## AHCCCS MINIMUM SUBCONTRACT PROVISIONS (MSPs)

For the sole purpose of this document, the following definitions apply:

**SUBCONTRACT**: A Contract between an AHCCCS contracted Managed Care Organization (MCO) and a third party for the performance of any or all services or requirements specified under the MCO's Contract with AHCCCS and includes any Provider Participation Agreement or Group Biller Agreement with AHCCCS.

**SUBCONTRACTOR**: Any health care provider, group biller, pharmacy benefit manager, administrative services organization or any other third party with a Contract with the Managed Care Organization (MCO) for the provision of any or all services or requirements specified under the MCO's Contract with AHCCCS and includes any entity which has a Provider Participation Agreement or Group Biller Agreement with AHCCCS.

All providers shall register with AHCCCS as an approved service provider (i.e., AHCCCS registered provider) consistent with provider disclosure, screening, and enrollment requirements and comply with Federal and State program integrity requirements (42 CFR 457.1285, 42 CFR 438.602, 42 CFR-608, 42 CFR 455.100-106, 42 CFR 455.400-470). For specific requirements on Provider Enrollment refer to the AHCCCS website.

### 1. ADULT PROTECTIVE SERVICES (APS) REGISTRY CHECK

Providers are required to conduct a search of the Adult Protective Services (APS) Registry for all personnel (including subcontracted personnel and volunteers) who provide direct services to members in Intermediate Care Facilities for Persons with Intellectual Disabilities (ICF/IIDs), Skilled Nursing Facilities (SNFs), Assisted Living Facilities (ALFs), and Group Homes as well as all subcontracted personnel, including paid family members, who provide direct service to members in their homes and other community based settings. The personnel shall be prohibited from providing services to members if the search of the APS Registry contains any substantiated report of abuse, neglect, or exploitation of vulnerable adults. Providers may choose to allow exceptions to the background requirements for DCWs providing services to family members only as specified in AMPM Policy 1240-A. The search of the APS Registry shall be conducted at the time of hire/initial contract and annually thereafter. Refer to the Report of the Abuse & Neglect Prevention Task Force to Governor Douglas A. Ducey (November 1, 2019) developed in response to Executive Order 2019-03.

### 2. ABUSE, NEGLECT, AND EXPLOITATION PREVENTION

Medicaid covered institutional, residential, employment, and/or day program providers that provide direct services to Children or Vulnerable Adults, as defined by A.R.S. § 46-451(A)(9), shall develop policies, signage, and training aimed at preventing abuse, neglect, and exploitation, as well as reporting and stabilizing incidents. Providers shall implement, disclose, and monitor policies and practices aimed at preventing abuse, neglect, and exploitation, reporting incidents, conducting investigations, and ensuring incident stabilization and recovery. Providers shall post signage on how to anonymously report abuse, neglect, and exploitation and post signage explaining whistleblower protections. All signage shall be appropriate for the setting, culturally appropriate, easy to read, and as accessible as possible for all members, and interpretation shall be available. Posted signage shall be in compliance with any additional AHCCCS issued guidance. In addition to these policies and signage, information regarding abuse, neglect, and exploitation reporting shall be conveyed by providers to served members, families/guardians, and staff through ongoing training and communication mechanisms. Providers shall offer training on the prevention of abuse, neglect, and exploitation. Training shall address retaliation (e.g., harassment or loss of employment) and penalization (e.g., changes to the nature and/or location of services and supports). Providers shall conduct routine testing of staff responses to simulated acts of exploitive, abusive, and neglectful behavior in a manner similar to routine fire and other emergency drills.

The executive officers, managers, and board (if any) of any provider under this section, whether governed by a board or otherwise, shall:

a. Commit to oversight of abuse and neglect prevention, recognition, and reporting,
b. Approve and oversee policies and procedures related to reporting and investigating reports of abuse and neglect, including protections for whistleblowers, and

c. Complete an annual training on abuse and neglect prevention, recognition, and reporting.

Refer to the Report of the Abuse & Neglect Prevention Task Force to Governor Douglas A. Ducey (November 1, 2019) developed in response to Executive Order 2019-03.

**3. AMOUNT DURATION AND SCOPE**

The Subcontractor shall not arbitrarily deny or reduce the amount, duration, or scope of a required service solely because of the diagnosis, type of illness, or condition of the member [42 CFR 438.210(a)(3)(ii)].

**4. ARTIFICIAL INTELLIGENCE PROHIBITIONS**

The Subcontractor shall comply with State Policy as it relates to Generative AI to the extent that it is applicable, as may be updated or amended. State Policy (2000 Generative AI) is found here:
https://aset.az.gov/policies-standards-and-procedures

**5. AWARDS OF OTHER SUBCONTRACTS**

AHCCCS and/or the Contractor may undertake or award other contracts for additional or related work to the work performed by the Subcontractor and the Subcontractor shall fully cooperate with such other contractors, Subcontractors or State employees. The Subcontractor shall not commit or permit any act which will interfere with the performance of work by any other Contractor, Subcontractor or State employee.

**6. CERTIFICATION OF COMPLIANCE – ANTI-KICKBACK AND LABORATORY TESTING**

By signing this Subcontract, the Subcontractor certifies that it has not engaged in any violation of the Medicare Anti-Kickback statute (42 USC § 1320a-7b) or the "Stark I" and "Stark II" laws governing related-entity referrals (42 USC § 1395nn) and compensation there from. If the Subcontractor provides laboratory testing, it certifies that it has complied with 42 CFR 411.361 (42 USC §§ 1320a-7b, PL 101-239 and PL 101-432, 42 CFR 411.361).

**7. CERTIFICATIONS REQUIRED BY LAW**

If the Subcontractor is a Company as defined in A.R.S. § 35-393, the Subcontractor 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 agreement. Subcontractor further certifies that it shall comply with A.R.S. § 35-394, regarding use of the forced labor of ethnic Uyghurs, as applicable.

**8. CLINICAL LABORATORY IMPROVEMENT AMENDMENTS OF 1988**

The Clinical Laboratory Improvement Amendment (CLIA) of 1988 requires all clinical laboratories and other facilities that test human specimens to obtain either a CLIA Waiver or CLIA Certificate in order to obtain reimbursement from the Medicare and Medicaid (AHCCCS) programs. In addition, they must meet all the requirements of 42 CFR 493.

Pass-through billing or other similar activities with the intent of avoiding the above requirements are prohibited. The Contractor may not reimburse providers who do not comply with the above requirements (CLIA of 1988, 42 CFR 493).

**9. COMPLIANCE WITH AHCCCS RULES RELATING TO AUDIT AND INSPECTION**

The Subcontractor shall comply with all applicable AHCCCS Rules and Audit Guides relating to the audit of the Subcontractor's records and the inspection of the Subcontractor's facilities (42 CFR 431.107, A.R.S. § 35-214). If the Subcontractor is an inpatient facility, the Subcontractor shall file uniform reports and Title XVIII and Title XIX cost reports with AHCCCS.

The state, CMS, the HHS Inspector General, the Comptroller General, or their designees have the right to audit, evaluate, and inspect any books, records, contracts, computer, or other electronic systems of the subcontractor, or of the subcontractor's Contractor, that pertain to any aspect of services and activities performed, or determination of amounts payable under the Contractor's Contract with the State [42 CFR 457.1201(i), 42 CFR 457.1233(b), 42 CFR 438.230(c)(3)(i)-(iv)].

The Subcontractor will make available, for purposes of an audit, evaluation, or inspection under paragraph (c)(3)(i) of 42 CFR 438.230, its premises, physical facilities, equipment, books, records, contracts, computer, or other electronic systems relating to its Medicaid members [42 CFR 457.1201(i), 42 CFR 457.1233(b), 42 CFR 438.230(c)(3)(iv)].

The right to audit under paragraph (c)(3)(i) of 42 CFR 438.230 will exist through 10 years from the final date of the Contract period or from the date of completion of any audit, whichever is later [42 CFR 457.1201(i), 42 CFR 457.1233(b), 42 CFR 438.230.

**10. COMPLIANCE WITH LAWS AND OTHER REQUIREMENTS**

The Subcontractor shall comply with all Federal, State and local laws, rules, regulations, standards, and executive orders governing performance of duties under this subcontract, without limitation to those designated within this subcontract**.**

**11. CONFIDENTIALITY REQUIREMENT**

The Subcontractor shall safeguard confidential information in accordance with Federal and State laws and regulations, including but not limited to: 42 CFR Part 431, Subpart F, Safeguarding Information of Applicants and Beneficiaries; 42 CFR Part 2, Confidentiality of Substance Use Disorder Patient Records; 45 CFR Parts 164, Security and Privacy of Protected Health Information (PHI), and A.A.C. R9-22-512, Release of Safeguarded Information.

**12. CONFLICT IN INTERPRETATION OF PROVISIONS**

In the event of any conflict in interpretation between provisions of the Subcontract and the AHCCCS Minimum Subcontract Provisions, the latter shall take precedence.

**13. CONTRACT CLAIMS AND DISPUTES**

Contract claims and disputes between the Contractor and a Subcontracted provider arising under A.R.S. Title 36, Chapter 29 shall be adjudicated in accordance with AHCCCS Rules, A.R.S. § 36-2901 et seq. (for Acute) and A.R.S. § 36-2931 et seq. (for ALTCS).

**14. CORPORATE GOVERNANCE FOR PROVIDERS**

Corporate Governance applies to providers of services to Children and/or Vulnerable Adults (as defined by A.R.S. § 46-451(A)(10)). Providers shall comply with the following standards of good governance:

a. If the provider has a board, then the board shall:
   i. Keep minutes for every meeting of the board. Meeting minutes shall comply with all privacy and confidentiality laws and regulations.
   ii. Stagger terms for board members. Prior to the appointment or re-appointment of a board member, the board shall consider the diversity of knowledge and experience of its members.
   iii. Implement and enforce a conflict of interest policy that requires board members to disclose any conflict of interest to the board prior to appointment to the board or as soon as a conflict arises. The policy shall provide for appropriate action by the board in response to an identified conflict of interest that includes requiring the board member to recuse themselves from participation in board discussions or actions and/or removal from the board.
b. The executive officers, managers, and board (if any) of any provider, whether governed by a board or otherwise, shall review the Provider's financial statements annually and implement measures to ensure the Provider's financial statements are complete, accurate, prepared in accordance with generally accepted accounting principles, and include all necessary disclosures.
c. Providers shall maintain records, such as policies and procedures, demonstrating compliance with each requirement, to be available for inspection by AHCCCS, for five years. (Refer to the Report of the Abuse & Neglect Prevention Task Force to Governor Douglas A. Ducey ((November 1, 2019)) developed in response to Executive Order 2019-03).

**15. DUGLESS DATA REPORTING REQUIREMENTS**

For those demographic elements with no identified alternative data source or Social Determinate identifier, AHCCCS created an online portal (DUGless) to be accessed directly by providers for the collection of the remaining data elements for members.

A Subcontracted provider organization that provides data for the DUG as well as all providers who might document or provide these types of data are required to provide the required data via the DUGless portal.

The requirements, definitions, and values for submission of the identified data elements are outlined in the AHCCCS DUGless Portal Guide (DPG). Subcontracted providers must collect the required information and submit the information via the DUGless Portal on the Provider AHCCCS Online. Data and information are recorded and reported to MCOs to assist in monitoring and tracking of the following:

a. Access and utilization of services,
b. Community and stakeholder information,
c. Compliance of Federal, State, and grant requirements,
d. Health disparities and inequities,
e. Member summaries and outcomes,
f. Quality and Medical Management activities, and
g. Social Determinants of Health.

**16. EMPLOYEES OF THE SUBCONTRACTOR**

All employees of the Subcontractor employed in the performance of work under the agreement shall be considered employees of the Subcontractor at all times, and not employees of AHCCCS or the State. The Subcontractor shall comply with the Social Security Act, Workman's Compensation laws and Unemployment laws of the State of Arizona and all State, local and Federal legislation relevant to the Subcontractor's business.

**17. ENCOUNTER DATA REQUIREMENT**

If the Subcontractor is a provider and the Subcontractor does not bill the Contractor (e.g., Subcontractor is capitated), the Subcontractor shall submit encounter data to the Contractor in a form acceptable to AHCCCS.

**18. EVALUATION OF QUALITY, APPROPRIATENESS, OR TIMELINESS OF SERVICES**

AHCCCS or the U.S. Department of Health and Human Services may evaluate, through inspection or other means, the quality, appropriateness, or timeliness of services performed under the Subcontract.

**19. E-VERIFY REQUIREMENTS**

In accordance with A.R.S. § 41-4401, the Subcontractor warrants compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with A.R.S. § 23-214, Subsection A.

**20. FEDERAL IMMIGRATION AND NATIONALITY ACT**

The Subcontractor 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 subcontract. Further, the Subcontractor shall flow down this requirement to all its subcontractors utilized during the term of the Contract. The State shall retain the right to perform random audits of Subcontractor and Subcontractor records or to inspect papers of any employee thereof to ensure compliance. Should the State determine that the Subcontractor and/or any of its subcontractors be found noncompliant, the State may pursue all remedies allowed by law, including, but not limited to; suspension of work, termination of the Subcontract for default and suspension and/or debarment of the Subcontractor.

**21. FRAUD AND ABUSE**

If the Subcontractor discovers, or is made aware, that an incident of suspected fraud or abuse has occurred, the Subcontractor must report the incident to AHCCCS, Office of Inspector General (AHCCCS/OIG) immediately and to the Managed Care Organization (MCO). It shall be the responsibility of the Subcontractor to report all cases of suspected fraud and abuse by Subcontractor's own members or employees. The Subcontractor is prohibited from taking any actions, such as recouping funds from the provider if fraud, waste, and/or abuse is identified, or from taking any other type of action against the provider, including but not limited to, initiating any type of suspensions, etc.

AHCCCS/OIG has the sole authority to handle and dispose of any matter involving fraud, waste, and/or abuse. The Subcontractor shall assign to AHCCCS/OIG the right to recoup any amounts overpaid to a provider as a result of fraud, waste, and/or abuse. If the Subcontractor receives anything of value that could be construed to represent the repayment of any amount expended due to fraud, waste and/or abuse, the Subcontractor shall forward that recovery to AHCCCS/OIG within 30 days of its receipt and failure to do so shall be deemed an overpayment subject to offset in the amount recouped by Subcontractor.

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.

### 22. GRIEVANCE AND APPEAL SYSTEM

The Subcontractor shall assist members in understanding their right to file grievances and appeals in conformance with all AHCCCS Grievance and Appeal System and member rights policies.

### 23. LIMITATIONS ON BILLING AND COLLECTION PRACTICES

Except as provided in Federal and State Law and regulations, the Subcontractor shall not bill, nor attempt to collect payment directly or through a collection agency from an individual who was AHCCCS eligible at the time the covered service(s) were rendered, or from the financially responsible relative or representative for covered services that were paid or could have been paid by the system.

### 24. LOBBYING

No funds paid to the Subcontractor by AHCCCS, or interest earned thereon, shall be used for the purpose of influencing or attempting to influence an officer or employee of any Federal or State agency, a member of the United States Congress or State Legislature, an officer or employee of a member of the United States Congress or State Legislature in connection with awarding of any Federal or State contract, the making of any Federal or State grant, the making of any 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 Subcontractor shall disclose if any funds other than those paid to the Subcontractor 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.

### 25. MAINTENANCE OF REQUIREMENTS TO DO BUSINESS AND PROVIDE SERVICES

If the Subcontractor is a provider, the Subcontractor shall be registered with AHCCCS and all Subcontractors shall obtain and maintain all licenses, permits and authority necessary to do business and render service under this subcontract and, where applicable, shall comply with all laws regarding safety, unemployment insurance, disability insurance and worker's compensation.

### 26. NONDISCRIMINATION REQUIREMENTS

The Subcontractor 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. The Subcontractor shall include these provisions in contracts with its Subcontractors when required by Federal or State law.

### 27. OFF-SHORE PERFORMANCE OF WORK PROHIBITED

Any services that are described in the specifications or scope of work that directly serve the State of Arizona or its clients and involve access to secure or sensitive data or personal client data shall be performed within the defined territories within the borders of the United States. No claims paid by the Contractor to a network provider, out-of-network provider, Subcontractor, or financial institution located outside of the United States are considered in the development of actuarially sound capitation rates [42 CFR 438.602(i)]. The term “data” as it relates specifically to this paragraph: means recorded information, regardless of form or the media on which it may be recorded. The term may include technical data and computer software. The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing, or management information.

**28. PRIOR AUTHORIZATION AND UTILIZATION MANAGEMENT**

If the Subcontractor is a provider, the Subcontractor shall obtain Prior Authorization as required by the Subcontract and AHCCCS Rules and Policies (for members enrolled with a contracted MCO) or AHCCCS Rules and Policies (for members not enrolled with an MCO). In addition, the Subcontractor must cooperate with Utilization Management processes established by the Subcontract and AHCCCS' Rules and Policies.

**29. PROTECTION OF STATE CYBERSECURITY INTERESTS**

The Subcontractor 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.

**30. RECORD RETENTION**

The Subcontractor shall maintain books and records relating to covered services and expenditures including reports to AHCCCS and working papers used in the preparation of reports to AHCCCS. The Subcontractor shall comply with all specifications for record keeping established by AHCCCS. All books and records shall be maintained to the extent and in such detail as required by AHCCCS Rules and policies. Records shall include but not be limited to financial statements, records relating to the quality of care, medical records, prescription files and other records specified by AHCCCS.

The Subcontractor agrees to make available at its office at all reasonable times during the term of the Subcontract and the period set forth in this Paragraph 30, Record Retention, any of its records for inspection, audit or reproduction by any authorized representative of AHCCCS, State or Federal government.

The Subcontractor is required to retain records for the longest period of time under applicable Federal and State requirements including but not limited to 42 CFR 431.17, 42 CFR 438.3(u), A.R.S. §§ 35-214, and 12-2297. At a minimum, records must be retained for five years after completion of the subcontract.

Records which relate to grievances, disputes, litigation or the settlement of claims arising out of the performance of the Subcontract, or costs and expenses of the Subcontract to which exception has been taken by AHCCCS, shall be retained by the Subcontractor for a period of five years after the date of final disposition or resolution thereof unless a longer period of time is required by law (42 CFR 431.17, A.R.S. § 41-2548).

**31. TERMINATION OF CONTRACT**

a. Suspension or Debarment. The State may, by written notice to the Subcontractor, immediately terminate the Subcontract if the State determines that the Subcontractor 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 Subcontractor is not currently suspended or debarred. If the Subcontractor becomes suspended or debarred, the Subcontractor shall immediately notify the State.
b. Termination for Convenience. The State reserves the right to terminate the Subcontract, 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 Subcontractor shall stop all work, as directed in the notice, notify all Subcontractors of the effective date of the termination, and minimize all further costs to the State. In the event of termination under this paragraph, all documents, data, and reports prepared by the Subcontractor under the Subcontract shall become the property of and be delivered to the State upon demand. The Subcontractor 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.
c. Termination clauses in a Business Associate Agreement (BAA).
    i. Termination for Cause. Business Associate authorizes termination of the Subcontract 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.

ii. Obligations of Business Associate Upon Termination. Upon termination, cancellation, expiration or other conclusion of the Subcontract, Business Associate, with respect to PHI received from AHCCCS, or created, maintained, or received by Business Associate on behalf of AHCCCS, shall:
   a) Retain only that PHI which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities,
   b) Destroy or return to AHCCCS all remaining PHI that the Business Associate still maintains in any form,
   c) 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,
   d) 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
   e) 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.

iii. Survival. The obligations of Business Associate under this Section shall survive the termination of the Subcontract.

**32. SEVERABILITY**

If any provision of the Subcontract, including these Minimum Subcontract Provisions, is held invalid or unenforceable, the remaining provisions shall continue to be valid and enforceable to the full extent permitted by law.

**33. SUBJECTION OF SUBCONTRACT**

The terms of this Subcontract shall be subject to the applicable material terms and conditions of the Contract existing between the Contractor and AHCCCS for the provision of covered services.

**34. VOIDABILITY OF SUBCONTRACT**

The Subcontract is voidable and subject to immediate termination by AHCCCS upon the Subcontractor becoming insolvent or filing proceedings in bankruptcy or reorganization under the United States Code, or upon assignment or delegation of the Subcontract without AHCCCS' prior written approval.

**35. INSURANCE AND INDEMNIFICATION**

For any Subcontract valued at less than $50,000.00 for the entire term of the Subcontract, the Subcontractor is required to maintain insurance, at a minimum, as specified below in "27.2 Standard Professional Service Contract – Working with Children and/or Vulnerable Adults - Under $50,000" subsection. For all other Subcontracts, the Subcontractor is required to maintain insurance, at a minimum, as specified below in "27.1 Standard Professional Service Contract - Working with Children and/or Vulnerable Adults" subsection. See below for Subcontractor sexual abuse and molestation insurance requirements. Subcontractor adherence to insurance requirements shall be verified by the Contractor for all existing Subcontracts and as new Subcontracts are initiated.

For Subcontractors working with children or vulnerable adults as defined by A.R.S. § 46-451(A)(9), the Contractor shall evaluate as to whether or not to require coverage of sexual abuse and molestation **as outlined below.**

**35.1 STANDARD PROFESSIONAL SERVICE CONTRACT – WORKING WITH CHILDREN AND/OR VULNERABLE ADULTS**

**Indemnification Clause**

To the fullest extent permitted by law, the Subcontractor shall defend, indemnify, and hold harmless the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Subcontractor 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 Subcontractor 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 Subcontractor from and against any and all claims. It is agreed that Subcontractor will be responsible for primary loss investigation, defense, and judgment costs where this indemnification is applicable. In consideration of the award of the Subcontract, the Subcontractor 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 Subcontractor for the State of Arizona.

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

**Insurance Requirements**

Subcontractors shall procure and maintain, until all of their obligations have been discharged, including any warranty periods under this Contract or Subcontract, 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 Subcontractor, its agents, representatives, employees or Subcontractors.

The Insurance Requirements herein are minimum requirements for this subcontract and in no way limit the indemnity covenants contained in this subcontract. The State of Arizona in no way warrants that the minimum limits contained herein are sufficient to protect the Subcontractor from liabilities that arise out of the performance of the work under this subcontract by the Subcontractor, its agents, representatives, employees or Subcontractors, and the Subcontractor is free to purchase additional insurance. The State of Arizona in no way warrants that the minimum limits contained herein are sufficient to protect the Subcontractor from liabilities that arise out of the performance of the work under this Contract or Subcontract by the Subcontractor, its agents, representatives, employees or subcontractors, and the Subcontractor is free to purchase additional insurance.

**A. Minimum Scope and Limits of Insurance**

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

**1. Commercial General Liability (CGL) – Occurrence Form**

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

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|---|---|
| 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 the Subcontractor, or on behalf of the Subcontractor or 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 the Subcontractor, or on behalf of the Subcontractor or Contractor.

c. For Subcontractors providing direct services to children and/or vulnerable adults (as defined by A.R.S. § 46-451(A)(9)), the policy shall include coverage for Sexual Abuse and Molestation (SAM). This SAM coverage may be sub-limited to no less than $500,000. The limits may be included within the General Liability limit, provided by separate endorsement with its own limits. If you are unable to obtain SAM coverage under your General Liability because the insurance market will not support it, it should it be included with the Professional Liability.
d. Subcontractors must provide the following statement on their Certificate(s) of Insurance: "Sexual Abuse and Molestation coverage is included" or "Sexual Abuse and Molestation coverage is not excluded."

**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 or Subcontract. If no automobiles are used in the performance of this Contract or Subcontract, then this is not applicable).

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| 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 the Subcontractor, or on behalf of the Subcontractor or Contractor, involving automobiles owned, hired and/or non-owned by the Subcontractor.
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 the Subcontractor, or on behalf of the Subcontractor or Contractor.

**3. Workers' Compensation and Employers' Liability**

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| 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 the Subcontractor or on behalf of the Subcontractor or 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).

**4. Professional Liability (Errors and Omissions Liability)**

| | |
|---|---|
| Each Claim | $ 1,000,000 |
| Annual Aggregate | $ 2,000,000 |

a. For Subcontractors providing direct services to children and/or vulnerable adults (as defined by A.R.S. § 46-451(A)(9)), if SAM coverage is being provided under this policy, then Subcontractors must provide the following statement on their Certificate(s) of Insurance:

"Sexual Abuse and Molestation coverage is included" or "Sexual Abuse and Molestation coverage is not excluded." This coverage may be sub-limited to no less than $500,000.

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

**B. Additional Insurance Requirements**

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

The Subcontractor's policies, as applicable, shall stipulate that the insurance afforded the Subcontractor shall be primary and that any insurance carried by the Department of Administration, 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 Subcontractor shall not limit the Subcontractor's liability assumed under the indemnification provisions of this Subcontract.

**C. Notice of Cancellation**

Applicable to all insurance policies required within the Insurance Requirements of this Contract or the Subcontract, Subcontractor'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 the Prime Contractor.

**D. Acceptability of Insurers**

Subcontractor'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 or Subcontractor from potential insurer insolvency.

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

**E. Verification of Coverage**

The Subcontractor shall furnish the Contractor with certificates of insurance (valid ACORD form or equivalent approved by the State of Arizona) evidencing that Subcontractor has the insurance as required by this Subcontract. An authorized representative of the insurer shall sign the certificates. Subcontractor shall also furnish certificates to AHCCCS if requested.

Each insurance policy required by this Subcontract must be in effect at, or prior to, commencement of work under this Subcontract. Failure to maintain the insurance policies as required by this Subcontract, or to provide evidence of renewal, is a material breach of contract.

All certificates required by this Subcontract shall be sent directly to the Contractor. All Subcontractors are required to maintain insurance and to provide verification upon request. The AHCCCS subcontract number and project

description shall be noted on the certificate of insurance. The State of Arizona and AHCCCS reserve the right to require complete copies of all insurance policies required by this Subcontract at any time.

**F. Subcontractors**

Subcontractors' certificate(s) shall include all of its subcontractors as insureds under its policies or Subcontractor shall be responsible for ensuring and/or verifying that all of its subcontractors have valid and collectable insurance as evidenced by the certificates of insurance and endorsements for each of its Subcontractor. All coverages for subcontractors shall be subject to the Minimum Subcontract Provisions located on the AHCCCS website. AHCCCS reserves the right to require, at any time throughout the life of the Contract or Subcontract, proof from the Subcontractor that its subcontractors have the required coverage.

**G. 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 or Subcontract, as deemed necessary. Such action will not require a formal Contract or Subcontract amendment but may be made by administrative action.

**H. 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.

**35.2 STANDARD PROFESSIONAL SERVICE CONTRACT – WORKING WITH CHILDREN AND/OR VULNERABLE ADULTS – UNDER $50,000**

**Indemnification Clause**

To the fullest extent permitted by law, Subcontractor shall defend, indemnify, and hold harmless the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Subcontractor 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 Subcontractor 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 Subcontractor from and against any and all claims. It is agreed that Subcontractor will be responsible for primary loss investigation, defense, and judgment costs where this indemnification is applicable. In consideration of the award of the Subcontract, the Subcontractor 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 Subcontractor for the State of Arizona.

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

**Insurance Requirements**

Subcontractors shall procure and maintain, until all of their obligations have been discharged, including any warranty periods under this Contract or Subcontract, 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 Subcontractor, its agents, representatives, employees or Subcontractors.

The Insurance Requirements herein are minimum requirements for this subcontract and in no way limit the indemnity covenants contained in this subcontract. The State of Arizona in no way warrants that the minimum limits contained herein are sufficient to protect the Subcontractor from liabilities that arise out of the performance of the work under this subcontract by the Subcontractor, its agents, representatives, employees or Subcontractors, and the Subcontractor is free to purchase additional insurance. The State of Arizona in no way warrants that the minimum limits contained herein are sufficient to protect the Subcontractor from liabilities that arise out of the performance of the work under this Contract or Subcontract by the Subcontractor, its agents, representatives, employees or subcontractors, and the Subcontractor is free to purchase additional insurance.

**A. Minimum Scope and Limits of Insurance**

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

**1. Commercial General Liability (CGL) – Occurrence Form**

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

| | |
|---|---|
| General Aggregate | $1,000,000 |
| Products – Completed Operations Aggregate | $500,000 |
| Personal and Advertising Injury | $500,000 |
| Damage to Rented Premises | $25,000 |
| Each Occurrence | $500,000 |

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 the Subcontractor, or on behalf of the Subcontractor or 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 the Subcontractor, or on behalf of the Subcontractor or Contractor.

c. For Subcontractors providing direct services to children and/or vulnerable adults (as defined by A.R.S. § 46-451(A)(9)), the policy shall include coverage for Sexual Abuse and Molestation (SAM). This SAM coverage may be sub-limited to no less than $250,000. The limits may be included within the General Liability limit, provided by separate endorsement with its own limits. If you are unable to obtain SAM coverage under your General Liability because the insurance market will not support it, it should be included with the Professional Liability.

d. Subcontractors must provide the following statement on their Certificate(s) of Insurance: "Sexual Abuse and Molestation coverage is included" or "Sexual Abuse and Molestation coverage is not excluded."

**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 or Subcontract. If no automobiles are used in the performance of this Contract or Subcontract, then this is not applicable).

| | |
|---|---|
| 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 the Subcontractor, or on behalf of the Subcontractor or Contractor, involving automobiles owned, hired and/or non-owned by the Subcontractor.

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 the Subcontractor, or on behalf of the Subcontractor or Contractor.

**3. Workers' Compensation and Employers' Liability**

| | |
|---|---|
| Workers' Compensation | Statutory |
| Employers' Liability | Each Accident $500,000 |
| | Disease – Each Employee $500,000 |
| | Disease – Policy Limit $500,000 |

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 the Subcontractor or on behalf of the Subcontractor or 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).

**4. Professional Liability (Errors and Omissions Liability)**

| | |
|---|---|
| Each Claim | $ 1,000,000 |
| Annual Aggregate | $ 1,000,000 |

a. For Subcontractors providing direct services to children and/or vulnerable adults (as defined by A.R.S. § 46-451(A)(9)), if SAM coverage is being provided under this policy then Subcontractors must provide the following statement on their Certificate(s) of Insurance:

"Sexual Abuse and Molestation coverage is included" or "Sexual Abuse and Molestation coverage is not excluded." This coverage may be sub-limited to no less than $250,000.

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

c. Policy shall cover professional misconduct or wrongful acts for those positions defined in the Scope of Work of this Contract or Subcontract.

**B. Additional Insurance Requirements**

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

The Subcontractor's policies, as applicable, shall stipulate that the insurance afforded the Subcontractor shall be primary and that any insurance carried by the Department of Administration, 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 Subcontractor shall not limit the Subcontractor's liability assumed under the indemnification provisions of this Subcontract.

**C. Notice of Cancellation**

Applicable to all insurance policies required within the Insurance Requirements of this Contract or the Subcontract, Subcontractor'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 the Prime Contractor.

**D. Acceptability of Insurers**

Subcontractor'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 or Subcontractor from potential insurer insolvency.

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**E. Verification of Coverage**

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All certificates required by this Subcontract shall be sent directly to the Contractor. All Subcontractors are required to maintain insurance and to provide verification upon request. The AHCCCS Contract number and project

description shall be noted on the certificate of insurance. The State of Arizona and AHCCCS reserve the right to require complete copies of all insurance policies required by this Subcontract at any time.

**F. Subcontractors**

The Subcontractors' certificate(s) shall include all of its subcontractors as insureds under its policies or the Subcontractor shall be responsible for ensuring and/or verifying that all of its subcontractors have valid and collectable insurance as evidenced by the certificates of insurance and endorsements for each of its Subcontractor. All coverages for subcontractors shall be subject to the Minimum Subcontract Provisions located on the AHCCCS website. AHCCCS reserves the right to require, at any time throughout the life of the Contract or Subcontract, proof from the Subcontractor that its subcontractors have the required coverage.

**G. 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 or Subcontract, as deemed necessary. Such action will not require a formal Contract or Subcontract amendment but may be made by administrative action.

**H. Exceptions**

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