INTERGOVERNMENTAL AGREEMENT
(Agreement #_____)

This Intergovernmental Agreement ("Agreement") is entered into by and between the **Arizona Health Care Cost Containment System ("AHCCCS")**, the agency of the State of Arizona authorized to administer the Medicaid and behavioral health systems in the State of Arizona, and the **United States Department of Health and Human Services,_____)**, an agency of the United States.

Project Title: American Indian Medical Home ("AIMH")

WHEREAS, AHCCCS has authority to contract for services specified herein in accordance A.R.S. Title 36, Chapters 29 and 34, and A.R.S. §§ 11-951 and 11-952; and

WHEREAS, the Contractor has the authority to contract for the performance of the services provided herein pursuant to the laws, rules and sovereign authority of the United States; and

NOW, THEREFORE, the Contractor and AHCCCS (collectively, the "Parties" or individually, a "Party"), pursuant to the above and in consideration of the matters set forth herein, do mutually agree as follows:

_____

Signature Date

Printed Name

Title

AHCCCS

Signature Date

Printed Name

Title

In accordance with A.R.S. § 11-952, this Agreement has been reviewed by the undersigned General Counsel of the agency, who has determined that the Agreement is in the proper form and is within the powers granted under the laws of the State of Arizona to AHCCCS.

Signature Date

Printed Name

Title

SCOPE OF WORK

1. **Background, Purpose and Qualification.**

1.1. Pursuant to Section 1932(a) of the Social Security Act, the United States Department of Health and Human Services, Centers for Medicare and Medicaid Services, approved AHCCCS' request to amend its State Plan to establish a primary care case management program entitled "American Indian Medical Home." AHCCCS submitted this State Plan Amendment (17-003) after reviewing and incorporating revisions suggested through Tribal Consultation and public comment. This State Plan Amendment became effective on July 1, 2017.

1.2. The purpose of the Agreement is to establish the Contractor as an AIMH that will provide "primary care case management" (as defined in 42 C.F.R. § 438.2) as an "Indian Managed Care Entity" (as defined by 42 C.F.R. § 438.14(a)). For the purposes of this Agreement, the Contractor is a "primary care case manager" and not a "primary care case management entity" as those terms are used in 42 C.F.R. Part 438.

1.3. Nothing in this Agreement reduces or eliminates any provision of any other contract between AHCCCS and the Contractor including, but not limited to, the Provider Participation Agreement or the Group Biller Agreement. To provide services under this Agreement, the Contractor must also maintain an active Provider Participation Agreement and/or Group Biller Agreement with AHCCCS. AHCCCS will rely on the information provided by the Contractor during the provider registration process to fulfill the disclosure and screening requirements of 42 C.F.R. § 438.602, 438.604(a) (6), and 438.608(c) (2). [42 C.F.R. § 438.602, 438.604(a) (6) & 438.608(c) (2)]

1.4. The Contractor must meet one of the following standards, initially and on an annual basis:

1.4.1. Patient Centered Medical Home recognition through the National Committee for Quality Assurance, Accreditation Association for Ambulatory Health Care, the Joint Commission Primary Care Medical Home Accreditation Program, or other nationally-recognized accreditation body; or

1.4.2. An annual attestation from the Indian Health Services ("IHS") Improving Patient Care ("IPC") that the Contractor has completed all of the following in the year prior to attestation:

1.4.2.1. Submitted the Safety Net Medical Home Initiative Patient-Centered Home Assessment to IHS-IPC;

1.4.2.2. Submitted monthly data regarding IPC Core Measures to the IPC Data Portal; and

1.4.2.3. Submitted quarterly narrative summaries to IHS IPC regarding IPC Medical Home improvement projects.

1.5. Throughout this Agreement, "day" or "days" means "calendar day" or "calendar days" unless otherwise specified.

1.6. Throughout this Agreement, the individuals who are eligible for the Contractor's services will be referred to as "Members."

2. **Assignment of Members.**

2.1. Except as provided in Section 2.2, any Indian, as defined by 42 C.F.R. § 438.14(a), enrolled with AHCCCS to receive Medicaid-funded services through the Fee-For-Service American Indian Health Program may enroll with the Contractor to receive primary care case management services.

2.2. The following individuals are not eligible for enrollment in the Contractor's AIMH:

2.2.1. Persons enrolled in another managed care program;

2.2.2. Persons enrolled in the Tribal ALTCS program;

2.2.3. Persons enrolled through hospital presumptive eligibility;

2.2.4. Persons enrolled in Fee-For-Service Temporary, Fee-For-Service Regular, or Federal Emergency Services Only;

2.2.5. Persons residing in Nursing Facilities or Intermediate Care Facilities for the Mentally Retarded (also known as Intermediate Care Facilities for the Intellectually Disabled); and

2.2.6. Persons enrolled in prior quarter coverage or any other retroactive eligibility category (during the period of retroactive eligibility).

2.3. A Member's enrollment and disenrollment with the Contractor is completely voluntarily and at the will of the Member. At any time and without cause, a Member may opt into or out of the AIMH program, or move to another AIMH that is not operated by the Contractor by notifying AHCCCS or the Contractor. [42 C.F.R. § 438.3(d) (2) & (q) (5); 42 C.F.R. § 438.54(c); 42 C.F.R. 438.56(c) & (d)]

2.4. Upon enrollment in the Fee-For-Service American Indian Health Program, AHCCCS will provide the Member with the opportunity to enroll in an AIMH and will provide the information required by 42 C.F.R. § 438.10(e)(2). At any time after enrollment in the Fee-For-Service American Indian Health Program, a Member may contact AHCCCS and request placement into an AIMH. If the Member contacts AHCCCS to request assignment to a Contractor as his or her AIMH, AHCCCS will notify the Contractor.

2.5. The Contractor will maintain forms, in both electronic and paper formats, that an individual may complete to enroll or disenroll with the Contractor, or select a new AIMH. The Contractor must use the forms approved by AHCCCS that are available on AHCCCS' website.

2.5.1. AHCCCS will ensure that the template enrollment and disenrollment forms comply with 42 C.F.R. § 438.10(e) (2) by including the following: information about enrolling and disenrolling at will; the basic features of managed care; the populations included and excluded from the AIMH program; the benefits of the AIMH program including the Contractor's responsibility for coordinating care; and the lack of Member cost for the program. [42 C.F.R. § 438.10(e) (2)]

2.5.2. With AHCCCS' approval, the Contractor may modify the enrollment and disenrollment forms to provide specific information about the Contractor. The Contractor will add to its enrollment and disenrollment forms information about the service area covered by the Contractor. [42 C.F.R. § 438.10(e) (2) (iv)]

2.5.3. Electronic enrollment and disenrollment forms must meet the following federal requirements:

2.5.3.1. The format must be readily accessible, and placed in a prominent and readily accessible space on the Contractor's website; [42 C.F.R. § 438.10(c) (6) (i) & (ii)]

2.5.3.2. The information is an electronic format that can be electronically retained and printed; 42 C.F.R. § 438.10(c) (6) (iii)]

2.5.3.3. The information meets the requirements of Section 4.4.1; [42 C.F.R. § 438.10(c) (6) (iv)] and

2.5.3.4. The Contractor will make the electronic information available to Members and potential Members in paper form and without charge within five business days of a Member or potential Member's request for the electronic information in paper form. [42 C.F.R. § 438.10(c) (6) (v)]

2.5.4. The Contractor will assist the Member in completing enrollment and disenrollment forms. The Contractor will manage assignment of members electronically through the AHCCCS Online web portal and will keep the signed enrollment forms on file.

2.6. AHCCCS may, unilaterally or at the request of the Contractor made pursuant to Section 2.10, restrict enrollment with the Contractor to individuals who reside sufficiently near the Contractor to reach the Contractor within a reasonable time using available and affordable modes of transportation. [42 C.F.R. § 438.3(q) (2)]

2.7. Upon a Member's request, AHCCCS will assign, and notify the Contractor of the member's request; individuals eligible for enrollment pursuant to Section 2.1 in the order in which they applied, without restriction. [42 C.F.R. § 438.3(d) (1)]

2.8. The Contractor will not, on the basis of health status or need for health care services, discriminate against individuals eligible to enroll pursuant to Section 2.1. [42 C.F.R. § 438.3(d) (3) & (q) (4)]

2.9. The Contractor will not discriminate against individuals eligible to enroll pursuant to Section 2.1 on the basis of race, color, national origin, sex, sexual orientation, gender identity, or disability and will not use any policy or practice that has the effect of discriminating on the basis of race, color, or national origin, sex, sexual orientation gender identity, or disability, except that the Contractor may restrict its enrollment and service delivery to "Indians" (as defined by 42 C.F.R. § 438.14(a)). [42 C.F.R. § 438.3(d) (4); 42 C.F.R. § 438.14(d)]

2.10. A Contractor may request, in writing, that AHCCCS discontinue assignment of a Member from the Contractor's AIMH for good cause. The Contractor may not request disenrollment because of an adverse change in the Member's health status, or because of the Member's utilization of medical services, diminished mental capacity, or uncooperative or disruptive behavior resulting from his or her special needs (except when his or her continued enrollment with the Contractor seriously impairs the Contractor's ability to furnish services to either this particular Member or other Members). [42 C.F.R. § 438.56(b)]

2.11. If a Member assigned to the Contractor automatically discontinues assignment as a result of the loss of eligibility for AHCCCS' Medicaid program, AHCCCS will automatically re-enroll the Member with the Contractor if the Member becomes eligible for the Fee-For-Service American Indian Health Program within two months of the date of the loss of AHCCCS eligibility.

3. **Service Delivery**

3.1. The Contractor will establish and follow policies and procedures to coordinate and integrate the care of Members assigned to the Contractor by:

- 3.1.1. Engaging in activities that support Member advocacy, help Members navigate healthcare systems, and ensure that Members, their families and healthcare providers work together and communicate effectively to achieve positive outcomes for Members;
- 3.1.2. Ensuring the provision of appropriate healthcare services in the least restrictive setting that meets the Member's needs in the most cost-effective manner;
- 3.1.3. Ensuring that all care coordination activities are for the purpose of improving the quality of Members' care and meeting the requirements of the Agreement;
- 3.1.4. Informing AHCCCS and Members of the circumstances under which the Contractor will coordinate care, the methods for coordinating Members' care, and the specific documentation of these processes;
- 3.1.5. Coordinating the provision of AHCCCS-covered services with AHCCCS-registered providers, and community and social services;
- 3.1.6. Complying with 42 C.F.R. § 438.62 and coordinating with AHCCCS' Division of Fee-For-Service Management to maintain continuity of care for Members transitioning into and out of the AIMH program, or to a different AIMH; [42 C.F.R. § 438.62]
- 3.1.7. Ensuring timely and confidential communication of clinical information among providers serving the Member;
- 3.1.8. Ensuring the protection of Members' rights as required by federal, state and tribal law, including 42 C.F.R. § 438.100; [42 C.F.R. § 438.100]
- 3.1.9. Establishing a process to ensure coordination of care based on early identification of health risk factors and special care needs;
- 3.1.10. Providing Members with 24-hour telephonic access to the care team; and
- 3.1.11. Providing for arrangements with or referrals to, a sufficient numbers of physicians and other practitioners to ensure that healthcare services can be furnished to Members promptly and without compromise to quality of care. [42 C.F.R. § 438.3(q) (3)]

3.2. The Contractor will provide for reasonable and adequate hours of operation, including 24-hour availability of information, referral, and treatment for emergency medical conditions. [42 C.F.R. § 438.3(q) (1)]

3.3. The Contractor will work collaboratively with any entity necessary to ensure the effective delivery of services to Members described in this Agreement, including:

3.3.1. Agencies of the State of Arizona, such as AHCCCS, the Arizona Department of Economic Security, the Arizona Department of Public Safety, the Arizona Department of Child Safety, the Administrative Office of the Courts, and the Arizona Department of Corrections;

3.3.2. Tribal governmental entities, juvenile courts and youth counselors, and other social services;

3.3.3. County and local governmental entities including the courts, probation departments and jails; and

3.3.4. Tribal Regional Behavioral Health Authorities, Regional Behavioral Health Authorities, and AHCCCS' managed care organizations.

3.4. By Agreement with AHCCCS, the Contractor will provide case management and care coordination at one of the following levels. The Contractor will determine which of the Contractor's sites or facilities will provide the services identified in this section.

3.4.1. American Indian Medical Home ("AIMHA"): provides primary care case management services as described in this Agreement except for Sections 3.4.2 through 3.4.4.

3.4.2. American Indian Medical Home providing diabetes education ("AIMHB"): provides the services of the AIMHA as well as diabetes education. The AIMHB must be accredited to provide diabetes education by a nationally-recognized accreditation agency.

3.4.3. American Indian Medical Home participating in the State Health Information Exchange ("AIMHC"): provides the services of the AIMHA and participates in the State Health Information Exchange.

3.4.4. American Indian Medical Home providing diabetes education and participating in the State Health Information Exchange ("AIMHD"): Meets the requirements and provides the services of the AIMHA, AIMHB, and AIMHC.

4. **Communication with Members, Members' Families, Stakeholders and Providers.**

4.1. The Contractor will be proactive in communicating information to Members, Members' families, stakeholders and providers to foster a community that understands AHCCCS' health delivery system. Such communication will include:

4.1.1. How to access services, including emergency behavioral health/crisis services;

4.1.2. Customer service contact information, for both the Contractor and AHCCCS;

4.1.3. Information pertaining to new initiatives, projects, programs, and/or opportunities within the AHCCCS system; and

4.1.4. Information describing the AHCCCS-registered provider network.

4.2. Upon request, the Contractor will assist AHCCCS in the dissemination of information to Members prepared by the federal government or AHCCCS. The cost of disseminating and communicating information to Members will be borne by the Contractor.

4.3. All advertisements, publications, and printed materials which are produced by the Contractor for Members that refer to AHCCCS-covered services provided under this Agreement will state that such services are funded through AHCCCS.

4.4. Communications with Members

4.4.1. Written Communication

4.4.1.1. The Contractor will educate Members about covered services, including where and how to access services.

4.4.1.2. Federal Requirements.

a) The Contractor will provide written materials to Members and potential Members in a manner and format that is easily understood and readily accessible by such Members and potential Members. [42 C.F.R. § 438.10(c) (1)]

b) The Contractor will provide written materials to Members and potential Members using easily understood language and format, and a font size no smaller than 12 point. [42 C.F.R. § 438.10(d) (6) (i) & (ii)]

c) Written materials must be made available in alternative formats and through the

provision of auxiliary aids and services that takes into consideration the special needs of Members or potential Members with disabilities or limited English proficiency. The written materials must include a large print tagline and information on how to request auxiliary aids and services, including the provision of the materials in alternative formats. Large print means printed in a font size no smaller than 18 point. [42 C.F.R § 438.10(d) (6) (iii) & (iv).

4.4.1.3. When program changes occur, written notification will be provided to the affected persons at least thirty (30) days before implementation.

4.4.1.4. All informational materials intended for distribution to Members will be reviewed for accuracy by the Contractor.

4.4.2. Oral Interpretation Requirements: the Contractor will make oral interpretation services available free of charge to all persons enrolled with AHCCCS based on eligibility for federally-funded services. This applies to all non-English languages regardless of prevalence.

FINANCIAL PROVISIONS

5. **Funding.**

5.1. AHCCCS will post on its website the per member, per month ("PMPM") rate for services provided under this Agreement.

5.1.1. AHCCCS will determine the number of Members included in the PMPM rate based on AHCCCS' prospective determination of the number of Members that will be served by the Contractor during the month covered by the payment. The number of Members for the month covered by the payment will be equal to the number of Members assigned to the Contractor as of the identified day of the month directly preceding the month covered by the payment. Any changes in the Contractor's enrollment that occur after that date but prior to the identified day of the month covered by the payment will become effective on the first day of the month directly following the month covered by the payment.

5.1.2. AHCCCS will not retroactively adjust the number of Members included in the PMPM rate based on the number of Members the Contractor actually served.

5.1.3. The PMPM rate will be further determined by the level of service provided by the Contractor as described in Section 3.4.

5.2. AHCCCS will make monthly payments to the Contractor in compliance with A.R.S. Titles 35, 36 and 41.

5.3. Payments are conditioned upon the rights and obligations of this Agreement and the availability to AHCCCS of funds authorized and appropriated by the State Legislature for expenditure in the manner and for the purposes stated in this Agreement. Neither AHCCCS nor the State will be liable for any purchase(s) entered into by the Contractor in anticipation of such funding.

5.4. Costs and Payments

5.4.1. Applicable Taxes.

5.4.1.1. Tax Indemnification. The Contractor will pay all Federal, state and local taxes applicable to its operation and any persons employed by the Contractor. The Contractor will add these requirements to its contracts with subcontractors.

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

5.4.2. "State fiscal year" means the period beginning with July 1 and ending June 30.

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

5.4.4. Availability of Funds for the Current State Fiscal Year. Should the State Legislature enter back into session and reduce the appropriations or for any reason and these goods or services are not funded, the State may take any of the following actions:

5.4.4.1. Accept a decrease in price offered by the Contractor; or

5.4.4.2. Cancel the Agreement.

TERMS AND CONDITIONS

6. Agreement Administration and Operation

6.1. Term of Agreement

6.1.1. The term of the Agreement is from October 1, , through September 30, , but may be extended on an annual basis by mutual agreement of the Parties in a duly authorized and executed amendment following AHCCCS' determination that the Contractor is in compliance with the terms of the Agreement.

6.1.2. All Agreement extensions will be through written amendment executed by both Parties. The terms and conditions of any such extension will remain the same as the original Agreement, as amended.

6.1.3. Under no circumstances will this Agreement be extended beyond June 30, 2022.

6.2. Agreement Changes

6.2.1. Amendments to the Agreement. Except as provided in Section 6.2.2, the Agreement may be modified only through an Amendment within the scope of the Agreement. Changes to the Agreement, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by a person who is not specifically authorized by the procurement officer in writing or made unilaterally by the Contractor are violations of the Agreement. Such changes, including unauthorized written Amendments will be void and without effect, and the Contractor will not be entitled to any claim under this Agreement based on those changes.

6.2.2. Amendments to AHCCCS Policies Incorporated by Reference. When AHCCCS amends one of the policies incorporated by reference into this Agreement, AHCCCS will post the amendment to its website. The Contractor may object in writing to the policy amendment within thirty days of the date that AHCCCS posted the policy amendment to its website. If the Contractor objects to the policy amendment, AHCCCS may terminate the Agreement. If the Contractor does not object to the policy amendment within thirty days from the date that AHCCCS posted the policy amendment to its website, the policy amendment will be deemed to have been accepted by the Contractor even if the Contractor does not sign the amendment.

6.3. Assignment and Delegation: The Contractor will not assign any right nor delegate any duty under this Agreement without the prior written approval of AHCCCS. AHCCCS will not unreasonably withhold approval.

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

6.5. Licenses: The Contractor will maintain in current status all federal, state and local licenses and permits required for the operation of the business conducted by the Contractor.

6.6. Agreement Interpretation

6.6.1. Governing Law. This Agreement will be interpreted under the applicable laws of the United States and the State of Arizona. If any laws conflict, the laws of the United States will control.

6.6.2. Severability. The provisions of this Agreement are severable. Any term or condition deemed illegal or invalid will not affect any other term or condition of the Agreement.

6.6.3. No Parole Evidence. This Agreement 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 will supplement or explain any terms used in this document and no other understanding either oral or in writing will be binding.

6.6.4. No Waiver. Either party's failure to insist on strict performance of any term or condition of the Agreement will 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.

6.7. Agreement Remedies

6.7.1. Notice and Opportunity to Cure. In the event of a breach of the Agreement, the non-breaching party must notify the breaching party of the breach in writing. If the breach is capable of cure, the non-breaching party must describe how the breach can be cured and identify a reasonable deadline by which any cure must be completed.

6.7.2. Corrective Action Plans. AHCCCS and the Contractor may collaboratively develop a corrective action plan to address a breach of this Agreement. The Contractor will implement the corrective action plan to bring performance into compliance with the Agreement in accordance with the corrective action plan, and within a reasonable timeframe.

6.7.3. Non-exclusive Remedies. The rights and the remedies of AHCCCS under this Agreement are not exclusive.

6.7.4. Technical Assistance. AHCCCS' provision of technical assistance to the Contractor to assist in achievement of compliance with any relevant Agreement terms does not relieve the Contractor of its obligation to fully comply with any relevant Agreement term or any other terms of this Agreement.

6.7.5. Right of Offset. AHCCCS will be entitled to offset against any sums due the Contractor, any expenses or costs incurred by AHCCCS, or damages assessed by AHCCCS concerning the Contractor's non-conforming performance or failure to perform the Agreement.

6.8. Agreement Termination

6.8.1. Cancellation for Conflict of Interest. AHCCCS may cancel this Agreement within three (3) years after Agreement execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Agreement on behalf of the State is or becomes, at any time while the Agreement or an extension of the Agreement is in effect, an employee of or a consultant to any other party to this Agreement. The Contractor must comply with the conflict of interest safeguards described in 42 C.F.R. § 438.58 and with the prohibitions described in Section 1902(a) (4) (C) of the Social Security Act applicable to contracting officers, employees or independent contractors. The cancellation will be effective when the Contractor receives written notice of the cancellation unless the notice specifies a later time. [42 C.F.R. § 438.3(f) (2)]

6.8.2. Gratuities. AHCCCS may, by written notice, terminate this Agreement, in whole or in part, if the State determines that employment or a gratuity was offered or made by the Contractor or a representative of the Contractor to any officer or employee of the State for the purpose of influencing the outcome of the procurement or securing of the Agreement, an amendment to the Agreement, or favorable treatment concerning the Agreement, including the making of any determination or decision about Agreement performance. AHCCCS, in addition to any other rights or remedies, will be entitled to recover exemplary damages in the amount of three times the value of the gratuity offered by the Contractor.

6.8.3. Suspension or Debarment. AHCCCS may, by written notice to the Contractor, immediately terminate this Agreement if AHCCCS 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 an Agreement will attest that the Contractor is not currently suspended or debarred. If the Contractor becomes suspended or debarred, the Contractor will immediately notify AHCCCS.

6.8.4. Termination for Convenience. Upon thirty (30) days written notice to the other Party, either Party may terminate the Agreement, in whole or in part, without penalty or recourse. The Contractor will be entitled to receive just and equitable compensation for work in progress, work completed and materials accepted before the effective date of the termination.

6.8.5. Termination for Default. Subject to section 14.7 ("Agreement Remedies"), in addition to the rights reserved in the Agreement, AHCCCS may terminate the Agreement in whole or in part due to the failure of the Contractor to materially comply with any term or condition of the Agreement, or to make satisfactory progress in performing the Agreement. The Procurement Officer will provide written notice of the termination and the reasons for it to the Contractor.

6.8.6. In the event that the Agreement terminates for any reason other than termination under 42 C.F.R. 455.416, the Parties agree to collaborate on transitioning the care of any Members potentially affected by the termination within a reasonable period of time. The Parties agree to work together to ensure that such a transition occurs in an orderly manner and without significant disruption in services to Members. Notwithstanding any provision of this Agreement, Contractor shall receive payment in full for all services delivered or performed by it under this subsection, regardless of whether this Agreement is terminated or cancelled. In the event of a termination under 42 C.F.R. 455.416, AHCCCS shall not require the Contractor to collaborate on transitioning care.

6.9. Agreement Disputes

6.9.1. In the event of a dispute, claim or controversy ("Dispute") arising out of or related to this Agreement, the Parties agree that it is in their mutual best interest to meet as promptly as possible for the purpose of informally resolving said Dispute.

6.9.2. In the event that the Parties cannot resolve their Dispute informally after attempting to work in good faith toward resolution, the Parties agree that Disputes arising out of this Agreement will be administratively adjudicated in accordance with A.R.S. § 2903.01(b)(4), the relevant portions of Arizona's Administrative Procedures Act, and AHCCCS' rules pertaining to appeals and grievances.

6.9.3. AHCCCS may take any action described in the Financial Provisions, and/or sections 6.7 ("Agreement Remedies") or 6.8 ("Agreement Termination") of these Terms and Conditions prior to initiating or engaging in any process described under Section 6.9 ("Agreement Disputes and Arbitration") of these Terms and Conditions. The Contractor may use the process described under Section 6.9 ("Agreement Disputes and Arbitration") of these Terms and Conditions to appeal such an action.

6.10. Subcontracts. The Contractor will not enter into any subcontract under this Agreement for the performance of any function required by this Agreement without advance written approval by AHCCCS. The Contractor will clearly list any proposed subcontractors and the subcontractor's proposed responsibilities. The subcontract will incorporate by reference the Terms and Conditions of this Agreement.

6.11. No Guaranteed Quantities. AHCCCS does not guarantee the Contractor any minimum or maximum quantity of services or goods to be provided under this contract.

6.12. Survival of Rights and Obligations after Agreement Expiration or Termination

6.12.1. Any provision of this Agreement that contemplates performance or observance subsequent to termination or expiration of this Agreement will survive termination or expiration of this Agreement and continue in full force and effect.

6.12.2. All representations and warranties made by the Contractor under this Agreement will survive the expiration or termination hereof.

7. Compliance

7.1. Prohibited Affiliations.

7.1.1. The Contractor may not knowingly have a relationship of the type described in Section 7.1.2 with the following:

7.1.1.1. An individual or entity that is debarred, suspended, or otherwise excluded from participating in procurement activities under the Federal Acquisition Regulation or from participating in nonprocurement activities under regulations issued under Executive Order No. 12549 or under guidelines implementing Executive Order No. 12549.

7.1.1.2. An individual or entity who is an affiliate, as defined in the Federal Acquisition Regulation at 48 CFR 2.101, of a person described in paragraph (a)(1) of this section.

7.1.1.3. An individual or entity that is excluded from participation in any Federal health care program under Section 1128 or 1128A of the Social Security Act.

7.1.2. The relationships described in Section 7.1.1, are as follows:

7.1.2.1. A director, officer, or partner of the Contractor.

7.1.2.2. A subcontractor of the Contractor, as governed by 42 C.F.R. § 438.230.

7.1.2.3. A person with an employment, consulting or other arrangement with the Contractor for the provision of items and services that are significant and material to the Contractor's obligations under the Agreement. [42 C.F.R. § 438.610]

7.2. Excluded Individuals.

7.2.1. The Contractor will not use any money provided by AHCCCS under this Agreement to pay for services and/or items furnished by an individual excluded from participation in federal healthcare programs pursuant to 42 U.S.C. § 1320a-7 and/or 42 C.F.R. Parts 1001 or 1002.

7.2.2. On a monthly basis, the Contractor will determine the exclusion status of individuals and entities directly or indirectly funded through the Agreement. This directive includes individuals receiving wages for providing Agreement services. Federal guidance on how to search for the exclusion status of individuals and entities can be found at https://downloads.cms.gov/cmsgov/archived-downloads/SMDL/downloads/SMD011609.pdf.

7.2.3. The Contractor will report any discovery an excluded individual or entity to AHCCCS-OIG and AHCCCS-DFSM, and will return to AHCCCS any monies directly or indirectly paid to that individual or entity.

7.3. Reporting Fraud, Waste and Abuse. The Contractor will report, in writing, all cases of suspected fraud, waste and/or abuse involving the programs administered by AHCCCS to the AHCCCS Office of the Inspector General ("OIG"). To report fraud, waste and/or abuse, the Contractor will complete the AHCCCS "Referral for Preliminary Investigation" form and submit it to AHCCCS-OIG with a copy sent to AHCCCS-DFSM.

7.4. Records.

7.4.1. Throughout this Agreement, "records" will include, but not be limited to, financial statements, case files (both hard copy and stored data), books, data, and any other documents relating to the acquisition and performance of the Agreement.

7.4.2. All records will 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.

7.4.3. At any time during the term of this Agreement and ten years thereafter, the Contractor's or any subcontractor's records will be subject to audit by AHCCCS and, where applicable, the Federal Government, to the extent that the records relate to the performance of the Agreement or a subcontract. The Contractor will make available, at all reasonable times during the term of this Agreement and the period set forth in in this section, any of its records for inspection, audit or reproduction by any authorized representative of AHCCCS, the State of Arizona or the Federal government. If AHCCCS requests the disclosure of any record(s) from the Contractor, the Contractor will provide the requested record(s) within the timeframe requested by AHCCCS and through the delivery mechanism specified by AHCCCS (*e.g.* U.S. mail, facsimile, secured email, web portal, etc.).

7.4.4. The Contractor and its subcontractors will preserve and make available all records for a period of ten years from the date of final payment under this Agreement except as provided below:

7.4.4.1. If this Agreement is completely or partially terminated, the records relating to the work terminated will be preserved and made available for a period of five years from the date of any such termination.

7.4.4.2. Records that relate to grievances, disputes, litigation or the settlement of claims arising out of the performance of this Agreement, or costs and expenses of this Agreement to which exception has been taken by AHCCCS, will be retained by the Contractor for a period of five years after the date of final disposition or resolution thereof.

7.4.5. Completed case files will be scheduled for archive shipment to AHCCCS, as defined by AHCCCS Policy and Procedures.

7.4.6. To the extent that the Agreement or applicable law require the disclosure of records to AHCCCS and/or the Federal government, such disclosure will be made at no cost to AHCCCS or the Federal government.

7.5. Confidentiality of Records and Disclosure of Confidential Information

7.5.1. The Contractor shall not, without prior written approval from AHCCCS, either during or after the performance of the services required by this Agreement, 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 Agreement. This nondisclosure requirement shall also pertain to any information contained in reports, documents, or other records furnished to the Contractor by AHCCCS.

7.5.2. 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 Agreement, is used or disclosed by it, its agents, officers or employees, except as required to efficiently perform duties under the Agreement. 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.

7.5.3. The disclosure of information in summary, statistical, or other form that does not identify particular individuals is permitted. The use or disclosure of personally identifiable information concerning Members will be limited to purposes directly connected with the scope of this Agreement or as otherwise provided by law.

7.5.4. The Contractor shall advise its employees, agents and subcontractors, if any, that they are subject to these confidentiality requirements.

7.6. Audits and Inspections.

7.6.1. The Contractor will cooperate with AHCCCS and/or the Federal government in any audit, review, investigation and/or request for information of the Contractor and/or its subcontractors relevant to the administration of this agreement, and in no event will this Agreement be construed to authorize any audit, review, investigation and/or request for information outside the scope of this Agreement.

7.6.2. Audits: AHCCCS may, upon reasonable advance notice to the Contractor, conduct periodic audits to confirm the Contractor's and subcontractor(s)' compliance with applicable law and this Agreement. These audits include, but are not limited to:

7.6.2.1. Ad Hoc Reviews: In addition to any other inspections, audits or reviews described in the Agreement, AHCCCS and/or agents of the federal government may, at any time, inspect and audit any records or documents of the Contractor, or its subcontractors, and may, at any time, inspect the premises, physical facilities, and equipment where Medicaid-related activities or work is conducted. The right to audit under this section exists for 10 years from the final date of the contract period or from the date of completion of any audit, whichever is later. [42 C.F.R. § 438.3(h)]

7.6.2.2. Program Integrity Review

a) AHCCCS-OIG and/or AHCCCS-DFSM may conduct audits of the Contractor and/or its subcontractors without notice for the purpose of ensuring program integrity.

b) Upon notice that an audit involves program integrity, the Contractor will respond to electronic, telephonic or written requests for information within the reasonable timeframe specified by AHCCCS-OIG and/or AHCCCS-DFSM.

7.7. Compliance with Laws, Regulations, and Policies

7.7.1. AHCCCS and the Contractor will comply with all applicable Federal and State laws, regulations, standards, and Executive Orders without limitation to those specifically designated herein, including Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972 (regarding education programs and activities), the Age Discrimination Act of 1975, the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990 as amended, and Section 1557 of the Patient Protection and Affordable Care Act. [42 C.F.R. § 438.3(f)]

7.7.2. All AHCCCS guidelines, policies and manuals, including but not limited to the following: AHCCCS Contractor Operations Manual, AHCCCS Medical Policy Manual, AHCCCS Covered Behavioral Health Services Guide, AHCCCS Fee-For-Service Manual, AHCCCS Claims Clues, and Reporting Guides are hereby incorporated by reference into this Agreement. Guidelines, policies and manuals are available on the AHCCCS website.

8. **Risk and Liability**

8.1. The Contractor will add to its contract(s) with any non-governmental contractor(s) or subcontractor(s) performing services in performance of this Agreement that the contractor(s) or subcontractor(s) will comply with the Minimum Subcontract Provisions found on AHCCCS' website. The Contractor has the discretion, based on the work performed by the Contractor's contractor(s) or subcontractor(s), to determine which of the insurance provisions in the Minimum Subcontract Provisions apply to each of the Contractor's contractor(s) or subcontractor(s).

8.2. Responsibility for Payments: The Contractor will be responsible for issuing payment for services performed by the Contractor's employees. The Contractor will, at AHCCCS' request, furnish satisfactory evidence that all obligations described under this subsection have been paid, discharged or waived.

8.3. Force Majeure.

8.3.1. Except for payment of sums due, neither Party will be liable to the other nor deemed in default under this Agreement if and to the extent that such Party's performance of this Agreement is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the Party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes acts of God; acts of the public enemy; war; riots; strikes; mobilization; labor disputes; civil disorders; fire; flood; lockouts; injunctions-intervention-acts; or failures or refusals to act by government authority; and other similar occurrences beyond the control of the Party declaring force majeure which such Party is unable to prevent by exercising reasonable diligence.

8.3.2. Force Majeure will not include the following occurrences:

8.3.2.1. Late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, or an oversold condition of the market;

8.3.2.2. Late performance by a subcontractor unless the delay arises out of a force majeure occurrence in accordance with this force majeure term and condition; or

8.3.2.3. Inability of either the Contractor or any subcontractor to acquire or maintain any required insurance, bonds, licenses or permits.

8.3.3. If either Party is delayed at any time in the progress of the work by force majeure, the delayed Party will 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 will specify the causes of such delay in such notice. Such notice will be delivered or mailed certified-return receipt and will make a specific reference to this article, thereby invoking its provisions. The delayed Party will cause

such delay to cease as soon as practicable and will notify the other party in writing when it has done so. The time of completion will be extended by 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 Agreement.

8.3.4. Any delay or failure in performance by either party hereto will 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.