:
  - 4.18.1. Communicate the AHCCCS Drug Lists to pharmacy providers and prescribers and continue to provide maintenance and support to ensure that the AHCCCS Drug Lists employ the current, competitive, and pharmaco-economic drug selections. Ongoing maintenance includes reviewing newly marketed brand and generic drugs, new indications, new dosage forms and strengths, new clinical guidelines and practice pattern changes.
  - 4.18.2. Support the AHCCCS Pharmacy and Therapeutics Committee as needed with the following:
    - 4.18.2.1. Preparation and presentation of therapeutic class reviews at the AHCCCS Quarterly P&T Committee meeting.
    - 4.18.2.2. Preparation and presentation of new drugs within 180 days from the date the product becomes commercially available.



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- 4.18.2.3. Update the adjudication system with the AHCCCS Preferred Drugs with the weekly NDC File and after the P&T Meeting, three times annually with the P&T Recommendations NDC File.
- 4.19. Provide the updated drug lists, at a minimum, three times annually with the accepted AHCCCS P&T changes for January 1<sup>st</sup>, April 1<sup>st</sup> and October 1<sup>st</sup> or upon request. Manage and implement the development of utilization and health management programs (e.g., DUR, utilization edits, and disease education) that decreases inappropriate prescribing and utilization while promoting better medication adherence with best practice treatment guidelines and improved healthcare outcomes as requested.
- 4.20. Complete the CMS DUR report and provide it to AHCCCS by May 31<sup>st</sup> annually.
  - 4.20.1. Annually present up to three clinical initiatives to the AHCCCS P&T Committee for approval. These initiatives shall be reported on the CMS DUR Annual Report.
  - 4.20.2. Implement, manage, and provide results of the clinical initiatives approved by the AHCCCS P&T Committee.
  - 4.20.3. Report the outcome measurements and other requested clinical details on the annual CMS DUR Report for the clinical initiatives.
- 4.21. Develop and implement a customized program for AHCCCS that profiles prescribers, pharmacies, and pharmacists in order to provide targeted educational materials and academic-detailing services.
- 4.22. Provide an academic detailing program upon request.
- 4.23. Adopt and disseminate practice guidelines. Decisions regarding utilization management, member and provider education, coverage of services, provision of services and other areas to which the guidelines are applicable must be consistent as they apply to all members covered under the prescription program. The practice guidelines must consider the needs of members and are:
  - 4.23.1. Based on reasonable medical evidence, treatment guidelines or a consensus of health care professionals in a particular specialty.
  - 4.23.2. Developed and/or adopted in consultation with contracting health care professionals.
  - 4.23.3. Reviewed and updated periodically annually at a minimum determined appropriate by the Contractor and approved by AHCCCS.
  - 4.23.4. Applied consistently to all members covered under the program; and
  - 4.23.5. Communicated to all providers and to individual members upon their request.
- 4.24. Develop and implement written policies and procedures to include:
  - 4.24.1. Evaluation of new pharmaceutical technologies and new uses of existing technologies that include consideration of national and state coverage guidelines, medication treatment algorithms, and legislation as appropriate as well as other compendia, research articles from respected industry journals and institutions.
  - 4.24.2. Coverage rules, practice guidelines, payment policies and pharmaceutical management that are in compliance with CMS Medicaid regulations and allow for individual medical necessity determinations.
- 4.25. Notify AHCCCS within 30 days of a purchase, acquisition, and any other change in its ownership, partner status or control affecting 10% or greater interest, any acquisition by it of 10% or greater interest in any subsidiary, and any new agreement with, by, or between any affiliates that is relevant to the contract.

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- 4.26. Comply with the program integrity requirements of 42 CFR Part 455, Subpart B and notify AHCCCS within thirty (30) days of purchase, acquisition, and any other change in its ownership, partner status or control affecting 5% or greater interest, any acquisition by it of 5% or greater interest in any subsidiary, and any new agreement with, by, or between any affiliates that is relevant to the contract.
- 4.27. The Contractor shall provide pharmacy benefit administrative services as listed in this document to AHCCCS members in accordance with all applicable federal, state and local laws, and regulated rules, listed by reference in this document. The services are described in detail in AHCCCS Rules R9-22, Articles 2 and 7, R9-28, Articles 2 and 7, and the AHCCCS Fee-For Service Provider Manual all of which are incorporated herein by reference. These references may be found at <http://www.azahcccs.gov> . The Contractor shall provide the same standard of care for all members regardless of the member's eligibility category.

### 5. ACCOUNT MANAGEMENT

The Contractor shall:

- 5.1. Provide an account management team that is experienced and knowledgeable of the AHCCCS pharmacy plans and has authority to respond to AHCCCS concerns and issues in a timely manner. The core members of the Account Management Team include at a minimum:
  - 5.1.1. Account Director.
  - 5.1.2. Account Manager.
  - 5.1.3. A full-time dedicated Clinical Pharmacist dedicated to managing the following, including but not limited to:
    - 5.1.3.1. Plan-setups;
    - 5.1.3.2. Formulary changes;
    - 5.1.3.3. P&T updates;
    - 5.1.3.4. Clinical system edits;
    - 5.1.3.5. Administrative edits;
    - 5.1.3.6. Weekly drug list preferred status changes;
    - 5.1.3.7. Ad hoc reporting;
    - 5.1.3.8. Provide P&T support on an as needed basis; and
    - 5.1.3.9. Additional requirements in Section 6.
- 5.2. A second full-time dedicated Clinical Pharmacist who will be responsible for the development, updating and management of the FFS prior authorization criteria. Please see section 4.7.1.3.7 for the requirements of this position.
- 5.3. A half-time FTE dedicated pharmacy financial analyst to the AHCCCS program.
- 5.4. The two required dedicated clinical pharmacists and the half-time dedicated pharmacy financial analyst shall include AHCCCS in the interview process for these positions. The Account Management team shall:
  - 5.4.1. Meet with AHCCCS staff at the request of AHCCCS.
  - 5.4.2. Be proactive and efficient in the management of pharmacy services, the operations, and cost trends and must have accountability and authority to respond and resolve inquiries, requests, and issues raised by AHCCCS to assure compliance and overall service quality.

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- 5.4.3. Be responsible for the overall support and relationship management of the AHCCCS account. The responsibilities include account management and coordination of day-to-day services and communication with AHCCCS to address questions regarding operations, staffing, claim issues and reporting on all services provided.
- 5.4.4. Provide 30 days advance notice to AHCCCS of any planned change in the primary account manager. If unplanned changes occur, notify AHCCCS as soon as the change occurs.
- 5.5. Review all available network information; plan parameters, and any additional information required to effectively transition from the current PBM.
- 5.6. Partner with AHCCCS in development of the initial phase-in, transition of care, and rollout of procedures prior to program implementation.
- 5.7. Respond within two (2) business days to non-urgent inquiries, and one (1) business day for any urgent inquiries from AHCCCS designated staff or representative regarding specific provider participation in the network or status of provider election submissions.
- 5.8. Respond within two (2) hours on member eligibility issues.
- 5.9. Notify AHCCCS immediately upon determination and identification of system related, programming, or data transfer problems. The Contractor shall make every effort necessary to correct such problems immediately, including but not limited to working nights, weekends, and holidays, to minimize any negative impact to members.
- 5.10. Provide:
  - 5.10.1. An escalation process to assist in matters that are unable to be resolved at the account team level.
  - 5.10.2. Documentation of a process for prompt issue resolution in the event of a failure to perform a required service.
  - 5.10.3. Access to an electronic tracking and resolution log of AHCCCS issues.

### 6. CLINICAL PROGRAMS AND DRUG LISTS MANAGEMENT

The Contractor shall:

- 6.1. Adhere to, develop, and administer a clinically sound Drug List management program in conjunction with AHCCCS that includes ongoing Pharmacy and Therapeutics Committee review, updates and maintenance.
- 6.2. Agree that AHCCCS is not mandated to participate in therapeutic interchange (i.e., “switch”) programs.
- 6.3. Agree that AHCCCS will have full authority to “turn-off” any point-of-sale edits (e.g., quantity limit, step therapy).
- 6.4. Adhere to and support the use of evidence-based literature in the development of utilization management programs.
- 6.5. Provide drug utilization review (DUR) programs integrated across the retail, mail order, and specialty distribution channels as part of the base administrative fees.
- 6.6. Be responsible for managing requests for vacation overrides, dosage changes, and/or refill too soon exceptions from AHCCCS, members and/or providers/pharmacists.
- 6.7. Provide academic detailing to physicians by pharmacists in key geographic areas with a large concentration of AHCCCS members/utilization. This academic detailing program shall be based on pharmacy claims analysis of the top prescribers who have a high potential for savings

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based on current prescribing habits and opportunities for changes to generic and/or drug list alternatives.

- 6.8. Obtain written approval from AHCCCS prior to implementation of any programs.
- 6.9. Work with AHCCCS to develop a blood glucose program with free meters.
- 6.10. Support and comply with electronic prescribing (e-Prescribing) foundational standards. The Contractor shall be prepared to implement operational standards for e-Prescribing when they are issued.
- 6.11. Ensure that all operational and clinical programs and processes are not modified during the term of this contract without the prior notification and approval from AHCCCS.
- 6.12. Work with AHCCCS to provide program alternative recommendations and targeted “quality and cost return on investment” for any clinical, utilization, and or medication management programs that will enhance quality or improve program cost performance as appropriately identified, analyzed, and reported to AHCCCS.
- 6.13. Include, but not limited to, the following requirements for POS Drug Utilization Review (DUR) activities for the Contractor’s pharmacies:
  - 6.13.1. Determination of medication Drug List status.
  - 6.13.2. Monitoring for drug-drug, drug-allergy, drug-age and drug-disease interactions.
  - 6.13.3. Verification of dosage(s) as clinically appropriate.
  - 6.13.4. Evaluate the prescription claim for over- and under-utilization.
  - 6.13.5. Evaluate members, prescribers, and pharmacy providers for opioid misuse.
  - 6.13.6. Calculate the Morphine Equivalent Daily Dose and require prior authorization for cumulative available dosages that exceed the maximum dosage set by AHCCCS.
  - 6.13.7. Potential fraud alert.
  - 6.13.8. Provide patient education materials; and
  - 6.13.9. E-Prescribing readiness capabilities must be able to accept and respond to electronically communicated requests by SureScripts and/or prescribing clinicians.
- 6.14. Ensure that the POS system provides the following capabilities and allows:
  - 6.14.1. Input of overrides by AHCCCS staff to allow the processing of claims;
  - 6.14.2. Restricting access of individual members to designated therapeutic classes of medications, prescribers and/or pharmacy providers; and
  - 6.14.3. Restricting individual prescribers from prescribing designated therapeutic classes of drugs; and
  - 6.14.4. Assigning a member to a single pharmacy provider and/or prescribing clinician.

### 7. SPECIALTY PHARMACY SERVICES

The Contractor shall ensure that Specialty Pharmacy providers shall:

- 7.1. Have contractual arrangements and processes in place to obtain specialty drugs that are only available through limited distribution pharmacies.
- 7.2. Replace and reship medication at no cost to AHCCCS or the member if the medication is unusable due to any delays in shipment, temperature issues, or other situations that arise and affect the drug stabilization from the Specialty Pharmacy.
- 7.3. Provide customized letters to members taking specialty medications and to prescribers, which describes the enrollment process and the clinical services offered by the Specialty Pharmacy.
- 7.4. Provide on-call support 24 hours a day, 7 days a week, 365 days a year for specialty pharmacy medication inquiries.

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- 7.5. Provide specialty pharmacy services from a specialty pharmacy that is registered as a specialty pharmacy in at least 90% of the 50 United States.
- 7.6. Ensure that specialty pharmacy services are available within the state of Arizona.
- 7.7. Specialty Pharmacies shall not be reimbursed a rate for a medication that is more favorable than the rate that would be reimbursed to a retail pharmacy. This applies to medications that are not limited by the FDA or manufacturer to a specific pharmacy.
- 7.8. AHCCCS, at its discretion, may allow retail pharmacies to fill and dispense specialty medications.

### 8. MAIL ORDER

The Contractor shall:

- 8.1. Be licensed by the Arizona State Board of Pharmacy and credentialed to operate in the applicable states where dispensing mail order facilities and specialty operations and AHCCCS members reside.
- 8.2. Be able to provide a mail order program for the life of the contract.
- 8.3. If the mail order facility is a subcontractor, ensure that the subcontract is fully disclosed and a copy of the subcontract made available to AHCCCS for review upon request.
- 8.4. Upon receipt of a complete and fully accurate shipping address, Contractor's subcontracted mail order facility must be financially responsible and must not bill AHCCCS or the member for drug, shipping and reshipping costs where the shipment of the medication has been sent to the wrong address, wrong patient, improperly packaged, or shipped by the wrong carrier.
- 8.5. Ship all medications to ensure that the medication is received by the member within the appropriate temperature as listed on the medication's package insert and approved by the Food and Drug Administration.

### 9. CLAIMING ACTIVITIES

The Contractor shall:

- 9.1. Ensure that the billing process is in accordance with current NCPDP standards and AHCCCS requirements for claims adjudication, electronic billing, and remittance advice.
- 9.2. Process and adjudicate all pharmacy claims. Ninety-five percent (95%) of clean claims must be paid to the pharmacy providers within 30 days of receipt and 100% within 60 days.
- 9.3. Submit adjudicated prescription claims to AHCCCS within 180 days from the date of service.
- 9.4. Ensure that claims are initially submitted to AHCCCS within 180 days from the date of service and those that have been denied by AHCCCS are corrected and resubmitted within 12 months from the date of service.
- 9.5. Electronically provide to AHCCCS, on no less than a biweekly basis, a file of all adjudicated claims in the format requested by AHCCCS to allow for the evaluation of appropriateness of the claims and reimbursement of the Contractor.
- 9.6. Ensure that claims data file billing to AHCCCS is post-pharmacy provider reimbursement by the Contractor and is subject to various eligibility, COB, and drug list edits by AHCCCS.
- 9.7. Provide electronic point of service (POS) pharmacy claims adjudication services to communicate member eligibility and prescription approval information to the Contractor's pharmacy network.

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- 9.8. Process paper claims for the life of the contract and for a period of 12 months after the contract term date if requested by AHCCCS.
- 9.9. Upon termination of the contract, provide all pertinent information including but not limited to claims data, prior authorization data, the prescriber file, and other information as identified by AHCCCS, to the succeeding Contractor or AHCCCS, as directed, at no additional charge to AHCCCS or the new Contractor. This includes but is not limited to:
  - 9.9.1. Developing and working with the new Contractor on the file format for exchanging claims data, prior authorization and other data files as required.
  - 9.9.2. Twenty-four (24) months of historical paid claims, open mail order refills, specialty claims and open prior authorizations, respectively, to any new contractor selected by AHCCCS upon termination of the contract.
  - 9.9.3. All necessary data and information including but not limited to: claims data; prior authorization detail/overrides, and patient profiles, to ensure high quality member care during the transition to a new Contractor.
- 9.10. Provide AHCCCS with access to the adjudication screens of the Contractor's claims adjudication system for claims verification.
- 9.11. **Adjudicate claims for Federal Emergency Services Program (FESP):**
  - 9.11.1. AHCCCS provides emergency health care services through the Federal Emergency Services Program (FESP) for those individuals who cannot establish either US citizenship or qualified alien status (consistent with 8 USC 1611 et seq.) but who meet all other requirements for Title XIX eligibility. The Federal Emergency Services Program does **not** cover prescription medications or over-the-counter products with the exception of a defined pharmacy benefit that is specific to FES members with end stage renal disease (ESRD). Currently, there are approximately 325 FES members with ESRD.
  - 9.11.2. The Contractor shall set up a separate plan for prescription claims adjudication that is specific to the FES end stage renal disease members including but not limited to:
    - 9.11.2.1. A toll-free line for use by members, prescribers, and pharmacy providers that is staffed by the Contractor and able to respond to issues and inquiries specific to the FES population.
    - 9.11.2.2. The ability to upload eligibility data provided by AHCCCS electronically and manually if provided verbally or faxed to the Offeror. The Contractor may need to contact AHCCCS designated staff for verification of eligibility as prescriptions are filled.
    - 9.11.2.3. Development and management of a Drug List specific to FES members with ESRD.
  - 9.11.3. IHS and 638 Pharmacies are excluded from this plan set-up.
- 9.12. **Adjudicate claims for Hemophilia/Blood Disorders** - AHCCCS entered into a contract with a specific provider for pharmaceutical services for members with hemophilia and related blood disorders that are reimbursed at negotiated pricing between AHCCCS and the awarded provider for these services. This negotiated pricing includes the cost, supplies, dispensing and delivery of the medication to the member.

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The Contractor shall:

- 9.12.1. Set-up a separate prescription claims adjudication plan that meets the requirements of the AHCCCS contractual arrangement with the provider.
  - 9.12.2. Establish a pharmacy network, which shall include this provider and others as identified by AHCCCS, for adjudicating hemophilia and related blood disorder claims.
  - 9.12.3. Establish a drug list of hemophilia and related blood disorder medications as identified by AHCCCS.
  - 9.12.4. Upload the AHCCCS negotiated pricing for claims adjudication on a quarterly basis within 24 hours of receiving it from AHCCCS or the provider.
  - 9.12.5. Ensure that the dispensing fee for these drugs will in accordance with the contract between AHCCCS and the Hemophilia Factor Contractor.
  - 9.12.6. Exclude IHS and 638 Pharmacies from this plan set-up.
- 9.13. **340B Rule – FQHC (Federally Qualified Health Centers) & FQHC Look-Alike Pharmacies A.A.C. R-9-22-710C, “FQHC Pharmacy Requirement”** defines the reimbursement methodology to be used by Contractors for FQHC and FQHC Look-Alike Pharmacies and Contract Pharmacies that have entered into a 340B drug purchasing arrangement with any 340B entity. The Contractor shall:
- 9.13.1. Set-up a separate prescription claims adjudication plan that meets the requirements of this rule.
  - 9.13.2. Abide by this rule as amended from time to time.
  - 9.13.3. Upload the 340B Unit Pricing file provided by AHCCCS for adjudicating claims for pharmacies affected by this rule.
  - 9.13.4. Reimburse the 340B prescription claim using the 340B Unit Price plus the Professional Fee, both as identified by AHCCCS.
  - 9.13.5. Apply utilization management edits.
  - 9.13.6. Perform Coordination of benefits and cost avoid prescription claim costs for members with alternate insurance.
  - 9.13.7. Add 340B entity pharmacies as identified by AHCCCS.
  - 9.13.8. Exclude IHS and 638 Pharmacies from this plan set-up.
- 9.14. **IHS and 638 Tribal Pharmacies**
- The Contractor shall:
- 9.14.1. Use expanded eligibility for the IHS and 638 Tribal Pharmacies plan set-ups for reimbursement of the All Inclusive Rate (AIR) and Specialty Drugs noted below:
    - 9.14.1.1. Set up a separate plan for prescription claims adjudication and reimbursement of POS claims in accordance with AHCCCS requirements to reimburse the AIR.
    - 9.14.1.2. Reimburse the AIR up to once daily per member, per IHS/648 pharmacy for the first federally and state covered outpatient reimbursable drug; the maximum reimbursement of 5 AIRs for unduplicated, unique services will include AIR claims reimbursed through the PBM.
    - 9.14.1.3. Provide one fee on the pricing sheet which shall be referred to as the claims transaction/administrative fee a federal and state reimbursable covered outpatient drugs unless the claim rejects or is denied;
      - 9.14.1.3.1. The total number of claims for SFY 2022 submitted to AHCCCS and reimbursed using the AIR methodology was 1.142M;

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- 9.14.1.3.2. The total number of claims for SFY 2022 submitted to AHCCCS that were not paid the AIR but were covered outpatient federal and state reimbursable drugs was 299,246.
      - 9.14.1.4. Reverse claims reimbursed via the AIR when an individual IHS/638 Facility has submitted and been reimbursed 5 AIRs on the same date of service that the prescription claim for the AIR was paid. AHCCCS will identify claim reversals for the Contractor when the IHS/638 Facility has exceeded the 5 AIR reimbursement limit on the same date of service.
        - 9.14.1.4.1. The Drug List for this plan shall not include specialty medications.
        - 9.14.1.4.2. Apply Utilization management edits.
    - 9.14.2. Set up a separate plan for prescription claims adjudication and reimbursement of POS claims for Specialty Drugs in accordance with AHCCCS requirements to reimburse these medications at the Actual Acquisition Cost plus a Dispensing Fee/Professional Fee. The actual acquisition cost is determined as the lesser of the Federal Supply Schedule Unit Price or the Wholesale Acquisition Cost. The Contractor shall:
      - 9.14.2.1. Utilize a Drug List for this plan that only includes specialty medications as defined by AHCCCS.
      - 9.14.2.2. Apply utilization management edits; and
      - 9.14.2.3. Perform Coordination of benefits and cost-avoid prescription claim costs for members with alternate insurance.
    - 9.14.3. The offeror shall confirm that they have access to the Federal Supply Schedule for drugs and that it can be utilized in their point-of-sale adjudication system.
    - 9.14.4. Include all medication utilization in the member's profile including prescription claims adjudicated at the AIR and Specialty Drugs reimbursement rate with IHS Pharmacies, 638 Tribal Pharmacies, and utilization from all other pharmacies in the Contractor's Pharmacy Network for this contract.
- 9.15. **Prior Quarter Coverage**

The Contractor shall:

  - 9.15.1. Allow the AHCCCS staff to manually update eligibility for a member.
  - 9.15.2. Develop the plan set up to include all federally and state reimbursable drug without any utilization edits.
  - 9.15.3. Ensure that AHCCCS staff can enter a previous date for a claims adjudication window.
  - 9.15.4. Have procedures in place to contract with a pharmacy that has an AHCCCS ID but may not be in the Contractor's Pharmacy Network to ensure reimbursement for this plan.
- 9.16. **Dual Eligibles**

The Contractor shall:

  - 9.16.1. Utilize the AHCCCS eligibility file to identify members eligible or enrolled in Medicare. AHCCCS flags these members on the eligibility file.
  - 9.16.2. Develop a plan set-up that includes a drug list of Over-The-Counter products and drugs specifically excluded from Medicare Part D plans by CMS as identified by AHCCCS.
  - 9.16.3. Develop a plan set-up for Medicare Part B claims. AHCCCS is the secondary or tertiary, etc. payer on Medicare Part B claims. AHCCCS will reimburse pharmacies up to 20% of the Medicare Part B claim. The secondary payment plus the primary payment of a



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Medicare Part B claim can be no greater than if AHCCCS had paid the claim as the primary payer.

9.16.4. Ensure that Medicare Part D claims are not adjudicated as secondary claims processed through the coordination of benefits process. Federal and State monies are prohibited from being used to pay for copayments or cost sharing of Medicare Part D prescription claims.

9.16.5. IHS and 638 Pharmacies are included in the Dual Eligible plan set-up for Over-The-Counter medications which are paid as primary claims.

### 9.17. **TRBHA Behavioral Health**

The Contractor shall:

9.17.1. Utilize the AHCCCS eligibility file to identify members enrolled in the TRBHA Plan.

Members may be enrolled in AHCCCS FFS and also enrolled in the TRBHA Plan.

9.17.2. Develop a plan set-up that includes a drug list of Behavioral Health Drugs.

9.17.3. Apply utilization management edits.

9.17.4. Perform coordination of benefits and cost-avoid prescription claims costs for members with alternate insurance.

### 9.18. **AHCCCS FFS Acute Care**

The Contractor shall:

9.18.1. Utilize the AHCCCS eligibility file to identify members enrolled in the FFS Acute plan.

Members may be enrolled in this plan and also enrolled in the TRBHA plan.

9.18.2. Develop a plan set-up that includes a drug list specific to the Acute Care Plan.

9.18.3. Apply utilization management edits.

9.18.4. Perform Coordination of benefits and cost-avoid prescription claim costs for members with alternate insurance.

9.18.5. Exclude IHS and 638 Pharmacies from this plan set-up as they will have their own plan set-up.

### 9.19. **AHCCCS Long Term Care (LTC)**

The Contractor shall:

9.19.1. Utilize the AHCCCS eligibility file to identify members enrolled in the FFS LTC plan

9.19.2. Develop a plan set-up that includes a drug list specific to the LTC plan.

9.19.3. Apply utilization management edits.

9.19.4. Perform Coordination of benefits and cost-avoid prescription claim costs for members with alternate insurance.

9.19.5. Exclude IHS and 638 Pharmacies from this plan set-up as they will have their own plan set-up.

### 9.20. **KidsCare Title XXI**

The Contractor shall:

9.20.1. Utilize the AHCCCS eligibility file to identify members enrolled in the KidsCare plan.

Members may be enrolled in this plan and also enrolled in the TRBHA plan.

9.20.2. Develop a plan set-up that includes a drug list specific to the KidsCare Program.

9.20.3. Ensure that IHS and 638 Pharmacies are included in this plan set-up to adjudicate prescription claims under this program.

9.20.4. Apply utilization management edits.

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- 9.20.5. Perform Coordination of benefits and cost-avoid prescription claim costs for members with alternate insurance.
- 9.20.6. The IHS/638 Pharmacies shall be included in the KidsCare plan set-up and shall be reimbursed the guaranteed contractual rate the Contractor has provided on the pricing sheet for their non-IHS/638 pharmacy network. IHS/638 Pharmacy shall not be paid the AIR for medications dispensed to KidsCare members.

### 10. NETWORK MANAGEMENT

The Contractor shall:

- 10.1. Agree that AHCCCS will have full authority to add pharmacies to the network as needed.
- 10.2. Add a pharmacy that has an AHCCCS ID number to the network immediately for urgent situations.
- 10.3. Develop a statewide pharmacy network and other AHCCCS registered pharmacies in the surrounding states.
- 10.4. Verify with each prescription claim adjudication that the pharmacy provider and ordering provider is AHCCCS registered and the NPI is valid. AHCCCS shall provide the Contractor with a monthly Provider File.
- 10.5. Implement measures to recover overpayments made to pharmacies and employ a mechanism to ensure that AHCCCS receives credit for these overpayments. Details of threshold recovery levels will be finalized at the time of the contract award.
- 10.6. Provide a program to annually audit 100% of the network pharmacies that have processed a minimum of 500 prescriptions. All audit recoveries shall be returned to AHCCCS. The audit tool must be able to identify submission errors, waste, fraud, and abuse at no additional charge to AHCCCS.
- 10.7. Ensure network pharmacies meet CMS requirements, for example, for Long Term Care Pharmacies.

### 11. MEMBERS SERVICES

The Contractor shall:

- 11.1. Provide customer service to AHCCCS members, pharmacy providers and prescribing clinicians that include, but are not limited to the provisions of:
  - 11.1.1. A single front-end, toll-free number with touch tone routing, for members with questions concerning their prescription (retail, mail, or specialty), to refill a mail order or specialty prescription, to check on a mail order or specialty prescription, etc.
  - 11.1.2. A voice response system with a user-friendly menu and alternative language options in accordance with federal regulation Section 1557 of the Affordable Care Act (or access to language translation services), and must be available 24 hours a day, 7 days a week, 365 days a year, as part of the base administrative fees with no additional cost to AHCCCS.
- 11.2. Provide a designated, trained Customer Service Center team for AHCCCS with electronic access to their eligibility system, mail order claims, and claims history. At a minimum, this designated team must be responsible for:
  - 11.2.1. Accepting all calls from AHCCCS members between the hours of 7 a.m. and 9 p.m. Arizona Time Monday through Friday, 8 a.m. to 5 p.m. Arizona Time and Saturday, Sunday, and holidays.

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- 11.3. Provide Customer Service representatives that are trained on the AHCCCS Prescription Benefit Plans.
- 11.4. Ensure that people with limited English proficiency and those who are deaf or hearing impaired have access to communication services that enable members to utilize the phone lines.
- 11.5. Submit copies of all member communication materials and promotional materials to AHCCCS. All such materials shall be approved in writing by AHCCCS. Materials include; but, are not limited to: notification letters; error/correction letters; form letters for additions or changes to the network; newsletters; or any material distributed to 100 or more plan members, unless the letter is in reference to an urgent drug recall.
- 11.6. Prepare and cover cost of design, production and mailing of all announcements, letters, notices, brochures, forms, and other supplies and services for US mail distribution to members. Contractor shall provide customized member communication materials during transition and implementation activities.
- 11.7. Provide member support specific to AHCCCS' plan design, including new member packets, handbooks, as part of the base administrative fees and at no additional charge to AHCCCS.
- 11.8. Provide materials as part of the base administrative fees and at no additional cost to AHCCCS.

## 12. DATA AND SYSTEMS

The Contractor shall:

- 12.1. Absorb all programming costs associated with data file transfers in current data file compliant formats.
- 12.2. Accept the data transmissions requirements in this section from AHCCCS or designated plans as currently transmitted and agree there will be no additional fees to establish the interface and/or any other IT services in the initial set up or to accept changes to the file layout during the contract term:
  - 12.2.1. Eligibility verification, which is also available online through the Division of Member Services, IVR and Web.
  - 12.2.2. Prescription claims extract sent at a minimum biweekly in the NCPDP post Adjudication History (PAH) version 2.2 format.
- 12.3. Accept, process, and apply within 24 hours, a monthly 834 full eligibility file.
- 12.4. Accept, process, and apply within 12 hours, a daily 834 eligibility update file.
- 12.5. Accept, process, and reconcile the 5010 835 electronic remittance advice against submitted claims.
- 12.6. Perform concurrent electronic interface with the AHCCCS member eligibility database. Files are available on the AHCCCS server for access by the Contractor.
- 12.7. Make all data available to AHCCCS in an electronic format mutually agreeable to the Contractor and AHCCCS.
- 12.8. Work with AHCCCS to identify opportunities to improve data transmission requirements that will result in improved operational efficiencies and program effectiveness.
- 12.9. Provide online, unlimited eligibility updating and entry capabilities for authorized AHCCCS staff.
- 12.10. Conduct manual eligibility updates at no charge to AHCCCS.

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- 12.11. Have available the following online tools and services, updated at least quarterly to ensure the accuracy of the information, for members and providers as applicable:
  - 12.11.1. Mail order status and refill.
  - 12.11.2. Retail network pharmacies locator.
  - 12.11.3. Co-payment information.
  - 12.11.4. Drug List search, alphabetically, by therapeutic class and including suggested alternatives for non-preferred and generic substitution.
  - 12.11.5. Downloadable prior authorization forms.
  - 12.11.6. E-prescribing interface tools.
  - 12.11.7. Step therapy protocols.
- 12.12. Allow access to its point-of-sale system to up to three (3) authorized representatives of AHCCCS to assist in adjudication of claims, including real-time viewing and issuing of prior authorization, real-time viewing of submitted claims (denied and adjudicated), and various reference screens. The materials must be printable from the AHCCCS website.

### 13. REPORTING REQUIREMENTS

- 13.1. The Contractor shall maintain records in such a manner that allow reporting of claims submitted by providers. Standard and ad hoc reports shall be provided via a secured website (by SFTP and loaded in PMMIS and the data warehouse). Standard Reporting Package: List the package of standard clinical and financial reports that the Contractor plans to provide to AHCCCS including but not limited to elements, frequency, and format of report. Include samples.
- 13.2. The Contractor must provide a series of management reports to the AHCCCS Director of Pharmacy, no later than ten (10) business days following the last calendar day of each month providing activity detailed summaries and results from the previous month, quarterly and/or annually. The Contractor shall submit a listing of standard clinical and financial reports that address utilization by:
  - 13.2.1. Members
  - 13.2.2. Prescribers
  - 13.2.3. Pharmacy Providers
  - 13.2.4. Therapeutic Classes & Specific DUR (i.e. Controlled Substances)
  - 13.2.5. Prior Authorization Requests, Denials & Outcomes
  - 13.2.6. Plan Overview
  - 13.2.7. Specific opioid use reports including but not limited to the MEDD and short & long-acting opioid utilization.
  - 13.2.8. Expenditures & Trending and actual Plan savings (Retail, Mail, Specialty scripts) related to benchmarks that are mutually determined between the Contractor and AHCCCS after the contract award.
- 13.3. If applicable or requested, the Contractor shall submit the following rebate report quarterly to the AHCCCS Director of Pharmacy that includes:
  - 13.3.1. NDC of the Drug
  - 13.3.2. Drug Name and Strength
  - 13.3.3. Total Quantity Dispensed
  - 13.3.4. Total Number of Prescriptions

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- 13.4. Data must be submitted electronically, according to the agreed upon standards designated by AHCCCS and be made available electronically and conform to HIPAA data exchange standards once finalized.
- 13.5. The Contractor shall provide access for five (5) user IDs to AHCCCS and each Sister State Agency to access the Contractor's web-enabled online reporting tools as part of the base administrative fees with no additional charge.
- 13.6. In the event that AHCCCS cannot pull the data necessary from the web enabled online reporting tools, AHCCCS may request reports throughout the contract period to meet its needs based on plan adjustment, legislative inquiries, or fund review. The Contractor shall provide such reports as soon as possible upon receipt of the request and no greater than 15 business days.
- 13.7. Produce and deliver standard clinical and financial reports electronically upon request in an agreed upon format to AHCCCS.
- 13.8. Monitor specialty drug utilization and refill adherence data to identify opportunities to minimize waste. Such activities must be reported to AHCCCS on a quarterly basis.
- 13.9. Provide supporting reports on a quarterly basis to demonstrate the activity of this network-auditing program.
- 13.10. 90-Day Transition Plan: Provide a transition plan to begin implementation services prior to the operational period (which starts October 1, 2024) in order to prepare for program administration (e.g., data file transfer arrangements, contractor coordination, communication, and so forth). The Contractor will include how it will minimize impact to FFS members.
- 13.11. Plan Document: Describe the Plan Document that the Contractor will use to provide all pertinent details of the prescription plan benefit and including all changes.
- 13.12. Claim System Downtime: Provide procedures for the notification process for claim system downtime.
- 13.13. Provide the:
  - 13.13.1. MAC List(s) must be provided quarterly to AHCCCS.
  - 13.13.2. Claims Adjudication Process Flow.
  - 13.13.3. Current Standard Drug List and Utilization Management Requirements.
  - 13.13.4. Prior Authorization Process Flow and Three Prior Authorization Criteria Examples.
  - 13.13.5. State of Arizona Pharmacy Network Listing in Excel quarterly or when pharmacies are added or deleted.
  - 13.13.6. Pharmacy and Therapeutics Drug Review Process and Two Recent Drug Monograph Examples
  - 13.13.7. Supporting reports on a quarterly basis to demonstrate the activity of this network-auditing program.
  - 13.13.8. Business continuity and disaster recovery plans.
- 13.14. The half-time (20 hours per week) dedicated financial analyst shall work with AHCCCS FFS and AHCCCS Contractors' drug utilization to provide reports requested by AHCCCS.

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### 14. PERFORMANCE GUARANTEES

- 14.1. The Contractor shall provide competitive Implementation and Aggregate Performance Service Guarantee values in which the Contractor takes full financial risk for unsatisfied guarantees. The Contractor must place annual penalties at-risk for successfully maintaining Operational Performance Guarantees. Refer to Attachment 3: Performance Guarantees Matrix, which describes the guarantees, proof of performance, measurement, timeframes, and penalties.
- 14.2. The Contractor shall immediately take corrective steps and/or provide a written plan of action that clearly outlines the corrective steps and timeframes for completion when services do not meet industry standards (standards that are inappropriate, undesirable, and/or poor-quality services as identified by AHCCCS). The corrective action plan must be approved by AHCCCS.
- 14.3. The resources needed to correct services that do not meet industry and AHCCCS quality standards shall be provided at no additional cost to AHCCCS.
- 14.4. Any changes to any written policies or procedures as a result of the corrective steps that are used in administration of this contract must be approved by AHCCCS in advance of implementation. A written notification shall be submitted to AHCCCS describing any proposed changes and the reason for the change.

### 15. AUDIT

- 15.1. The Contractor must provide operational, audit and financial information necessary for the agency to validate and confirm that the Contractor has met pricing guarantees as specified in this contract.
- 15.2. The Contractor must provide their audit process for all contracted pharmacies.

### 16. SISTER AGENCIES

The Contractor shall enter into subcontractor agreements with Arizona State Sister Agencies under this AHCCCS PBM contract.

At present, the Department of Economic Security (DES) intends to utilize this contract for the Division of Developmental Disability (DDD) and State-Operated Facilities members. The Contractor shall prepare and submit the encounter file to DDD in the format as specified by AHCCCS. The Contractor shall provide the encounter file at no additional charge. The Contractor shall update the encounter file for no additional charge when requested by AHCCCS. The encounter file shall be submitted to DDD monthly or as required by DDD.

Other populations may be added and agreed to by both the Contractor and the individual State Agency. Each subcontractor agreement with another State Agency shall be sent to the AHCCCS Procurement Officer after execution for the file.

# SPECIAL TERMS AND CONDITIONS

## [Special Terms and Conditions](#)

### 1. **Term of Contract and Option to Renew:**

- 1.1. The initial terms of this contract shall be for three (3) initial years with two (2) one-year options to extend, not to exceed a total contracting period of five (5) years. 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.
- 1.2. When the Procurement officer issues an amendment to extend the contract, the provisions of such extension will be deemed to have been accepted 60 days after the date of mailing by the Procurement officer, even if the extension amendment has not been signed by the Contractor, unless within that time the Contractor notifies the Procurement officer in writing that it refuses to sign the extension amendment. If the Contractor provides such notification, the Procurement officer will initiate contract termination proceedings.
- 1.3. 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 with 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.

### 2. **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.

### 3. **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.

### 4. **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.

### 5. **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:

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- 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 in 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. The Procurement officer may resort to any single or combination of the following remedies:
    - 5.5.1. Cancel any contract;
    - 5.5.2. Reserve all rights or claims to damage for breach of any covenants 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 non-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 combinations of the above or any other remedies as provided by law.
6. **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
- 6.1. The Contractor provides material that does not meet the specifications of the contract;
  - 6.2. The Contractor fails to adequately perform the services set forth in the specifications of the contract;
  - 6.3. The Contractor fails to complete the work required or furnish the materials required within the time stipulated by the contract;
  - 6.4. 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;
  - 6.5. 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 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.
    - 6.5.1. Cancel any contract;
    - 6.5.2. Reserve all rights or claims to damage for breach of any covenant of the contract;



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- 6.5.3. 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;
  - 6.5.4. 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:
    - 6.5.4.1. Deduction from an unpaid balance;
    - 6.5.4.2. Collection against the bid and/or performance bond; or
    - 6.5.4.3. Any combination of the above or any other remedies as provided by law.
7. **Contract Disputes:** Contract disputes arising under A.R.S. § Title 36, Chapter 29 shall be adjudicated in accordance with AHCCCS Rules.
8. **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.
9. **Confidentiality of Records and Disclosure of Confidential Information:**
- 9.1. 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.
  - 9.2. 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.
  - 9.3. 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.

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9.4. 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.

**10. 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.

**11. Contract Order of Precedence:**

11.1. The parties to this contract shall be bound by all terms and conditions contained herein. For interpreting such terms and conditions the following sources shall have precedence in descending order: The Constitution and laws of the United States and applicable Federal regulations; the terms of the CMS Section 1115 waiver for the State of Arizona; the Arizona State Plan; the Constitution and laws of Arizona, and applicable State Rules; the terms of this Contract which consists of the RFP, the Proposal of the Successful Offeror, and any Best and Final Offer including any attachments, executed amendments and modifications; and AHCCCS policies and procedures.

11.2. The Contract consists of the following, in order of Precedence:

11.2.1. HIPAA Business Associates Agreement or Addendum (if included)

11.2.2. Contract Amendments issued after award in descending order;

11.2.3. Special Terms and Conditions;

11.2.4. Uniform Terms and Conditions;

11.2.5. Statement or Scope of Work;

11.2.6. Specifications;

11.2.7. Attachments;

11.2.8. Exhibits;

11.2.9. Documents referenced or included in the Solicitation as may be amended.

11.2.10. AHCCCS policies and procedures incorporated by reference.

11.2.11. The proposal submitted by the Contractor in response to the RFP including any Best and Final Offers.

11.3. In the event of a conflict in language between the Offeror's 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.

11.4. 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.

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### **12. Administrative Changes**

The Procurement Officer, or authorized designee, reserves the right to correct any obvious clerical, typographical or grammatical errors, as well as errors in party contact information (collectively, "Administrative Changes"), prior to or after the final execution of a Contract or Contract Amendment. Administrative Changes subject to permissible corrections include: misspellings, grammar errors, incorrect addresses, incorrect Contract Amendment numbers, pagination and citation errors, mistakes in the labeling of the rate as either extended or unit, and calendar date errors that are illogical due to typographical error. The Procurement Office shall subsequently notice the Contractor of corrections to administrative errors in a written confirmation letter with a copy of the corrected Administrative Change attached.

### **13. Fraud and Abuse:**

- 13.1. 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.
- 13.2. 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.
- 13.3. 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.

### **14. 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.

### **15. 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.

### **16. 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

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making of any federal or State grant, the making of any 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.

**17. No Guaranteed Quantities:**

AHCCCS does not guarantee the Contractor any minimum or maximum quantity of services or goods to be provided under this contract.

**18. 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.

**19. Ownership of Information and Data:**

19.1. 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.

19.2. 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.

19.3. 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.

## SPECIAL TERMS AND CONDITIONS

### 20. **Records:**

- 20.1. 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.
- 20.2. 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.
- 20.3. 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:
  - 20.3.1. 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.
  - 20.3.2. 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.
  - 20.3.3. Completed case files shall be scheduled for archive shipment to AHCCCS, as defined by AHCCCS Policy and Procedures.

21. **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.

### 22. **Transitions:**

During commencement, Contractor shall attend transition meetings with any outgoing suppliers to coordinate and ease the transition so that the impact on State's operations is kept to a minimum. State may elect to have outgoing suppliers complete some or all of their Work or Orders in progress, even if that Work could be covered under the incoming supplier's Contract. Conversely, the State may have a continued need for the same Materials and Services upon expiration or earlier termination of the Contract. Accordingly, Contractor shall work closely with any incoming supplier and State to ensure as smooth and complete a transition transfer as is practicable.

# Addendum A to Special Terms and Conditions Insurance Requirements

## [Addendum A to the Special Terms and Conditions \(Insurance\)](#)

### 1. **Insurance Requirements**

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.

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.

### 2. **Minimum Scope and Limits of Insurance**

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

#### 2.1 **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

- a. 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.
- 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.

#### 2.2 **Business Automobile Liability**

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

- Combined Single Limit (CSL) \$1,000,000

- a. 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 involving automobiles owned, hired and/or non-owned by the Contractor.

## **Addendum A to Special Terms and Conditions Insurance Requirements**

- 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.

### **2.3 Workers' Compensation and Employers' Liability**

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

- a. 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.
- b. 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).

### **2.4 Professional Liability (Errors and Omissions Liability)**

- Each Claim \$2,000.000
- Annual Aggregate \$2,000.000

- a. In the event that the Professional Liability insurance required by this Contract is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of this Contract and, either continuous coverage will be maintained, or an extended discovery period will be exercised, for a period of two (2) years beginning at the time work under this Contract is completed.
- b. The policy shall cover professional misconduct or negligent acts for those positions defined in the Scope of Work of this contract.

#### Additional Insurance Requirements

The policies shall include, or be endorsed to include, as required by this written agreement, the following provisions:

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).

Insurance provided by the Contractor shall not limit the Contractor's liability assumed under the indemnification provisions of this Contract.

## **Addendum A to Special Terms and Conditions Insurance Requirements**

### **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 shall 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 mailed, emailed, hand delivered or sent by facsimile transmission to AHCCCS.

### **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.

If the Contractor utilizes the Social Service Contractors Indemnity Pool ("SSCIP") or other prior approved insurance pool for insurance coverage, SSCIP or the other prior approved insurance pool is exempt from the A.M. Best's rating requirements listed in this section. If the Contractor chooses to use SSCIP or another approved insurance pool as its insurance provider, the Contractor would be considered in full compliance with insurance requirements relating to the A.M. Best rating requirements.

### **5. Verification of Coverage**

Contractor shall furnish the State of Arizona 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.

All such certificates of insurance and policy endorsements shall 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.

Each insurance policy required by this Contract shall 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.

All certificates required by this Contract shall be sent directly to AHCCCS. The State of Arizona project/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.



## **Addendum A to Special Terms and Conditions Insurance Requirements**

**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**

AHCCCS, 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.

## **Addendum B to Special Terms and Conditions IT Security Requirements**

### [Addendum B to the Special Terms and Conditions \(IT Security\)](#)

#### **Warranties and Requirements Related to Arizona Information Technology Statewide Policies, Standards, and Procedures**

1. Security Standards
  - 1.1. Security of the State's systems and data are of **utmost** importance to the State. In order to assure security from a personnel and operations perspective, Contractor shall comply with all requirements, in their entirety, as described in the statewide enterprise architecture; statewide Information Technology security policies, standards, and procedures; and any applicable agency-specific Information Technology security policies, standards, and procedures.
  - 1.2. Contractor shall follow the correct, current version of these policies, standards, and procedures. The current website for some of these policies, standards, and procedures is: [Information Technology Policies, Standards and Procedures](#). Note that this link is provided for convenience only.
  - 1.3. For security reasons, some state facilities require non-state personnel to have escorts. If required by the state facility, Contractor personnel shall only be allowed inside of a State facility if accompanied by an escort designated by the State. This is applicable in Correctional facilities, Public Safety facilities, State Lottery, and other facilities as designated by the State.
  
2. Security Framework
  - 2.1. The State of Arizona information security policies and standards follow the National Institute of Standards and Technology (NIST) Cyber Security Framework (CSF) and NIST SP 800-53 Rev. 5 Security and Privacy Guidelines may currently be located at: <https://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800-53r5.pdf>.
  - 2.2. The State has established a process to assess risk associated with storing, processing and/or transmitting State of Arizona data with external, non-State of Arizona, entities. The Arizona Risk and Authorization Management Program (AZRamp) was developed to ensure State and contractors meet these requirements. All contractors responding to State solicitations must successfully complete the AZRamp risk assessment based upon the data classification involved as determined by the data owner and Arizona Strategic Enterprise Technology (ASET) Department. Failure to successfully complete AZRamp assessment will be deemed as breach of contract.
  - 2.3. In the State's sole discretion, the State may also accept current FedRamp and StateRamp certifications as evidence that the Contractor has met the State's risk assessment requirements.
  - 2.4. Other forms of Cybersecurity Frameworks (CSF), Trust Documents, Self-Attestations, including, but not limited to, ISO/IEC, SOC 2 & 3, PCI, or HIPAA reports of compliance, may be reviewed as part of the State's risk assessment, but are not exclusive or conclusive evidence that the Contractor has met the State's risk assessment requirements.

## Addendum B to Special Terms and Conditions

### IT Security Requirements

3. Additional Security Requirements
  - 3.1. Contractor shall comply with all security requirements requested by the State.
  - 3.2. If an Arizona Risk and Authorization Management Program (AZRamp) is required, it will generally follow these steps, each of which shall be completed by the Contractor upon request by the State:
    - 3.2.1. Contractor shall submit a completed Arizona Baseline Infrastructure Security Controls assessment spreadsheet with its Offer. The Arizona Baseline Infrastructure Security Controls assessment spreadsheet as found at: <https://azdohs.gov/file/4357>, and mitigate gaps or install compensating controls for any issues of concern identified by State.
    - 3.2.2. Contractor shall provide Information Security documentation for the AZRamp assessment to include System Security Plan (SSP), Written Information Security Programs (WISP), or supporting written IT policies for review of the assessment.
    - 3.2.3. Note regarding the confidential treatment of Contractor information:
      - 3.2.3.1. The State of Arizona seeks a partnership with our supporting vendors, therefore, Non-Disclosure Agreements (NDA) for release to review submitted SSP's, WISP 's, or written IT policies will not be considered.
      - 3.2.3.2. Submitted SSP's, WISP's, or written IT policies are deleted and not retained after AZRamp Authorization is granted.
      - 3.2.3.3. Procedures for submission of documents considered confidential or proprietary are identified within this RFP.
      - 3.2.3.4. Special secure transfer of documents related to this AZRamp review process may be made by contacting: AsetAssurance@azdoa.gov to make special arrangements for the transfer of these documents.
    - 3.2.4. If applicable to this Solicitation, Contractor shall complete and submit with the Offer an unedited and signed State of Arizona Health Insurance Portability and Accountability Act (HIPAA) Business Associate Addendum (BAA).
    - 3.2.5. All contract awards are contingent on the successful completion of the AZRamp 125 Low Impact (public information) or the AZRamp 325 Moderate (Confidential, PII, or PHI) Impact Control spreadsheet titled "Arizona Infrastructure Security Controls 2017 (Excel)," to be determined by the Enterprise Security, Privacy & Risk Compliance team. Low (Column E) and Moderate (Column F) Impact controls spreadsheet can be located here: <https://azdohs.gov/file/4356>.
  - 3.3. The State reserves the right to conduct risk assessments, vulnerability assessments, black-box penetration tests or hire a third party to conduct risk assessments, vulnerability assessments, and black-box penetration tests of the Contractor's environment. Contractor will be alerted in advance and arrangements made for an agreeable time. Contractor shall respond to all flaws deemed serious by the State when discovered by providing an acceptable timeframe to resolve the issue and/or implement a compensating control(s).
  - 3.4. Upon request, Contractor shall submit copies of system logs from Contractor's environment to the State of AZ security team in the format requested to be added to the State SIEM (Security Information Event Monitor) or IDS (Intrusion Detection System).

## Addendum B to Special Terms and Conditions IT Security Requirements

- 3.5. Contractor shall comply with all applicable State and Federal laws and regulations, including, but not limited to, the following (please note that the links are provided for convenience only and may change):
- 3.5.1. State of Arizona statewide policies, standards and procedures: <https://azdohs.gov/information-technology-it-policies-standards-and-procedures>;
  - 3.5.2. Federal Information Security Modernization Act of 2014 (FISMA): <https://csrc.nist.gov/topics/laws-and-regulations/laws/fisma>;
  - 3.5.3. OMB Circular A-130: <https://www.federalregister.gov/documents/2016/07/28/2016-17872/revision-of-omb-circular-no-a-130-managing-information-as-a-strategic-resource>;
  - 3.5.4. National Cyber Strategy of the United States of America: <https://www.cisa.gov/executive-order-strengthening-cybersecurity-federal-networks-and-critical-infrastructure>;
  - 3.5.5. Health Insurance Portability and Accountability Act (HIPAA) including Business Associate Agreement/ Health Information Technology for Economic and Clinical Health Act (HITECH): <https://www.hhs.gov/hipaa/index.html>;
  - 3.5.6. Tax Information Security Guidelines For Federal, State and Local Agencies: Safeguards for Protecting Federal Tax Returns and Return Information (I.R.S. Publication 1075): <https://www.irs.gov/pub/irs-pdf/p1075.pdf>;
  - 3.5.7. Criminal Justice Information Services Security Policy (CJIS): <https://www.fbi.gov/services/cjis/cjis-security-policy-resource-center>;
  - 3.5.8. Centers for Medicare & Medicaid Services (CMS), Minimum Acceptable Risk Standards for Exchanges (MARS-E): <https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/2-MARS-E-v2-0-Minimum-Acceptable-Risk-Standards-for-Exchanges-11102015.pdf>;
  - 3.5.9. A.R.S. Title 41, Chapter 41. Arizona Department of Homeland Security;
  - 3.5.10. A.R.S. §18-104 - Arizona Department of Administration, Arizona Strategic Enterprise Technology (ADOA-ASET), Powers and duties of the agency: <https://www.azleg.gov/arsDetail/?title=18>;
  - 3.5.11. A.R.S. §18-105 - Statewide Information Security and Privacy Office (SISPO): <https://www.azleg.gov/viewdocument/?docName=http%3A//www.azleg.gov/ars/18/00105.htm>;
  - 3.5.12. A.R.S. §18-551 - Definitions Information Security Including PII: <https://www.azleg.gov/ars/18/00551.htm>;
  - 3.5.13. A.R.S. §18-552 - Notification of security system breaches; requirements; enforcement; civil penalty; preemption; exceptions: <https://www.azleg.gov/ars/18/00552.htm>;
  - 3.5.14. Arizona Executive Order 2008-10 – Mitigating Cyber Security Threats: <https://aset.az.gov/node/192>;
  - 3.5.15. SIPC Memorandum of Understanding (MOU): <https://www.sipc.org/about-sipc/>;
  - 3.5.16. State Environmental policies: <https://azdeq.gov/LawsAndRules>;

## **Addendum B to Special Terms and Conditions IT Security Requirements**

- 3.5.17. Family Education Rights Privacy Act (FERPA):  
<https://www2.ed.gov/policy/gen/guid/fpco/ferpa/index.html?src=rn>;
- 3.5.18. Driver's Privacy Protection Act (DPPA): <https://azdot.gov/motor-vehicles/driver-services/driver-license-information/motor-vehicle-records>;
- 3.5.19. Incident Response Reporting program and system:  
[https://aset.az.gov/sites/default/files/P8240%20Incident%20Response%20Planning\\_Sept2018\\_0.pdf](https://aset.az.gov/sites/default/files/P8240%20Incident%20Response%20Planning_Sept2018_0.pdf);
- 3.5.20. Privacy Incident Reporting policy and standards:  
<https://aset.az.gov/sites/default/files/STANDARD%208240%20INCIDENT%20RESPONSE%20PLANNING.pdf>;
- 3.5.21. State of Arizona Library, Archives and Public Records, Records Management Division, General Retention Schedules <https://azlibrary.gov/arm/policies>; and
- 3.5.22. Payment Card Industry (PCI) Security Standards including but not limited to Supplemental Documents, Information Supplements and Validation Requirements:  
<https://www.pcisecuritystandards.org>

# UNIFORM TERMS AND CONDITIONS

## Uniform Terms and Conditions

Version 10.4

1. Definition of Terms. Reserved
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. 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.
  - 2.4. 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.
  - 2.5. No Parol 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.
  - 2.6. 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 any and all Data and other "records" relating to the acquisition and performance of the Contract for a period of five (5) 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 Nos. 2023-09, 2023-01, 2009-09, and any and all other applicable Federal and State laws, rules and regulations, including the Americans with Disabilities Act. Contractor shall include these provisions in contracts with Subcontractors when required by Federal or State law.
  - 3.3. Audit. Pursuant to A.R.S. § 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.

## UNIFORM TERMS AND CONDITIONS

- 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 as required under A.R.S. § 41-2547. 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 non-compliance 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, stated in the Contract, or listed on the State's eProcurement system. 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. Continuous Improvement. Contractor shall recommend continuous improvements on an on-going basis in relation to any Materials and Services offered under the Contract, with a view to reducing State costs and improving the quality and efficiency of the provision of Materials or Services. State may require Contractor to engage in continuous improvements throughout the term of the Contract.
- 3.8. Other Contractors. State may undertake on its own or award other contracts to the same or other suppliers for additional or related work. In such cases, the Contractor shall cooperate fully with State employees and such other suppliers and carefully coordinate, fit, connect, accommodate, adjust, or sequence its work to the related work by others. Where the Contract requires handing-off Contractor's work to others, Contractor shall cooperate as State instructs regarding the necessary transfer of its work product, Materials, Services, or records to State or the other suppliers. Contractor shall not commit or permit any act that interferes with the State's or other suppliers' performance of their work, provided that, State shall enforce the foregoing section equitably among all its suppliers so as not impose an unreasonable burden on any one of them.
- 3.9. Ownership of Intellectual Property
- 3.9.1. Rights In Work Product. All intellectual property originated or prepared by Contractor pursuant to the Contract, including but not limited to, inventions, discoveries, intellectual copyrights, trademarks, trade names, trade secrets, technical communications, records reports, computer programs and other documentation or improvements thereto, including Contractor's administrative communications and records relating to the Contract, are considered work product and Contractor's property, provided that, State has Government Purpose Rights to that work product as and when it was delivered to State.
- 3.9.2. "Government Purpose Rights" are:
- 3.9.2.1. the unlimited, perpetual, irrevocable, royalty free, non-exclusive, worldwide right to use, modify, reproduce, release, perform, display, sublicense, disclose

## UNIFORM TERMS AND CONDITIONS

- and create derivatives from that work product without restriction for any activity in which State is a party;
    - 3.9.2.2. the right to release or disclose that work product to third parties for any State government purpose; and
    - 3.9.2.3. the right to authorize those to whom it rightfully releases or discloses that work product to use, modify, release, create derivative works from the work product for any State government purpose; such recipients being understood to include the federal government, the governments of other states, and various local governments.
  - 3.9.3. "Government Purpose Rights" do not include any right to use, modify, reproduce, perform, release, display, create derivative works from or disclose that work product for any commercial purpose, or to authorize others to do so.
  - 3.9.4. Joint Developments. The Contractor and State may each use equally any ideas, concepts, know-how, or techniques developed jointly during the course of the Contract, and may do so at their respective discretion, without obligation of notice or accounting to the other party.
  - 3.9.5. Pre-existing Material. All pre-existing software and other Materials developed or otherwise obtained by or for Contractor or its affiliates independently of the Contract or applicable Purchase Orders are not part of the work product to which rights are granted State under subparagraph 3.9.1 above, and will remain the exclusive property of Contractor, provided that:
    - 3.9.5.1. any derivative works of such pre-existing Materials or elements thereof that are created pursuant to the Contract are part of that work product;
    - 3.9.5.2. any elements of derivative work of such pre-existing Materials that was not created pursuant to the Contract are not part of that work product; and
    - 3.9.5.3. except as expressly stated otherwise, nothing in the Contract is to be construed to interfere or diminish Contractor's or its affiliates' ownership of such pre-existing Materials.
  - 3.9.6. Developments Outside Of Contract. Unless expressly stated otherwise in the Contract, this Section does not preclude Contractor from developing competing Materials outside the Contract, irrespective of any similarity to Materials delivered or to be delivered to State hereunder.
- 3.10. Property of the State. If there are any materials that are not covered by Section 3.9 above created under this Contract, including but not limited to, reports and other deliverables, these materials 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.
- 3.11. Federal Immigration and Nationality Act. 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, 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.



## UNIFORM TERMS AND CONDITIONS

Should the State determine that the Contractor 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 or debarment of the contractor.

- 3.12. 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 Section A.R.S. § 23- 214, Subsection A.
  - 3.13. Offshore Performance of Work involving Data is 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 Data shall be performed within the defined territories of the United States.
  - 3.14. Protection of State Cybersecurity Interests. The Contractor shall comply with State Executive Order No. 2023-10, which includes, but is not limited to, a prohibition against
    - (a) downloading and installing of TikTok on all State-owned and State-leased information technology;
    - and (b) accessing TikTok through State information technology.
  - 3.15. Certifications Required by State Law.
    - 3.15.1. If Contractor is a Company as defined in A.R.S. § 35-393, Contractor certifies that it is not currently engaged in a boycott of Israel as described in A.R.S. §§ 35-393 *et seq.* and will refrain from any such boycott for the duration of this Contract.
    - 3.15.2. Contractor further certifies that it shall comply with A.R.S. § 35-394, regarding use of the forced labor of ethnic Uyghurs, as applicable.
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 Materials 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, per A.R.S. § 47-2319, all prices shall be F.O.B. (“free on board”) 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.

## UNIFORM TERMS AND CONDITIONS

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 Materials 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.

### 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 Services or Materials, the revision of payment terms, or the substitution of Services 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 as described in Arizona State Procurement Office Standard Procedure 002. 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 Materials covered under this Contract until received by authorized personnel at the location designated in the purchase order or Contract. Mere receipt does not constitute final acceptance. The risk of loss for nonconforming Materials shall remain with the Contractor regardless of receipt.

#### 6.2. Indemnification

6.2.1. Contractor/Vendor Indemnification (Not Public Agency). 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")

## UNIFORM TERMS AND CONDITIONS

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 Subcontractor(s) is/are an agency, board, commission or university of the State of Arizona.

6.2.2. Public Agency Language Only. Each party (as 'indemnitor') agrees to indemnify, defend, and hold harmless the other party (as 'indemnitee') from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as 'claims') arising out of bodily injury of any person (including death) or property damage but only to the extent that such claims which result in vicarious/derivative liability to the indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the indemnitor, its officers, officials, agents, employees, or volunteers.

6.3. Indemnification - Patent and Copyright. The Contractor shall indemnify and hold harmless the 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 paragraph shall not apply.

6.4. Force Majeure.

6.4.1. Except for payment of sums due, neither the Contractor nor State 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, failures or refusals to act by government authority, and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence.

6.4.2. Force Majeure shall not include the following occurrences:

6.4.2.1. Late delivery of equipment, Materials, or Services 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;

# UNIFORM TERMS AND CONDITIONS

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 the Contractor or State 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 the Special Terms and Conditions, the Contractor warrants that, for one (1) 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. Conformity to Requirements.

7.3.1. Contractor warrants that, unless expressly provided otherwise elsewhere in the Contract, the Materials and Services will for one (1) year after acceptance and in each instance:

7.3.1.1. Conform to the requirements of the Contract, which by way of reminder include without limitation all descriptions, specifications, and drawings identified in the Scope of Work and any and all Contractor affirmations included as part of the Contract;

7.3.1.2. Be free from defects of material and workmanship;

7.3.1.3. Conform to or perform in a manner consistent with current industry

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standards; and

7.3.1.4. Be fit for the intended purpose or use described in the Contract.

7.3.2. Mere delivery or performance does not substitute for express acceptance by the State. Where inspection, testing, or other acceptance assessment of Materials or Services cannot be done until after installation or invoicing, the forgoing warranty will not begin until State's explicit acceptance of the Materials or Services.

- 7.4. Inspection/Testing. The warranties set forth in this Section 7 [Warranties] are not affected by inspection or testing of or payment for the Materials or Services by the State.
- 7.5. Contractor Personnel. Contractor warrants that its personnel will perform their duties under the Contract in a professional manner, applying the requisite skills and knowledge, consistent with industry standards, and in accordance with the requirements of the Contract. Contractor further warrants that its key personnel will maintain any and all certifications relevant to their work, and Contractor shall provide individual evidence of certification to State's authorized representatives upon request.
- 7.6. Compliance With Applicable Laws. The Materials and Services supplied under this Contract shall comply with all applicable federal, state, and local laws and policies (including, but not limited to, information technology policies, standards, and procedures available on the State's website and/or the website of any department, commission, council, board, bureau, committee, institution, agency, government corporation or other establishment or official of the executive branch or corporation commission of the State of Arizona). Federal requirements may be incorporated into this Contract, if required, pursuant to A.R.S. § 41-2637. Contractor shall maintain any and all applicable license and permit requirements. This requirement includes, but is not limited to, any and all Arizona state statutes that impact state contracts, regardless of whether those statutory references have been removed during the course of contract negotiations; this is notice to Contractors that the State does not have the authority to modify Arizona state law by contract.
- 7.7. Intellectual Property. Contractor warrants that the Materials and Services do not and will not infringe or violate any patent, trademark, copyright, trade secret, or other intellectual property rights or laws, except only to the extent the Specifications do not permit use of any other product and Contractor is not and cannot reasonably be expected to be aware of the infringement or violation.
- 7.8. Licenses and Permits. Contractor warrants that it will maintain all licenses required to fully perform its duties under the Contract and all required permits valid and in force.
- 7.9. Operational Continuity. Contractor warrants that it will perform without relief notwithstanding being sold or acquired; no such event will operate to mitigate or alter any of Contractor's duties hereunder absent a consented delegation under paragraph 5.3 [Assignment and Delegation] that expressly recognizes the event.
- 7.10. Performance in Public Health Emergency. Contractor warrants that it will:
- 7.10.1. Have in effect, promptly after commencement, a plan for continuing performance in the event of a declared public health emergency that addresses, at a minimum:
- 7.10.1.1. Identification of response personnel by name;

## UNIFORM TERMS AND CONDITIONS

- 7.10.1.2. Key succession and performance responses in the event of sudden and significant decrease in workforce; and
    - 7.10.1.3. Alternative avenues to keep sufficient product on hand or in the supply chain.
  - 7.10.2. Provide a copy of its current plan to State within three (3) business days after State's written request. If Contractor claims relief under paragraph 6.4 [Force Majeure] for an occurrence of force majeure that is a declared public health emergency, then that relief will be conditioned on Contractor having first implemented its plan and exhausted all reasonable opportunity for that plan implementation to overcome the effects of that occurrence, or mitigate those effects to the extent that overcoming entirely is not practicable.
  - 7.10.3. A request from the State related to this paragraph 7.10 does not necessarily indicate that there has been an occurrence of force majeure, and the Contractor will not be entitled to any additional compensation or extension of time by virtue of having to implement a plan.
  - 7.10.4. Failure to have or implement an appropriate plan will be a material breach of contract.
- 7.11. Lobbying
- 7.11.1. Prohibition. Contractor warrants that it will not engage in lobbying activities, as defined in 40 Code of Federal Regulations (CFR) part 34 and A.R.S. § 41-1231, *et seq.*, using monies awarded under the Contract, provided that, the foregoing does not intend to constrain Contractor's use of its own monies or property, including without limitation any net proceeds duly realized under the Contract or any value thereafter derived from those proceeds; and upon award of the Contract, it will disclose all lobbying activities to State to the extent they are an actual or potential conflict of interest or where such activities could create an appearance of impropriety. Contractor shall implement and maintain adequate controls to assure compliance with above. Contractor shall obtain an equivalent warranty from all Subcontractors and shall include an equivalent no-lobbying provision in all Subcontracts.
  - 7.11.2. Exception. This paragraph 7.11 does not apply to the extent that the Services are defined in the Contract as being lobbying for State's benefit or on State's behalf.
- 7.12. Covered Telecommunications or Services. Contractor warrants that the Materials and Services rendered under this Agreement will not require Contractor to use for the State, or provide to the State to use, "covered telecommunications equipment or Services" as a substantial or essential component of any system, or as critical technology as part of any system, within the meaning of Federal Acquisition Regulation ("FAR") Section 52.204-25.
- 7.13. Debarment, Suspension, U.S. Government Restricted Party Lists. Contractor warrants that it is not, and its Subcontractors are not, on the U.S. government's Denied Parties List, the Unverified List, the Entities List, the Specially Designated Nationals and Blocked Parties List, and neither the Contractor nor any Subcontractors are presently debarred, suspended, proposed for debarment or otherwise declared ineligible for award of federal contracts or participation in federal assistance programs or activities.

## UNIFORM TERMS AND CONDITIONS

7.14. False Statements. Contractor represents and warrants that all statements and information Contractor prepared and submitted in response to the Solicitation or as part of the Contract documents are current, complete, true, and accurate. If the Procurement Officer determines that Contractor submitted an Offer or Bid with a false statement, or makes material misrepresentations during the performance of the Contract, the Procurement Officer may determine that Contractor has materially breached the Contract and may void the submitted Offer or Bid and any resulting Contract.

7.15. Survival of Rights and Obligations after Contract Expiration or Termination.

7.15.1. Survival of Warranty. All representations and warranties made by Contractor under the Contract will survive the expiration or earlier termination of the Contract.

7.15.2. 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.

7.15.3. 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.

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- 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 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 with 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 (3) 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



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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 or Services accepted before the effective date of the termination. The cost principles and procedures provided in A.R.S. § 41-2543 and A.A.C. Title 2, Chapter 7, Article 7, 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

10.1. 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 (A.R.S. Title 41).

# HIPAA Business Associate Addendum

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:
    - 2.3.1.1. A description of the nature of the unauthorized use or disclosure, including the number of individuals affected by the unauthorized use or disclosure;
    - 2.3.1.2. A description of the PHI used or disclosed;
    - 2.3.1.3. The date(s) on which the unauthorized use or disclosure occurred;
    - 2.3.1.4. The date(s) on which the unauthorized use or disclosure was discovered;
    - 2.3.1.5. Identify the person(s) who used or disclosed the PHI in an unauthorized manner;
    - 2.3.1.6. Identify the person(s) who received PHI disclosed in an unauthorized manner;
    - 2.3.1.7. A description of actions, efforts, or plans undertaken by the Business associate to mitigate the harm of the unauthorized disclosure;
    - 2.3.1.8. A description of corrective actions undertaken or planned to prevent future similar unauthorized use or disclosure;

## HIPAA Business Associate Addendum

- 2.3.1.9. An assessment of whether a breach, as defined in 45 CFR 164.402, including, if necessary, an assessment of the probability of harm, and
- 2.3.1.10. Such other information, as may be reasonably requested by the AHCCCS Privacy Official.
- 2.3.2. 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.
- 2.3.3. 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.
- 2.3.4. 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 of 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 DISCLOSURES 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 Minimum Necessary, as required at 45 § CFR 164.502(b) and 164.514(d).
- 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.

## HIPAA Business Associate Addendum

### **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](http://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
  - 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.

## **HIPAA Business Associate Addendum**

- 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.

## **HIPAA Business Associate Addendum**

**END OF SOLICITATION**