

MINIMUM SUBCONTRACT PROVISIONS

MINIMUM SUBCONTRACT PROVISIONS

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

“*Subcontract*” means any contract between the AHCCCS Contractor and another party for the performance of any or all services or requirements specified under the Contractor’s contract with AHCCCS.

“*Subcontractor*” means any party with a contract with the Contractor for the provision of any or all services or requirements specified under the Contractor’s contract with AHCCCS.

Subcontractors who provide services under the AHCCCS Programs including, but not limited to Acute Care, DCS/Comprehensive Medical and Dental Program (DCS/CMDP), ADHS/Division of Behavioral Health Services (ADHS/DBHS), and Children’s Rehabilitative Services (CRS), must comply with the following applicable rules and statutes:

- Acute Care Program - A.A.C. Title 9, Chapter 22. AHCCCS statutes for the Acute Care Program are generally found in A.R.S. Title 36, Chapter 29, Article 1. Rules for the KidsCare Program are found in A.A.C. Title 9, Chapter 31 and the statutes for KidsCare Program may be found in A.R.S. 36, Chapter 29, Article 4.
- Medicare Cost Sharing - A.A.C. Title 9, Chapter 29 (for Acute) and A.A.C. Title 9, Chapter 29 (for ALTCS).
- DCS/CMDP - A.A.C. Title 6, Chapter 5, Article 60. AHCCCS statutes for CMDP are generally found in A.R.S. Title 8, Chapter 5, Article 1.
- ADHS/DBHS - A.A.C. Title 9, Chapter 20, 21, and Chapter 22, Articles 2 and 12, and A.A.C. Title 9, Chapter 31, Article 12. AHCCCS statutes for BHS are generally found in A.R.S. Title 36, Chapter 34.
- CRS - A.A.C. Title 9, Chapter 22, A.A.C. Title 9, Chapter 7. AHCCCS statutes for CRS are generally found in A.R.S. Title 36, Chapter 2, A.R.S. §36-797.43 and 44.

All statutes, rules and regulations cited in this attachment are listed for reference purposes only and are not intended to be all inclusive.

MINIMUM SUBCONTRACT PROVISIONS

The following provisions must be referenced and compliance required in every Subcontract.

1. ASSIGNMENT AND DELEGATION OF RIGHTS AND RESPONSIBILITIES

No payment due the Subcontractor under this subcontract may be assigned without the prior approval of the Contractor. No assignment or delegation of the duties of this subcontract shall be valid unless prior written approval is received from the Contractor.

2. 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.

3. 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 (PL 101-239 and PL 101-432) and compensation there from. If the Subcontractor provides laboratory testing, it certifies that it has complied with 42 CFR 411.361 and has sent to AHCCCS simultaneous copies of the information required by that rule to be sent to the Centers for Medicare and Medicaid Services. (42 USC §§1320a-7b; PL 101-239 and PL 101-432; 42 CFR 411.361)

4. CERTIFICATION OF TRUTHFULNESS OF REPRESENTATION

By signing this subcontract, the Subcontractor certifies that all representations set forth herein are true to the best of its knowledge.

5. CLINICAL LABORATORY IMPROVEMENT AMENDMENTS OF 1988

The Clinical Laboratory Improvement Amendment (CLIA) of 1988 requires 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, Subpart A.

To comply with these requirements, AHCCCS requires all clinical laboratories to provide verification of CLIA Licensure or Certificate of Waiver during the provider registration process. Failure to do so shall result in either a termination of an active provider ID number or denial of initial registration. These requirements apply to all clinical laboratories.

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, Subpart A)

6. COMPLIANCE WITH AHCCCS RULES RELATING TO AUDIT AND INSPECTION

The Subcontractor shall comply with all applicable AHCCCS Rules and Audit Guide relating to the audit of the Subcontractor's records and the inspection of the Subcontractor's facilities. If the Subcontractor is an inpatient facility, the Subcontractor shall file uniform reports and Title XVIII and Title XIX cost reports with AHCCCS. (A.R.S. §41-2548; 45 CFR 74.48 (d))

MINIMUM SUBCONTRACT PROVISIONS

7. 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. [42 CFR 434.70] [42 CFR 438.6(l)]

8. CONFIDENTIALITY REQUIREMENT

The Subcontractor shall safeguard confidential information in accordance with Federal and State laws regulations, policies, and AHCCCS directives, including but not limited to, 42 CFR Part 431, Subpart F, A.R.S. §36-107, §36-2903 (for Acute), §36-2932 (for ALTCS), §41-1959 and §46-135, the Health Insurance Portability and Accountability Act (Public Law 107-191 Statutes 1936), 45 CFR Parts 160 and 164, and AHCCCS Rules.

9. CONFLICT IN INTERPRETATION OF PROVISIONS

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

10. CONTRACT CLAIMS AND DISPUTES

Contract claims and disputes 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).

11. ENCOUNTER DATA REQUIREMENT

If 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.

12. 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 this subcontract.

13. E-VERIFY REQUIREMENTS

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

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

15. 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 the Inspector General (AHCCCS-OIG) immediately within one business day and to the prime Contractor.

MINIMUM SUBCONTRACT PROVISIONS

16. GENERAL INDEMNIFICATION

The parties to this contract agree that AHCCCS shall be indemnified and held harmless by the Contractor and Subcontractor for the vicarious liability of AHCCCS as a result of entering into this contract. However, the parties further agree that AHCCCS shall be responsible for its own negligence. Each party to this contract is responsible for its own negligence.

17. INSURANCE

The Subcontractor is required to maintain insurance, at a minimum, as specified in Attachment E-1, Standard Professional Service Contracts and E-2, Standard Professional Service Contracts – Under \$50,000. 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, the Contractor may require coverage of sexual abuse and molestation.

18. LIMITATIONS ON BILLING AND COLLECTION PRACTICES

Except as provided in Federal and State law and regulations, the Subcontractor shall not bill, or attempt to collect payment from a person 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.

19. MAINTENANCE OF REQUIREMENTS TO DO BUSINESS AND PROVIDE SERVICES

The Subcontractor shall be registered with AHCCCS and 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.

20. NON-DISCRIMINATION REQUIREMENTS

The Subcontractor shall comply with State Executive Order No. 99-4, which mandates that all persons, regardless of race, color, religion, gender, national origin or political affiliation, shall have equal access to employment opportunities, and all other applicable Federal and State laws, rules and regulations, including the Americans with Disabilities Act and Title VI. The Subcontractor shall take positive action to ensure that applicants for employment, employees, and persons to whom it provides service are not discriminated against due to race, creed, color, religion, sex, national origin or disability. (Federal regulations, State Executive order # 99-4)

21. 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. Unless specifically stated otherwise in specifications, this definition does not apply to indirect or “overhead” services, redundant back-up services or services that are incidental to the performance of the contract. This provision applies to work performed by Subcontractors at all tiers.

22. PRIOR AUTHORIZATION AND UTILIZATION MANAGEMENT

The Contractor and Subcontractor shall develop, maintain and use a system for Prior Authorization and Utilization Management that is consistent with AHCCCS Rules and the Contractor's policies.

MINIMUM SUBCONTRACT PROVISIONS

23. RECORDS RETENTION

The Subcontractor shall maintain records relating to covered services and expenditures including reports to AHCCCS and documentation 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 all reasonable times during the term of this contract, any of its records for inspection, audit or reproduction by any authorized representative of AHCCCS, State or Federal government.

The Subcontractor shall preserve and make available, at no cost, all records for a period of five years from the date of final payment under this contract unless a longer period of time is required by law. For retention of patient medical records, the subcontractor shall ensure compliance with A.R.S. §12-2297 which provides, in part, that a health care provider shall retain patient medical records according to the following:

1. If the patient is an adult, the provider shall retain the patient medical records for at least six years after the last date the adult patient received medical or health care services from that provider.
2. If the patient is under 18 years of age, the provider shall retain the patient medical records either for at least three years after the child's eighteenth birthday or for at least six years after the last date the child received medical or health care services from that provider, whichever date occurs later.

In addition, the Subcontractor shall comply with the record retention periods specified in HIPAA laws and regulations, including, but not limited to, 45 CFR 164.530(j)(2).

If this contract is completely or partially terminated, the records relating to the work terminated shall be preserved and made available, at no cost, for a period of five years from the date of any such termination. Records which relate to grievances, disputes, litigation or the settlement of claims arising out of the performance of this contract, or costs and expenses of this contract to which exception has been taken by AHCCCS, shall be retained by the 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. [45 CFR 74.53; 42 CFR 431.17; A.R.S. §41-2548]

24. RESERVED

25. SEVERABILITY

If any provision of these subcontract terms and conditions is held invalid or unenforceable, the remaining provisions shall continue valid and enforceable to the full extent permitted by law.

26. 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.

27. STANDARDS OF CONDUCT

The subcontractor will perform services for members consistent with the proper and required practice of medicine and must adhere to the customary rules of ethics and conduct of its appropriate professional organization including, but not limited to, the American Medical Association and other national and state boards and associations or health care professionals to which they are subject to licensing, certification, and control.

MINIMUM SUBCONTRACT PROVISIONS

28. TERMINATION OF SUBCONTRACT

AHCCCS may, by written notice to the Subcontractor, terminate this subcontract if it is found, after notice and hearing by the State, that gratuities in the form of entertainment, gifts, or otherwise were offered or given by the Subcontractor, or any agent or representative of the Subcontractor, to any officer or employee of the State with a view towards securing a contract or securing favorable treatment with respect to the awarding, amending or the making of any determinations with respect to the performance of the Subcontractor; provided, that the existence of the facts upon which the state makes such findings shall be in issue and may be reviewed in any competent court. If the subcontract is terminated under this section, unless the Contractor is a governmental agency, instrumentality or subdivision thereof, AHCCCS shall be entitled to a penalty, in addition to any other damages to which it may be entitled by law, and to exemplary damages in the amount of three times the cost incurred by the Subcontractor in providing any such gratuities to any such officer or employee. [A.A.C. R2-5-501; A.R.S. §41-2616 C.; 42 CFR 434.6, a. (6)]

29. VOIDABILITY OF SUBCONTRACT

This 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.

30. WARRANTY OF SERVICES

The Subcontractor, by execution of this subcontract, warrants that it has the ability, authority, skill, expertise and capacity to perform the services specified in this contract.

ATTACHMENT E-1
STANDARD PROFESSIONAL SERVICE CONTRACT

ATTACHMENT E-1

STANDARD PROFESSIONAL SERVICE CONTRACT

INDEMNIFICATION CLAUSE:

To the extent allowed by law, Subcontractors 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 "Indemnatee") 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 Indemnatee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnatee, 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 this contract, the Contractor agrees to waive all rights of subrogation against the State of Arizona, its officers, officials, agents and employees for losses arising from the work performed by the 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, are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, employees or Subcontractors.

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

A. **MINIMUM SCOPE AND LIMITS OF INSURANCE:** Subcontractor shall provide coverage with limits of liability not less than those stated below as applicable in accordance with the services provided by the Subcontractor.

1. **Commercial General Liability – Occurrence Form**

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

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

ATTACHMENT E-1
STANDARD PROFESSIONAL SERVICE CONTRACT

- a. The policy shall be endorsed (**Blanket Endorsements are not acceptable**) to include the following additional insured language: *"The State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees shall be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor."* Such additional insured shall be covered to the full limits of liability purchased by the Subcontractor, even if those limits of liability are in excess of those required by this contract.
- b. Policy shall contain a waiver of subrogation endorsement (**Blanket Endorsements are not acceptable**) in favor of the "State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees" for losses arising from work performed by or on behalf of the Subcontractor.

2. Business Automobile Liability

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

- Combined Single Limit (CSL) \$1,000,000
 - a. The policy shall be endorsed (**Blanket Endorsements are not acceptable**) to include the following additional insured language: *"The State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees shall be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor, involving automobiles owned, leased, hired or borrowed by the Contractor."* Such additional insured shall be covered to the full limits of liability purchased by the Subcontractor even if those limits of liability are in excess of those required by this contract.
 - b. Policy shall contain a waiver of subrogation endorsement (**Blanket Endorsements are not acceptable**) in favor of the "State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees" for losses arising from work performed by or on behalf of the Subcontractor.
 - c. Policy shall contain a severability of interest provision.

3. Worker's Compensation and Employers' Liability

- Workers' Compensation Statutory
- Employers' Liability

Each Accident	\$ 500,000
Disease – Each Employee	\$ 500,000
Disease – Policy Limit	\$ 1,000,000
- a. Policy shall contain a waiver of subrogation endorsement (**Blanket Endorsements are not acceptable**) in favor of the "State of Arizona, and departments, agencies, boards, commissions, universities, officers, officials, agents, and employees" for losses arising from work performed by or on behalf of the Subcontractor.
- b. This requirement shall not apply to: Separately, EACH Contractor or Subcontractor exempt under A.R.S. §23-901, AND when such Contractor or Subcontractor executes the appropriate waiver (Sole Proprietor/Independent Contractor) form.

ATTACHMENT E-1
STANDARD PROFESSIONAL SERVICE CONTRACT

4. Professional Liability (Errors and Omissions Liability)

Each Claim	\$ 1,000,000
Annual Aggregate	\$ 2,000,000

- a. In the event that the professional liability insurance required by this contract is written on a claims-made basis, Subcontractor warrants that any retroactive date under the policy shall precede the effective date of this contract; 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 is completed.
- b. The policy shall cover professional misconduct or negligent acts for those positions defined in the Scope of Work of this contract.

B. ADDITIONAL INSURANCE REQUIREMENTS:

The policies shall include, or be endorsed (**Blanket Endorsements are not acceptable**) to include, the following provisions. Subcontractors not currently having these provisions in place shall do so upon insurance policy renewal:

1. The Subcontractor's policies shall stipulate that the insurance afforded the Subcontractor shall be primary insurance and that any insurance carried by the Department, and its agents, officials, employees or the State of Arizona shall be excess and not contributory insurance, as provided by A.R.S. §41-621 (E).
2. Coverage provided by the Subcontractor shall not be limited to the liability assumed under the indemnification provisions of this contract.

C. NOTICE OF CANCELLATION: With the exception of (10) day notice of cancellation for non-payment of premium, any changes material to compliance with this contract in the insurance policies above shall require (30) days written notice to the State of Arizona. Such notice shall be sent directly to AHCCCS Contracts Unit, Mail Drop 5700, Division of Business and Finance, 701 E. Jefferson St., Phoenix, AZ 85034 and shall be sent by certified mail, return receipt requested.

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. Insurer 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 Subcontractor from potential insurer insolvency.

E. VERIFICATION OF COVERAGE: Subcontractor shall furnish the State of Arizona with certificates of insurance (ACORD form or equivalent approved by the State of Arizona) as required by this contract. The certificates for each insurance policy are to be signed by an authorized representative.

Upon request, all certificates and endorsements (**Blanket Endorsements are not acceptable**) are to be received and approved by the State of Arizona before work commences. Each insurance policy required by this contract must be in effect at or prior to commencement of work under this contract and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this contract, or to provide evidence of renewal, is a material breach of contract.

All certificates required by this contract shall be sent directly to AHCCCS Contracts Unit, Mail Drop 5700, Division of Business and Finance, 701 E. Jefferson St., Phoenix, AZ 85034. All subcontractors are required to maintain insurance and to provide verification upon request. The State of Arizona project/contract number and project description shall be noted on the certificate of insurance. The State of

ATTACHMENT E-1
STANDARD PROFESSIONAL SERVICE CONTRACT

Arizona reserves the right to require complete, copies of all insurance policies required by this contract at any time.

- F. **SUBCONTRACTORS:** Subcontractors' certificate(s) shall include all subcontractors as insureds under its policies **or** upon request, the Subcontractor shall furnish to the State of Arizona separate certificates and endorsements for each subcontractor upon request. All coverages for subcontractors shall be subject to the minimum requirements identified above.
- G. **APPROVAL:** Any modification or variation from the *insurance requirements* in this contract shall be made by the contracting agency in consultation with the Department of Administration, Risk Management Division. Such action will not require a formal contract amendment, but may be made by administrative action.
- H. **EXCEPTIONS:** In the event the 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 Subcontractor(s) is/are a State of Arizona agency, board, commission, or university, none of the above shall apply.

**ATTACHMENT E-2 STANDARD PROFESSIONAL
SERVICE CONTRACT – UNDER \$50,000**

ATTACHMENT E-2

STANDARD PROFESSIONAL SERVICE CONTRACT – UNDER \$50,000

INDEMNIFICATION CLAUSE:

To the extent allowed by law, Subcontractors 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 “Indemnatee”) 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 Indemnatee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnatee, 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 this contract, 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, are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Subcontractor, his agents, representatives, employees or subcontractors.

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

A. **MINIMUM SCOPE AND LIMITS OF INSURANCE:** Subcontractor shall provide coverage with limits of liability not less than those stated below as applicable in accordance with the services provided by the subcontractor.

1. **Commercial General Liability – Occurrence Form**

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

- | | |
|---|-------------|
| • General Aggregate | \$1,000,000 |
| • Products – Completed Operations Aggregate | \$ 500,000 |
| • Personal and Advertising Injury | \$ 500,000 |
| • Fire Legal Liability | \$ 25,000 |
| • Each Occurrence | \$ 500,000 |

**ATTACHMENT E-2 STANDARD PROFESSIONAL
SERVICE CONTRACT – UNDER \$50,000**

- b. The policy shall be endorsed (**Blanket Endorsements are not acceptable**) to include the following additional insured language: *“The State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees shall be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Subcontractor.”* Such additional insured shall be covered to the full limits of liability purchased by the Contractor, even if those limits of liability are in excess of those required by this contract.
- c. Policy shall contain a waiver of subrogation endorsement (**Blanket Endorsements are not acceptable**) in favor of the “State of Arizona, and departments, agencies, boards, commissions, universities, officers, officials, agents, and employees” for losses arising from work performed by or on behalf of the Subcontractor.
2. **Business Automobile Liability**
Bodily Injury and Property Damage for any owned, hired, and/or non-owned vehicles used in the performance of this contract.
- Combined Single Limit (CSL) \$500,000
 - a. The policy shall be endorsed (**Blanket Endorsements are not acceptable**) to include the following additional insured language: *“The State of Arizona, and departments, agencies, boards, commissions, universities, officers, officials, agents, and employees shall be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Subcontractor, involving automobiles owned, leased, hired or borrowed by the Subcontractor.”*
 - b. Policy shall contain a waiver of subrogation endorsement (**Blanket Endorsements are not acceptable**) in favor of the “State of Arizona, and departments, agencies, boards, commissions, universities, officers, officials, agents, and employees” for losses arising from work performed by or on behalf of the Subcontractor.
 - c. Policy shall contain a severability of interest provision.
3. **Worker's Compensation and Employers' Liability**
- Workers' Compensation Statutory
 - Employers' Liability
 - Each Accident \$ 100,000
 - Disease – Each Employee \$ 100,000
 - Disease – Policy Limit \$ 100,000
 - a. Policy shall contain a waiver of subrogation endorsement (**Blanket Endorsements are not acceptable**) in favor of the “State of Arizona, and departments, agencies, boards, commissions, universities, officers, officials, agents, and employees” for losses arising from work performed by or on behalf of the Subcontractor.
 - b. This requirement shall not apply to: Separately, EACH Contractor or Subcontractor exempt under A.R.S. §23-901, AND when such Contractor or Subcontractor executes the appropriate waiver (Sole Proprietor/Independent Contractor) form.
4. **Professional Liability (Errors and Omissions Liability)**
- Each Claim \$ 500,000
 - Annual Aggregate \$1,000,000
 - a. 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

**ATTACHMENT E-2 STANDARD PROFESSIONAL
SERVICE CONTRACT – UNDER \$50,000**

precede the effective date of this contract; 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 is completed.

- b. The policy shall cover professional misconduct or negligent acts for those positions defined in the Scope of Work of this contract.

B. **ADDITIONAL INSURANCE REQUIREMENTS:** The policies shall include, or be endorsed (**Blanket Endorsements are not acceptable**) to include, the following provisions. Subcontractors not currently having these provisions in place shall do so upon insurance policy renewal:

1. The Subcontractor's policies shall stipulate that the insurance afforded the Subcontractor shall be primary insurance and that any insurance carried by the Department, and its agents, officials, employees or the State of Arizona shall be excess and not contributory insurance, as provided by A.R.S. §41-621 (E).
2. Coverage provided by the Subcontractor shall not be limited to the liability assumed under the indemnification provisions of this contract.

C. **NOTICE OF CANCELLATION:** With the exception of (10) day notice of cancellation for non-payment of premium, any changes material to compliance with this contract in the insurance policies above shall require (30) days written notice to the State of Arizona. Such notice shall be sent directly to AHCCCS Contracts Unit, Mail Drop 5700, Division of Business and Finance, 701 E. Jefferson St., Phoenix, AZ 85034 and shall be sent by certified mail, return receipt requested.

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 Subcontractor from potential insurer insolvency.

E. **VERIFICATION OF COVERAGE:** Subcontractor shall furnish the State of Arizona with certificates of insurance (ACORD form or equivalent approved by the State of Arizona) as required by this contract. The certificates for each insurance policy are to be signed by an authorized representative.

Upon request, all certificates and endorsements (**Blanket Endorsements are not acceptable**) are to be received and approved by the State of Arizona before work commences. Each insurance policy required by this contract must be in effect at or prior to commencement of work under this contract and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this contract, or to provide evidence of renewal, is a material breach of contract.

All certificates required by this contract shall be sent directly to AHCCCS Contracts Unit, Mail Drop 5700, Division of Business and Finance, 701 E. Jefferson St., Phoenix, AZ 85034. All subcontractors are required to maintain insurance and to provide verification upon request. The State of Arizona project/contract number and project description shall be noted on the certificate of insurance. The State of Arizona reserves the right to require complete, certified copies of all insurance policies required by this contract at any time.

F. **SUBCONTRACTORS:** Subcontractors' certificate(s) shall include all subcontractors as insureds under its policies **or** upon request, the Subcontractor shall furnish to the State of Arizona separate certificates and endorsements for each subcontractor upon request. All coverages for Subcontractors shall be subject to the minimum requirements identified above.

**ATTACHMENT E-2 STANDARD PROFESSIONAL
SERVICE CONTRACT – UNDER \$50,000**

- G. **APPROVAL:** Any modification or variation from the *insurance requirements* in this contract shall be made by the contracting agency in consultation with the Department of Administration, Risk Management Division. Such action will not require a formal contract amendment, but may be made by administrative action.
- H. **EXCEPTIONS:** In the event the 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 Subcontractor(s) is/are a State of Arizona agency, board, commission, or university, none of the above shall apply.