



# Notice of Request for Proposal

SOLICITATION # YH22-0001

Data Analytics for Program Integrity

**Procurement Officer:**

Stacy L Ingalls  
Senior Procurement Specialist  
801 E. Jefferson, Phoenix, AZ 85034

AHCCCS E-Mail: [procurement@azahcccs.gov](mailto:procurement@azahcccs.gov)  
Issue Date: September 3, 2021

DESCRIPTION:

**YH22-0001 Data Analytics for Program Integrity**

PROPOSAL DUE DATE:

**October 14, 2021**

AT 3:00 P.M.  
ARIZONA TIME

Pre-Proposal Conference:

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

QUESTIONS about this solicitation shall be submitted to the Procurement Officer in writing via email by **September 17, 2021 5:00 PM** ARIZONA TIME on the QUESTIONS AND ANSWERS FORM provided with this RFP. Answers to questions will be posted publicly with the RFP in the form of a Solicitation Amendment for the benefit of all potential Offerors.

Offerors will be required to submit their proposals through the AHCCCS SFTP Server. The deadline to request access to the AHCCCS SFTP server is: **October 14, 2021, 2021.**

In accordance with A.R.S. § 36-2906, which is incorporated herein by reference, competitive sealed proposals must be submitted in accordance with this solicitation proposal instructions prior to the time and date indicated above. **Late proposals shall not be considered and will be rejected.**

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

**OFFERORS ARE STRONGLY ENCOURAGED TO CAREFULLY READ THE ENTIRE SOLICITATION.**

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

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

Attachment 1 - Pricing Schedule  
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Questions and Answers Form

# OFFER AND ACCEPTANCE

## OFFER

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

Arizona Transaction (Sales) Privilege Tax License No.:

For clarification of this offer, contact:

Name: \_\_\_\_\_

Federal Employer Identification No.:

Title: \_\_\_\_\_

E-Mail Address: \_\_\_\_\_

Phone: \_\_\_\_\_

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Signature of Person Authorized to Sign Offer

\_\_\_\_\_  
Address

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
City State Zip

\_\_\_\_\_  
Title

## CERTIFICATION

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

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

## ACCEPTANCE OF OFFER (to be completed by AHCCCS)

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

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

This contract shall henceforth be referred to as

Contract No. YH22-0001.

CONTRACT SERVICE START DATE: \_\_\_\_\_.

AWARD DATE: \_\_\_\_\_

\_\_\_\_\_  
**MEGGAN LAPORTE, AHCCCS Chief Procurement Officer**

# OFFER AND ACCEPTANCE

## 1. AHCCCS AND MEDQUEST OVERVIEW

AHCCCS is the single state Medicaid agency for the State of Arizona. In that capacity it is responsible for operating the Title XIX and Title XXI programs through the State's 1115 Research and Demonstration Waiver, which was granted by the Centers for Medicare and Medicaid Services (CMS), U.S. Department of Health and Human Services. As of June 1, 2021, AHCCCS provides coverage to approximately 2.3 million members in Arizona. In addition to the Arizona Medicaid program, AHCCCS supports processing for the Hawaii Medicaid program (Med-QUEST) and processes claims for several non-Medicaid programs including the Arizona Department of Corrections. Med-QUEST provides coverage to approximately 400,000 members.

Over 81% of the AHCCCS program's expenditures in SFY 2020 were through managed care programs. AHCCCS contracts with Managed Care Organizations (MCO's) that are responsible for providing Acute, Long Term Care, and Behavioral Health Services. A list of contracted plans can be found here:

<https://azahcccs.gov/Members/ProgramsAndCoveredServices/availablehealthplans.html>

The program has a total fund budget for FY 2021 of approximately \$18 billion. AHCCCS has over 108,000 active providers in Arizona and Med-Quest has approximately 10,000 active providers in Hawaii, such as individual medical and behavioral health practitioners, therapy disciplines, institutions, durable medical equipment companies and transportation entities. Additional information may be found on the AHCCCS website reporting page:

<http://www.azahcccs.gov/Resources/Reports>. A more detailed overview of the Med-QUEST Program is available at the Med-QUEST website, [www.med-quest.us](http://www.med-quest.us).

## 2. PURPOSE OF THE RFP

The purpose of this Request for Proposal (RFP) is to solicit proposals from experienced vendors who provide software and services for the support of the Program Integrity activities for the lines of business supported by the Agency. AHCCCS seeks to enhance and increase the effectiveness of the current program integrity efforts through the use of existing software solutions, with proven products that can be readily integrated within existing infrastructure.

The past utilization of this service was approximately \$3.5 Million expenditures over the life of the seven (7) year contract.

The objective of AHCCCS is to become a driver of quality care, recognized for effective cost management; a health information resource to support public policy discussions; and a valued health insurance option for their respective State residents and taxpayers. To accomplish this, the specific goals include:

- 2.1. Provide Program Integrity staff with timely scheduled and ad hoc management, medical and program/service reports, and information using state-of-the-art analytic and reporting tools, and system utilities that will enhance the staffs' capabilities to administer, plan, and evaluate the performance and utilization of the State's programs, health plans, providers, and members.
- 2.2. Identify patterns of billing practices and outliers across multiple lines of business, member categories, providers, and health plans, track service levels, and usage to ensure that the programs are not incurring costs for inappropriate care and are not paying for fraudulent services.

## SCOPE OF WORK

- 2.3. Provide reporting to monitor and analyze claims and encounters against expected submission volume levels by service categories.

### **3. LEGAL AUTHORITY**

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

### **4. CONTRACTOR RESPONSIBILITIES:**

- 4.1. The Contractor shall provide a post payment solution to identify fraud, waste and abuse in both fee-for-service and managed care related claims and payments.
- 4.2. The Contractor shall host the data analytics system with state-owned data, uploaded via File Transfer Protocol (FTP) in a mutually agreed upon data layout.
- 4.3. The Contractor shall be subject to U.S. Federal laws and regulations protecting PII.
- 4.4. The system shall meet all applicable federal security and privacy regulations, including, but not limited to, 45 CFR §155.260(b), 45 CFR Part 160, FIPS 199, AZRAMP, and MARS-E v2.2.0. If updates or modifications to federal security and privacy regulations occur, the Contractor shall ensure it complies with the new requirements.
- 4.5. The contractor shall provide AHCCCS and/or another third-party authorized by AHCCCS access to the Contractor's facilities, installations, operations, documentation, information systems, and personnel used in performance of this contract to the extent required to carry out a program of security assessment (to include vulnerability testing), investigation, and audit to safeguard against threats and hazards to the confidentiality, integrity, and availability of data or to the protection of the system in compliance with Federal CMS requirements.
- 4.6. The contractor shall work with AHCCCS to supply the deliverables required to complete the authority to connect (ATC) within the specified timelines determined by the Centers for Medicare and Medicaid Services (CMS).
- 4.7. The contractor shall supply both quarterly and annual deliverables within the specified timelines determined by CMS.
- 4.8. The state-owned data shall be completely refreshed at least quarterly and shall consist of three (3) years of claims and encounters, corresponding eligible recipients, three (3) years of active providers, and miscellaneous reference files.
- 4.9. The system shall not rely solely upon AHCCCS claims and encounter data as AHCCCS may be integrating other sources of information such as Medicare Parts A, B, C and D data.
- 4.10. The Contractor may leverage other external data sources or Metadata capabilities in addition to State-owned data for analysis of potential provider and member fraud, waste and abuse.

## SCOPE OF WORK

- 4.11. The system shall provide a means of validating the upload by comparing and reconciling the state-owned data transferred to the data retrieved and stored.
- 4.12. The data refresh shall be recoverable in the event of data and/or system issues.
- 4.13. AHCCCS Office of the Inspector General (OIG) shall be the principal user of the system (plus 4 users from the AZ MFCU). The Contractor shall provide a web-based portal that gives the user remote access to the system.
- 4.14. The system shall be available to AHCCCS users, at a minimum from 6am – 12am, Monday thru Friday Arizona Time. If possible, 24 hour access is preferred.
- 4.15. The system shall provide user level permissions administered by AHCCCS OIG staff.
- 4.16. The system shall provide comprehensive drill-down/across capabilities and must be easy for the AHCCCS user to navigate.
- 4.17. The system shall support comprehensive peer analysis, both Provider (by provider type, taxonomy and category of service) and health plan. See Exhibit B: PROVIDER TYPES and Exhibit C: CATEGORIES OF SERVICE (state-owned reference data). See also: <https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/Find-Your-Taxonomy-Code>.
- 4.18. The system shall be pre-loaded with a comprehensive set of fraud algorithms, and an efficient process must be in place to refine and maintain the contractor's algorithms and add OIG custom algorithms to this set at least quarterly to address emerging fraud schemes.
- 4.19. The system shall assess the appropriate use of Diagnosis Codes, Procedure Codes (CPT and HCPCS) Revenue Codes and Modifiers (as defined by the Center for Medicare and Medicaid Services and the American Medical Association) and report any discrepancies.
- 4.20. The system shall include integrated CCI edits for both professional and facility claims as defined by the Center for Medicare and Medicaid Services, in order to provide AHCCCS users the ability to review edit citations, limits and guidelines.
- 4.21. The system shall allow the AHCCCS user to generate comprehensive ad hoc queries. These queries shall support list, range and wildcard usage and allow the AHCCCS user to thoroughly research health plan, provider and member activities. They should enable the AHCCCS user to validate existing algorithms and to initiate new ones.
- 4.22. The system shall include integrated pattern analysis to alert the AHCCCS user to unusual activity (such as sudden increase in a provider's billing).
- 4.23. The system shall include integrated link analysis in order to identify associations between and among providers and members that indicate potential collusive fraudulent activity.

## SCOPE OF WORK

- 4.23.1. At a minimum this analysis shall be based upon claims and encounters data.
- 4.23.2. Additional sources of data may be used to supplement and enhance link analysis. When applicable, geospatial mapping should be used to display the results.
- 4.24. OPTIONAL ELEMENT - The system should leverage agency and vendor data where possible to evaluate member eligibility determinations to analyze potential accuracy or risk. Areas of risk include but are not limited to date of death, incarceration, out of state residency, inappropriate asset ownership and income. See Special Instructions, section 7.4
- 4.25. OPTIONAL ELEMENT - The system should analyze the appropriateness and cost effectiveness of care as defined by health care guidelines such as Milliman and InterQual, and report any associated issues for the AHCCCS user to research. See Special Instructions, section 7.4
- 4.26. OPTIONAL ELEMENT - The system should provide access to and keyword searching of AHCCCS policies, Arizona Revised Statutes (A.R.S.), Arizona Administrative Code (A.A.C.), Centers for Medicare and Medicaid Services (CMS) guidelines and policies, and the Code of Federal Regulations (C.F.R.) to support AHCCCS OIG investigations. See Special Instructions, section 7.4
- 4.27. The system shall include a set of statistical reports in order for the AHCCCS user to analyze the breakdown of medical costs across various lines of business and service type. See Exhibit D: FORM TYPES and CLAIM TYPES (state-owned reference data).
- 4.28. The AHCCCS user must be able to save detailed query results and reports generated by the system, onto the AHCCCS network.
- 4.29. The Contractor shall provide an efficient and effective change control process.
- 4.30. The system shall include online help to assist the AHCCCS user in navigating and understanding the system functions and features.
- 4.31. The system shall include a lookup function that displays the corresponding description of a user-entered or selected code (Diagnosis, HCPCS, CPT, Modifier, NDC, and other standard codes).
- 4.32. Planning, Training and Documentation
  - 4.32.1. Project Management Plan: The Contractor shall provide a project management plan using a proposed project start date of July 1, 2022, and deployment date of January 1, 2023, or before, that includes:
  - 4.32.2. All activities required to complete the installation, configuration and deployment of the proposed solution
    - 4.32.2.1. Responsibility for performing each task (State personnel or Contractor)
    - 4.32.2.2. Level of effort for each task
    - 4.32.2.3. Start and End Dates for each task
    - 4.32.2.4. Milestone dates to include but not limited to:
      - 4.32.2.4.1. Requirements Analysis

## SCOPE OF WORK

- 4.32.2.4.2. Development
- 4.32.2.4.3. Testing
- 4.32.2.4.4. Training
- 4.32.2.4.5. Deployment (Fully operational that includes data loaded, algorithms running, and users trained.)

- 4.32.3. User Training: The Contractor shall prepare a training plan and training materials for user training. The training plan and schedule must be provided in an electronic format and accommodate training to a core group of AHCCCS users prior to the user acceptance test. The Contractor shall provide training at project implementation, upon major system updates, and periodically to support new users. The project implementation training shall be performed remotely and will require two sessions (the 85 projected number of users will be split into two groups).
- 4.32.4. System Documentation: The Contractor shall provide a system integration/process flow diagram.
- 4.32.5. User Documentation: The Contractor shall provide adequate user documentation. This documentation must be available in an electronic format prior to the user acceptance test.
- 4.32.6. System Support: The Contractor shall provide telephone and/or email support for AHCCCS user issues or questions.

4.33. All system functions and solutions submitted in response to the requirements listed in the Scope of Work shall be fully operational by the date of deployment (January 1, 2023 or before).

4.34. The system shall satisfy the Program Integrity Checklist as defined by the Center for Medicare and Medicaid Services (CMS) Medicaid Enterprise Certification Toolkit (MECT). For more information on the MECT, visit <https://www.medicaid.gov/medicaid/data-systems/medicaid-enterprise-certification-toolkit/index.html>

## 5. ASSUMPTIONS

The following assumptions should be used:

- 5.1. Current membership in AHCCCS is approximately 2.3 million (snapshot) with a fluctuating churn rate.
- 5.2. AHCCCS processes approximately 89 Million Medicaid encounters per year.
- 5.3. AHCCCS processes approximately 62.8 Million Medicaid Fee-For-Service claims per year.
- 5.4. AHCCCS anticipates needing approximately 75 user seats.
- 5.5. Current membership in Med-QUEST is approximately 400,000 (snapshot) with an approximately 40% churn rate.
- 5.6. Med-QUEST processes approximately 10 Million Medicaid encounters per year.
- 5.7. Med-QUEST processes approximately 700 Thousand Medicaid Fee-For-Service claims per year.
- 5.8. Med-QUEST anticipates needing approximately 10 user seats.



# SCOPE OF WORK

## 6. PERFORMANCE GUARANTEES

At our own discretion AHCCCS may impose monetary performance guarantees. A non-compliance occurrence shall be viewed as any error, omission, commission, neglect, down time etc. that causes the product provided to AHCCCS in a deployment to be ineffective and has a result of providing inaccurate information causing rework or inaccuracy to AHCCCS or Med-Quest. Any occurrence shall be resolved by the next deployment or within 21 calendar days. AHCCCS may seek additional remedies listed in this contract up to and including termination of contract as applicable.

- 6.1. Non-compliance, first occurrence: **\$ 10,000.00 in addition to a corrective action plan.**
- 6.2. Non-compliance, second occurrence: **\$ 15,000.00 in addition to a corrective action plan.**
- 6.3. Non-compliance, third occurrence: **\$ 25,000.00 in addition to a corrective action plan.**
- 6.4. Each subsequent non-compliance occurrence : **\$ 50,000.00 in addition to a corrective action plan.**

## 7. PRICING

7.1. The contractor will be paid in accordance with Attachment 1: Pricing Schedule.

### 7.2. IMPLEMENTATION

- 7.2.1. The offeror shall proposed pricing for implementation activities. The Offeror shall propose implementation fees broken down by the five (5) milestones listed in the Scope of Work,
  - 7.2.1.1. Requirements Analysis
  - 7.2.1.2. Development change the order of the
  - 7.2.1.3. Testing
  - 7.2.1.4. Training
  - 7.2.1.5. Deployment
- 7.2.2. The Contractor shall invoice AHCCCS for the implementation fees only upon successful completion of each milestone. Successful completion will be determined in writing by AHCCCS.

### 7.3. FIXED ANNUAL FEE:

- 7.3.1. Offeror is required to propose pricing for activities Post-Implementation by fixed bi-annual fee. The fee shall be paid on a pro-rated bi-annually basis after award. The fee shall be inclusive of all costs associated with the delivery of the service and includes staff time, mileage, insurance, and administrative cost. Implementation fees will be paid upon AHCCCS signing of on Implementation services. No additional fees will be paid by AHCCCS.
- 7.3.2. AHCCCS will begin making bi-annual payments after the program has been up and running for one (1) full month following user acceptance testing.

## SCOPE OF WORK

7.3.3. Offerors shall enter a Fixed Price Annual Fee for its base solution.

### 7.4. OPTIONAL ELEMENTS:

7.4.1. For all Optional Elements, Offerors shall provide one of the following: 1.) Enter a price; 2.) Enter a statement that it is included in base solution; or 3.) Enter a statement that the optional element is not available.

7.4.2. Offerors may enter additional optional elements offered.

## 8. INVOICES

8.1. The Contractor shall submit a bi-annual invoice to the address listed below for fees associated with this contract.

8.2. Each invoice shall provide the following information, as applicable:

- 8.2.1. AHCCCS' assigned contract number
- 8.2.2. Description of services performed for each fee
- 8.2.3. Name of AHCCCS contact person (or program person) for this contract
- 8.2.4. Date(s) services were performed
- 8.2.5. Signature and title of authorized representative

8.3. Each invoice shall have adequate supporting documentation attached.

8.4. Unless otherwise described in this contract, all invoices shall be submitted to:

AHCCCS  
Accounts Payable, MD 5400  
[AHCCCSDBFAdminPayables@azahcccs.gov](mailto:AHCCCSDBFAdminPayables@azahcccs.gov)

# DEFINITIONS

As used in this Solicitation and any resulting Contract, the terms listed below are defined as follows:

1. **AAC:** Arizona Administrative Code.
2. **ACA:** Affordable Care Act.
3. **AHCCCS:** The Arizona Health Care Cost Containment System – a managed health care program which pertains to health care services provided pursuant to A.R.S. 36-2903 et seq., and is also the name of the State agency.
4. **AHCCCS COVERED SERVICES:** Those services set forth in A.R.S. § § 36-2907 and 36-2939, A.A.C. Title 9 Chapter 22, Articles 2 and 12 and, Chapter 28, Articles 2 and 11.
5. **ATTACHMENT:** Any item the Solicitation requires an Offeror to submit as part of the Offer.
6. **BEST AND FINAL OFFER:** A revision to an Offer submitted after negotiations are completed that contains the Offeror's most favorable terms for price, service and products to be delivered. Sometimes referred to as a Final Proposal Revision.
7. **CMS:** Centers for Medicare and Medicaid Services, an organization within the U.S. Department of Health and Human Services, which administers the Medicare and Medicaid programs and the State Children's Health Insurance Program.
8. **CHIP:** Children's Health Insurance Program.
9. **CONTRACT:** The combination of the Solicitation, including the Instructions to Offerors, Contract Terms and Conditions, and Scope of Work; the Offer; any Best and Final Offers; any Solicitation Amendments or Contract Amendments; and any terms applied by law.
10. **CONTRACT AMENDMENT:** A written document signed by the Procurement officer that is issued for the purpose of making changes in the contract.
11. **CONTRACTOR:** A person who has a contract with AHCCCS.
12. **DAYS:** Calendar days unless otherwise specified. If a due date falls on a Saturday, Sunday or legal holiday, then the due date is considered the next business day. A business day means a Monday, Tuesday, Wednesday, Thursday, or Friday unless a legal holiday falls on Monday, Tuesday, Wednesday, Thursday, or Friday. Computation of time begins the day after the event that triggers the period and includes all calendar days and the final day of the period. If the final day of the period is a weekend or legal holiday, the period is extended until the end of the next business day.
13. **EXHIBIT:** Any item labeled as an Exhibit in the Solicitation or placed in the Exhibits section of the Solicitation.
14. **FDSH:** Federal Data Services Hub. HEAplus interfaces with the FDSH to make several types of identity verifications.

## DEFINITIONS

15. **FFM:** Federally-Facilitated Marketplace.
16. **FFP (FEDERAL FINANCIAL PARTICIPATION):** The Federal share of reimbursement for services provided in accordance with Federal requirements for school-based Medicaid services.
17. **FMAP (FEDERAL MEDICAL ASSISTANCE PERCENTAGE):** Defined in CFR 42 §433.10 Rates of FFP for Program Services, is the Federal matching assistance percentage used to calculate payment to the states for part of their expenditures for services under an approved State Plan.
18. **GRATUITY:** A payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.
19. **HEALTH PLAN:** An organization which contracts with the AHCCCS Administration to administer the provision of a comprehensive package of AHCCCS covered acute and behavioral health care services to AHCCCS members enrolled with the health plan.
20. **KIDSCARE:** The State of Arizona's CHIP program.
21. **MATERIAL OMISSION:** A fact, data or other information excluded from a report, contract, etc. the absence of which could lead to erroneous conclusions following reasonable review of such report, contract, etc.
22. **MATERIALS:** All property, including equipment, supplies, printing, insurance and leases of property but does not include land, a permanent interest in land or real property or leasing space.
23. **MAY:** Indicates something that is not mandatory but permissible.
24. **NATIONAL PROVIDER NUMBER:** This single, unique ID is used for billing purposes by the provider to all third party payers, including billing for reimbursement under the DSC Program. All typical health care providers must have a 10-digit National Provider Identifier (NPI).
25. **NTE:** Not-to-Exceed amount.
26. **OFFER:** A response to a solicitation.
27. **OFFEROR:** A vendor or person who responds to a Solicitation.
28. **PERSON:** Any corporation, business, individual, union, committee, club or other organization or group of individuals.
29. **PROCUREMENT OFFICER:** The person, or his or her designee, duly authorized by the State and AHCCCS to enter into and administer Contracts and made written determinations with respect to the Contract.
30. **RELATED PARTY:** A party that has, or may have, the ability to control or significantly influence a Contractor, or a party that is, or may be, controlled or significantly influenced by a Contractor. "Related parties" include, but are not limited to, agents, managing employees, persons with an ownership or controlling interest in the disclosing entity, and their immediate families, subcontractors, wholly-owned subsidiaries or suppliers, parent

## DEFINITIONS

companies, sister companies, holding companies, and other entities controlled or managed by any such entities or persons.

31. **SCOPE OF WORK:** Those provisions of this solicitation which specify the work and/or results to be achieved by the Contractor.
32. **SHALL, MUST:** Indicates a mandatory requirement. Failure to meet these mandatory requirements may result in the rejection of a proposal as non-responsive.
33. **SHOULD:** Indicates something that is recommended but not mandatory. If the Offeror fails to provide recommended information, the State may, at its sole option, ask the Offeror to provide the information or evaluate the proposal without the information.
34. **SOLICITATION:** An Invitation for Bids (“IFB”), a Request for Proposals (“RFP”), or a Request for Quotations (“RFQ”).
35. **SOLICITATION AMENDMENT:** A written document that is authorized by the Procurement officer and issued for the purpose of making changes to the Solicitation.
36. **STATE:** The State of Arizona and AHCCCS.
37. **STATE FISCAL YEAR:** The period beginning with July 1 and ending June 30.
38. **SUBCONTRACT:** Any Contract, express or implied, between the Contractor and another party or between a subcontractor and another party delegating or assigning, in whole or in part, the making or furnishing of any material or any service required for the performance of the Contract.
39. **TITLE XIX:** Title XIX of the Social Security Act means Medicaid as defined in 42 U.S.C. 7.19.

# UNIFORM INSTRUCTIONS TO OFFERORS

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

**2 Inquiries:**

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

**3 Offer Preparation:**

- 3.1 Electronic Documents: The Solicitation is provided in an electronic format. Offerors are responsible for clearly identifying any and all changes or modifications to any Solicitation documents upon submission. Any unidentified alteration or modification to any Solicitation, attachments, exhibits, forms, charts or illustrations contained herein shall be null and void. Offeror's electronic files shall be submitted in a format acceptable to the State. Acceptable formats include Microsoft Word, Excel and

# UNIFORM INSTRUCTIONS TO OFFERORS

PowerPoint, Adobe Acrobat PDF, or as otherwise included in the solicitation. Offerors wishing to submit files in any other format shall submit an inquiry to the Procurement Officer.

- 3.2 Evidence of Intent to be Bound: The Offer and Acceptance form within the Solicitation shall be submitted with the Offer and shall include a signature by a person authorized to sign the Offer. The signature shall signify the Offeror's intent to be bound by the Offer and the terms of the Solicitation and that the information provided is true, accurate and complete. Failure to submit verifiable evidence of an intent to be bound, such as an original signature, may result in rejection of the Offer.
- 3.3 Exceptions to Terms and Conditions: All exceptions included with the Offer shall be submitted in a clearly identified separate section of the Offer in which the Offeror clearly identifies the specific paragraphs of the Solicitation where the exceptions occur. Any exceptions not included in such a section shall be without force and effect in any resulting Contract unless such exception is specifically accepted by the Procurement Officer in a written statement. The Offeror's preprinted or standard terms will not be considered by the State as a part of any resulting Contract.
- 3.3.1 All exceptions that are contained in the Offer may negatively impact an Offeror's susceptibility for award. An Offer that takes exception to any material requirement of the solicitation may be rejected.**
- 3.4 Subcontracts: Offeror shall clearly list any proposed subcontractors and the subcontractor's proposed responsibilities in the Offer.
- 3.5 Cost of Offer Preparation: AHCCCS will not reimburse any Offeror the cost of responding to a Solicitation.
- 3.6 Federal Excise Tax: The State of Arizona is exempt from certain Federal Excise Tax on manufactured goods. Exemption Certificates will be provided by the State.
- 3.7 Provision of Tax Identification Numbers: Offerors are required to provide their Arizona Transaction Privilege Tax Number and/or Federal Tax Identification number, if applicable, in the space provided on the Offer and Acceptance Form.
- 3.7.1 Employee Identification: Offeror agrees to provide an employee identification number or social security number to the State for the purposes of reporting to appropriate taxing authorities, monies paid by the Department under this contract. If the federal identifier of the Offeror is a social security number, this number is being requested solely for tax reporting purposes and will be shared with only appropriate state and federal officials. This submission is mandatory under 26 U.S.C. § 6041A.
- 3.8 Identification of Taxes in Offer. The State of Arizona is subject to all applicable state and local transaction privilege taxes. All applicable taxes shall be identified as a separate item offered in the solicitation. When applicable, the tax rate and amount shall be identified on the price sheet.
- 3.9 Disclosure: If the firm, business or person submitting this Offer has been debarred, suspended or otherwise lawfully precluded from participating in any public procurement activity, including being

# UNIFORM INSTRUCTIONS TO OFFERORS

disapproved as a subcontractor with any federal, state or local government, or if any such preclusion from participation from any public procurement activity is currently pending, the Offeror shall fully explain the circumstances relating to the preclusion or proposed preclusion in the Offer. The Offeror shall include a letter with its Offer setting forth the name and address of the governmental unit, the effective date of this suspension or debarment, the duration of the suspension or debarment, and the relevant circumstances relating to the suspension or debarment. If suspension or debarment is currently pending, a detailed description of all relevant circumstances including the details enumerated above shall be provided.

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

## 4 Submission of Offer:

- 4.1 Offer and Acceptance: Offers shall include a signed Offer and Acceptance form. The Offer and Acceptance form shall be signed with a signature by the person authorized to sign the Offer, and shall be submitted no later than the Solicitation due date and time. Failure to return an Offer and Acceptance form may result in rejection of the Offer.
- 4.2 Solicitation Amendments: Each Solicitation Amendment shall be signed by the person signing the Offer, and shall be submitted no later than the Offer due date and time. Failure to return a signed copy of a material Solicitation Amendment may result in rejection of the Offer.
- 4.3 Offer Amendment or Withdrawal: An Offer may not be amended or withdrawn after the Offer due date and time except as otherwise provided under applicable law.
- 4.4 Public Record: All Offers submitted and opened are public records and must be retained by the State for a period of time in accordance with the law. Offers shall be open and available to public inspection after Contract award, except for such portions deemed to be confidential in accordance with the procurement.



# UNIFORM INSTRUCTIONS TO OFFERORS

- 4.5 Non-collusion, Employment, and Services: By signing the Offer and Acceptance Form or other official contract form, the Offeror certifies that:
- 4.5.1 The Offeror did not engage in collusion or other anti-competitive practices in connection with the preparation or submission of its Offer; and
  - 4.5.2 The Offeror does not discriminate against any employee or applicant for employment or person to whom it provides services because of race, color, religion, sex, national origin, or disability, and that it complies with all applicable federal, state and local laws and executive orders regarding employment.

## 5 Evaluation:

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

## 6 Award:

AHCCCS shall award a Contract to the responsible and responsive Offeror whose proposal is determined most advantageous to the State under A.R.S. §36-2906 (R9-22 Article 6).

- 6.1 Number or Types of Awards: AHCCCS reserves the right to make multiple awards or to award a Contract by individual line items or alternatives, by group of line items or alternatives, or to make an aggregate award, or regional awards, whichever is deemed most advantageous to AHCCCS and to the State.

## UNIFORM INSTRUCTIONS TO OFFERORS

- 6.2 **Contract Inception:** An Offer does not constitute a Contract nor does it confer any rights on the Offeror to the award of a Contract. A Contract is not created until the Offer is accepted in writing by the Procurement officer's signature on the Offer and Acceptance Form. A notice of award or of the intent to award shall not constitute acceptance of the Offer.
- 6.3 **Effective Date:** The effective date of this Contract shall be the date that the Procurement officer signs the Offer and Acceptance form or other official contract form, unless another date is specifically stated in the Contract.
- 6.4 A response to this Request for Proposal is an offer to contract with AHCCCS based upon the terms, conditions, scope of work and specifications of the RFP. All of the terms and conditions of the Contract are contained in this Solicitation, Solicitation amendments and subsequent Contract amendments, if any, signed by the AHCCCS Chief Procurement Officer. Proposals do not become Contracts unless and until they are accepted by the AHCCCS Chief Procurement Officer. The Proposal submitted by the Offeror will become part of the Contract with AHCCCS. A Contract is formed when the AHCCCS Chief Procurement Officer signs the award page and provides written notice of the award(s) to the Successful Offeror(s), and the Offeror accepts any special provisions to the Contract and the final rates awarded. All Offerors will be promptly notified of Contract award.
- 6.5 The Offeror should note that, if awarded a Contract, the Offeror must meet all AHCCCS requirements, irrespective of what is requested and evaluated through this Solicitation. The Proposal submitted by the Offeror will become part of the Contract with AHCCCS and the Offeror shall comply with all commitments and statements included in its RFP submission.
- 7 **Protests:** Any protest shall comply with and be resolved according to A.R.S. § 36-2906 and rules adopted thereunder. Protests shall be submitted via email to the AHCCCS Procurement officer.

# SPECIAL INSTRUCTIONS TO OFFERORS

1. **Anticipated Procurement Schedule**

All dates here are subject to change at any time.

Activity	Date
RFP Release	September 3, 2021
Pre-Proposal Conference	N/A
Offeror Questions Due	September 17, 2021
Deadline to request access to SFTP server	October 14, 2021
Offeror’s Proposals Due	October 28, 2021
Final RFP Award (Subject to change, and contingent on CMS approval)	March 18,2022
Services Start Date	July 1, 2022*

\*Unless otherwise changed in writing by AHCCCS

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

Proposals will be evaluated based upon the ability of the Offeror to satisfy the requirements of the RFP in a cost-effective manner. The scored portions of the evaluation are listed in their relative order of importance.

- 3.1. Pass/Fail Meet the minimum requirements (Attachment 3) No points will be awarded for this process.
- 3.2. Method of Approach
- 3.3. Experience and Expertise
- 3.4. Pricing Proposal

Any proposals not meeting the Mandatory Requirements will be disqualified and rejected. Other susceptibility and rejection criteria are listed below in “Rejection of Proposal”.

Notwithstanding any other provision of this Solicitation, AHCCCS expressly reserves the right to:

- 1. Waive any immaterial mistake or informality,
- 2. Reject any or all Proposals, or portions thereof, and/or
- 3. Reissue a Request for Proposal.

Evaluators will be focused on information expressly provided by the Offeror. No inferences or assumptions will be made by the evaluation team when scoring in order to evaluate information submitted by the Offeror which is not clear, explicit, or thoroughly presented. Use of contingent language such as ‘exploring’ or ‘taking under consideration’ will not be given any weight during the scoring evaluation process. A policy, brochure, or reference to a policy or manual does not constitute an adequate response and will not be given any weight during the scoring evaluation process.

# SPECIAL INSTRUCTIONS TO OFFERORS

It is the responsibility of the Offeror to examine the entire RFP, timely seek clarification of any requirement that may not be clear and review all responses for accuracy before submitting its Proposal. The Proposal becomes a part of the Contract. Therefore, whatever information is stated in the Proposal may be evaluated either during the Proposal evaluation process or subsequently during other reviews. If any information contained inside an Offeror's proposal contradicts or does not comply with the solicitation requirements, the solicitation requirements prevail, unless otherwise accepted by AHCCCS in writing.

#### 4. **Submission of Proposal:**

The Offeror shall submit its proposal to the AHCCCS SFTP server in accordance with Exhibit A "PROPOSAL SUBMISSION INSTRUCTIONS". Failure to follow the prescribed format for submission may result in AHCCCS determining that the submission is non-responsive. **SEE Exhibit A Proposal Submission Instructions.**

The deadline to request access to the AHCCCS SFTP server is: October 14, 2021.

#### 4.1. **Contents of Proposal :**

The Offeror's Proposal shall contain the following and be organized as follows (see Exhibit A Proposal Submission Instructions):

##### PART A

- A1 Transmittal Letter with list of portions to be kept confidential (if any)
- A2 Signed Offer and Acceptance Page
- A3 Signed Solicitation Amendment(s)

##### PART B

- B1 Attachment 3 Minimum Requirements Pass/Fail
- B2 Narrative Proposal Method of Approach (page limited to\_30)
- B3 Narrative Proposal Experience and Expertise (page limited to\_30)
- B4 Attachment 1 Pricing Schedule

##### PART C

- C1 Intent to provide insurance
- C2 Separate, signed, legal Analysis for Confidential /Proprietary Determination (if any)
- C3 Attachment 2 Attestation of Boycott of Israel
- C4 Exceptions to any part of solicitation

#### 4.2. **Transmittal Letter:**

The Transmittal Letter must briefly summarize the Offeror's ability to supply the requested services that meet the requirements defined in this solicitation. The letter must also contain a statement indicating the Offeror's willingness to provide the services subject to the terms and conditions set forth in the RFP.

A person authorized to commit the Offeror to its representations and who can certify that the information offered in the proposal meets all general conditions must sign the Transmittal Letter. In the Transmittal Letter, please indicate the principal contact for the proposal along with an address, telephone number, fax number, and an e-mail address if that contact is different than the individual authorized for signature.

## SPECIAL INSTRUCTIONS TO OFFERORS

In addition to the required detailed legal analysis, the Offeror shall summarize in their Submittal Letter the list of distinct portions, including exact page numbers, of their proposal, if requested to be kept confidential. See paragraph 12 “Request for Confidential/Proprietary Determination” of this section (below).

### 4.3. **Narrative Proposal:**

Narrative Proposals must be structured and numbered according to the RFP section numbers and headers as presented in the table below. Responses in each section must be addressed in the order given. Since the evaluators have already read the Scope of Work for the services described, it is not necessary for the Offeror to repeat the exact language, nor to present a paraphrased version, as an original idea for a technical approach. The language of the narrative should be straightforward and limited to facts, solutions to problems, and plans of proposed action. The usage of technical language should be minimized and used only to describe a technical process.

Narrative Proposals will be evaluated based on the Offeror’s distinctive plan for providing these specialized services. The Offeror shall utilize a written narrative or any other printed technique to demonstrate the ability to satisfy the Scope of Work. When appropriate, the Narrative Proposal should describe a logical progression of tasks and efforts starting with the initial steps or tasks to be accomplished and continuing until all proposed tasks are fully described.

The Narrative Proposal should be broken into two (2) files: Method of Approach and Experience/Expertise.

#### 4.3.1. **Method of Approach**

The Method of Approach narrative proposal must be limited to thirty (30) pages. Provide documentation to support responses including any third-party validation, data, or other metrics that support the proposed methodology. The page limit does not include attachments supporting the proposed methodology. Provide a general explanation of how Offeror will meet the requirements described in the Scope of Work.

##### 4.3.1.1. **Assumptions**

The Offeror must identify any assumptions used when developing their proposals as it relates to scope, costs, schedule, resources, etc. It shall also identify is they did not use any of the Assumptions providing in section 6.0. If the Offeror’s assumption takes exception to any part of the solicitation (including but not limited to requirements, scope of work or terms and conditions), these shall be explained as well in the Offeror’s exceptions to terms submission.

##### 4.3.1.2. **Implementation**

Provide the Offeror’s implementation and transition plan to assume all operations of the program. The submitted plan should include timeframes for all key implementation and transition activities including hiring necessary staff, employee orientation, establishing financial and program systems, gathering necessary data, and an expected date for completion. Please identify any specific transitional staff in the proposed organizational chart.

# SPECIAL INSTRUCTIONS TO OFFERORS

## 4.3.1.3. **System Functionality**

- 4.3.1.3.1. Provide a complete system description and explanation of the proposed tools or technologies that meet each requirement described in the scope of work section 4.
- 4.3.1.3.2. How have the proposed tools or technologies been deployed in similar organizations? Given the specific nature of Medicaid, AHCCCS is particularly interested in any tools and technologies that have been utilized in other state Medicaid programs.
- 4.3.1.3.3. Describe any unique, innovative or additional service features the Offeror may provide to enhance or improve the quality or effectiveness of the system.
- 4.3.1.3.4. Provide information on what types of savings have been generated, quantified, and verified in association with these efforts. In addition, detail should be provided on the length of time that was required from award of contract to substantiation of real costs savings to the program.
- 4.3.1.3.5. The Offeror must identify any assumptions used when developing their proposals as it relates to scope, costs, schedule, resources, etc. If the Offeror's assumption takes exception to any part of the solicitation (including but not limited to requirements, scope of work or terms and conditions), these shall be explained as well in the Offeror's exceptions to terms submission.
- 4.3.1.3.6. Detail your proposed deployment plan, including timelines, resources, and training as specified. See Scope of Work section 4.32

## 4.3.1.4. **Maintenance/Support**

- 4.3.1.4.1. Detail the Maintenance/Support phase of the contract and all that is included in the Maintenance/Support plan, including the availability of support. See Scope of Work section 4.32.

## 4.3.2. **Experience/Expertise**

The entirety of the Experience/Expertise Narrative Proposal must be no longer than twenty (20) pages not including attachments as specified in the questionnaire. These attachments include, but are not limited to, organizational charts, certificates, formal agreements and resumes. The Narrative Proposal must address the following topics, requirement and inquiries related to the Offeror's experience and expertise for AHCCCS's evaluation. Where possible provide details including certifications or recognitions or other objective documentation to support responses.

- 4.3.2.1. Offeror's Experience and Expertise - The Offeror shall describe and submit documentation demonstrating:

## SPECIAL INSTRUCTIONS TO OFFERORS

- 4.3.2.1.1. Successful and reliable experience in past performances as related to the work in this RFP .
- 4.3.2.1.2. The qualifications of the Key Staff proposed by the Offeror to perform the requirements of this solicitation and resources to serve in each of the defined Key Staff roles in the Offeror's response and their minimum qualifications.
- 4.3.2.1.3. Organizational chart which clearly shows the reporting and lines of authority, to include all proposed Key Staff, proposed staffing and any sub-Contractors. The organizational chart should include and identify the point of contact between the Offeror and AHCCCS. Provide qualifications, experience and expertise of all key staff related to performance of the scope of work. Provide job descriptions for any position identified in the organizational chart. Org chart is not included in the page limit.
- 4.3.2.1.4. The Offeror's current and past history regarding lawsuits, litigation or legal issues. Has the Offeror had lawsuits and litigation in the past? Does Offeror have current or pending lawsuits or litigation? Has the Offeror ever had any business license or certification suspended or revoked? Provide an explanation and current status for a yes to any of the above questions.
- 4.3.2.1.5. Include resumes and job descriptions for key staff responsible for financial oversight and management of the Offeror's services. Resumes are not included in the page limit.
- 4.3.2.1.6. Describe the current physical location of the Offeror's organization and any program implementations.

### **4.3.3. COST:**

The evaluation of the category of cost shall be based on the proposed prices, as indicated on the Attachment 1: Pricing Schedule submitted with Offeror's proposal.

- 4.3.3.1. The proposed price shall be inclusive of all costs associated with the delivery of the service and includes staff time, mileage, insurance, and administrative cost. No additional fees will be paid by AHCCCS.
- 4.3.3.2. Taxes: If the products and/or services specified require transaction privilege or use taxes, they shall be described and itemized separately on the offer. Arizona transaction privilege and use taxes shall not be considered for evaluation.
- 4.3.3.3. After award, the Contractor shall assist the State when developing invoicing schedules and budgetary requirements to be sent to CMS, FNS the State of Arizona, or other funding partners.

## SPECIAL INSTRUCTIONS TO OFFERORS

- 4.3.3.4. At any time in the evaluation process, pricing proposals may be reviewed, apart from the cost scoring process, for realistic and competitive pricing. Outside information may be utilized as deemed appropriate by the Procurement Officer including but not limited to:
- 4.3.3.4.1. Other pricing proposals submitted for this RFP.
  - 4.3.3.4.2. Expenditures and pricing of any current or expired contract if the solicitation is a re-bid of a current service.
  - 4.3.3.4.3. Public or Independently obtained information based upon market research.
  - 4.3.3.4.4. Cost bids submitted by the Offeror in relation to any closely related procurement.
  - 4.3.3.4.5. Awarded Pricing obtained from other contracts held by the Offeror.
  - 4.3.3.4.6. Pricing obtained from other contracts for the same or similar service awarded by a public entity.
  - 4.3.3.4.7. Other information as deemed appropriate by the Procurement Officer.
  - 4.3.3.4.8. At any time during the evaluation, but before award, AHCCCS may reject a proposal in part or in whole based upon unrealistically high or low pricing.
5. **Intent to Provide Certificate of Insurance:** The Offeror shall provide a brief statement that, if notified of contract award, the Offeror will submit to AHCCCS for review and acceptance, the applicable certificate/s of insurance as required within this RFP document, within five (5) business days of such notification.
6. **Additional Information(Optional):** The Offeror may, at its option, submit any other pertinent information which would substantiate the Offeror has the experience, expertise and capability to provide the required services. The intent is to allow flexibility to an Offeror who may have desire to submit information that is not specifically requested by AHCCCS in the Special Instructions to Offerors as part of its Experience and Expertise submission and is NOT intended to allow any Offeror to circumvent the page limits of any requirement. Any additional information that is received pursuant to this section, must be contained exclusively in the Experience and Expertise section, and the submission MUST adhere to any prescribed page limits. Any pages submitted beyond the page limits for any submission requirement will not be reviewed by evaluators nor will it be included in the scored portion of the Offeror's proposal.
7. **Presentations and Demonstrations:** AHCCCS may request Offerors who are determined to be reasonably susceptible for award to give a presentation or show a demonstration of the product or service to the evaluation committee.
8. **Financial Stability** The Offeror must be financially stable and if requested shall be able to substantiate the financial stability of its company. Upon written request from AHCCCS, the Offeror shall submit an annual financial statement for itself, and parent company (if applicable) within five (5) business days of request. The State reserves the right to request additional documentation from the Offeror and to request reports on financial stability from independent financial rating services. The State reserves the right to reject any Offeror who does not demonstrate financial stability sufficient for the scope of this contract award.
9. **Clarification of Offers:** AHCCCS may request clarification of an offer any time after receipt. Clarifications may be requested orally or in writing. If clarifications are requested orally, the Offeror shall confirm the request in writing. A request for clarifications shall not be considered a determination that the Offeror is susceptible for award.



## SPECIAL INSTRUCTIONS TO OFFERORS

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

In accordance with applicable procurement regulations and best practices, at any time during the evaluation, AHCCCS may reject an Offer based upon a determination that Offeror is not responsible, or that the proposal is not responsive or not susceptible for award. AHCCCS may reject the Offer if doing so is in the best interest of the State. When rejecting a proposal, AHCCCS may consider any of the following:

  - 13.1. Whether the Offeror has had a contract within the last five (5) years that was terminated for cause due to breach or similar failure to comply with the terms of the contract;

## SPECIAL INSTRUCTIONS TO OFFERORS

- 13.2. Whether the Offeror has had a Contract that was terminated by AHCCCS for any reason;
- 13.3. Whether the Offeror's record of performance includes factual evidence of failure to satisfy the terms of the Offeror's agreements with any party to a contract. Factual evidence may consist of documented vendor performance reports, customer complaints, and/or negative references;
- 13.4. Whether the Offeror is legally qualified to contract with the State and the Offeror's financial, business, personnel, or other resources, including sub-contractors;
  - 13.4.1.1. Legally qualified includes if the vendor or if key personnel have been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to being disapproved as a subcontractor of any public procurement unit or other governmental body.
- 13.5. Whether the Offeror promptly supplied all requested information concerning its responsibility;
- 13.6. Whether the Offer was sufficient to permit evaluation by the State, in accordance with the evaluation criteria identified in this Solicitation or other necessary offer components. Necessary offer components include: attachments, documents or forms to be submitted with the offer, an indication of the intent to be bound, reasonable or acceptable approach to perform the Scope of Work, acknowledged Solicitation Amendments, references to include experience verification, adequacy of financial/business/personal or other resources to include a performance bond and stability including subcontractors and any other data specifically requested in the Solicitation;
- 13.7. Whether the Offer was in conformance with the requirements contained in the Scope of Work, Terms and Conditions, and Instructions for the Solicitation including its Amendments and all documents incorporated by reference;
- 13.8. Whether the Offer limits the rights of the State;
- 13.9. Whether the Offer includes, or is subject to, unreasonable conditions, to include conditions upon the State necessary for successful Contract performance. The State shall be the sole determiner as to the reasonableness of a condition;
- 13.10. Whether the Offer materially changes the contents set forth in the Solicitation, which includes the Scope of Work, Terms and Conditions, or Instructions;
- 13.11. Whether the Offeror provides misleading or inaccurate information;
- 13.12. Whether the Offer fails to meet the minimum mandatory requirements of the RFP;
- 13.13. Whether the Offer satisfies the requirements of the RFP in a cost effective manner, as determined by AHCCCS;
- 13.14. Whether the Offeror's pricing is unrealistic, or unreasonably or unsubstantiatedly high; or
- 13.15. Any other criteria deemed appropriate by AHCCCS to determine if the Offer is in the best interest of the State.

# UNIFORM TERMS AND CONDITIONS

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

## 2. **Contract Interpretation**

- 2.1 Arizona Law. The Arizona law applies to this Contract including, A.R.S. § 36-2906 and its implementing rules.
- 2.2 Implied Contract Terms. Each provision of law and any terms required by law to be in this Contract are a part of this Contract as if fully stated in it.
- 2.3 Relationship of Parties. The Contractor under this Contract is an independent Contractor. Neither party to this Contract shall be deemed to be the employee or agent of the other party to the Contract.
- 2.4 Severability. The provisions of this Contract are severable. Any term or condition deemed illegal or invalid shall not affect any other term or condition of the Contract.
- 2.5 No Parole Evidence. This Contract is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms used in this document and no other understanding either oral or in writing shall be binding.
- 2.6 No Waiver. Either party's failure to insist on strict performance of any term or condition of the Contract shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.

## 3. **Contract Administration and Operation**

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

The State shall also have the right to test, at its own cost, the materials to be supplied under this Contract. Neither inspection of the Contractor's facilities nor materials testing shall constitute final

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acceptance of the materials or services. If the State determines noncompliance of the materials, the Contractor shall be responsible for the payment of all costs incurred by the State for testing and inspection.

- 3.5 Notices. Notices to the Contractor required by this Contract shall be made by the State to the person indicated on the Offer and Acceptance form submitted by the Contractor unless otherwise stated in the Contract. Notices to the State required by the Contract shall be made by the Contractor to the Solicitation Contact Person indicated on the Solicitation cover sheet, unless otherwise stated in the Contract. An authorized Procurement Officer and an authorized Contractor representative may change their respective person to whom notice shall be given by written notice to the other and an amendment to the Contract shall not be necessary.
- 3.6 Advertising, Publishing and Promotion of Contract. The Contractor shall not use, advertise or promote information for commercial benefit concerning this Contract without the prior written approval of the Procurement Officer.
- 3.7 Property of the State. Any materials, including reports, computer programs and other deliverables, created under this Contract are the sole property of the State. The Contractor is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. The Contractor shall not use or release these materials without the prior written consent of the State.
- 3.8 Ownership of Intellectual Property. Any and all intellectual property, including but not limited to copyright, invention, trademark, trade name, service mark, and/or trade secrets created or conceived pursuant to or as a result of this contract and any related subcontract (“Intellectual Property”), shall be work made for hire and the State shall be considered the creator of such Intellectual Property. The agency, department, division, board or commission of the State of Arizona requesting the issuance of this contract shall own (for and on behalf of the State) the entire right, title and interest to the Intellectual Property throughout the world. Contractor shall notify the State, within thirty (30) days, of the creation of any Intellectual Property by it or its subcontractor(s). Contractor, on behalf of itself and any subcontractor(s), agrees to execute any and all document(s) necessary to assure ownership of the Intellectual Property vests in the State and shall take no affirmative actions that might have the effect of vesting all or part of the Intellectual Property in any entity other than the State. The Intellectual Property shall not be disclosed by Contractor or its subcontractor(s) to any entity not the State without the express written authorization of the agency, department, division, board or commission of the State of Arizona requesting the issuance of this contract.
- 3.9 Federal Immigration and Nationality Act. The Contractor shall comply with all federal, state and local immigration laws and regulations relating to the immigration status of their employees during the term of the contract. Further, the Contractor shall flow down this requirement to all subcontractors utilized during the term of the contract. The State shall retain the right to perform random audits of Contractor and subcontractor records or to inspect papers of any employee thereof to ensure compliance. Should the State determine that the Contractor and/or any subcontractors be found noncompliant, the State may pursue all remedies allowed by law, including, but not limited to; suspension of work, termination of the contract for default and suspension and/or debarment of the Contractor.
- 3.10 E-Verify Requirements. In accordance with A.R.S. § 41-4401, Contractor warrants compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with A.R.S. § 23-214, Subsection A.

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

## 4. Costs and Payments

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

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

4.3 Applicable Taxes.

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

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

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

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

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

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

4.5.1 Accept a decrease in price offered by the Contractor;

4.5.2 Cancel the Contract; or

4.5.3 Cancel the contract and re-solicit the requirements.

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## 5. Contract Changes

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

## 6. Risk and Liability

- 6.1 Risk of Loss. The Contractor shall bear all loss of conforming material covered under this Contract until received by authorized personnel at the location designated in the purchase order or Contract. Mere receipt does not constitute final acceptance. The risk of loss for nonconforming materials shall remain with the Contractor regardless of receipt.
- 6.2 Indemnification.
- 6.2.1 Contractor/Vendor Indemnification The parties to this contract agree that the State of Arizona, its departments, agencies, boards and commissions shall be indemnified and held harmless by the Contractor for the vicarious liability of the State as a result of entering into this contract. However, the parties further agree that the State of Arizona, its departments, agencies, boards and commissions shall be responsible for its own negligence. Each party to this contract is responsible for its own negligence.
- 6.3 Indemnification - Patent and Copyright. The Contractor shall indemnify and hold harmless the State against any liability, including costs and expenses, for infringement of any patent, trademark or copyright arising out of Contract performance or use by the State of materials furnished or work performed under this Contract. The State shall reasonably notify the Contractor of any claim for which it may be liable under this paragraph. If the Contractor is insured pursuant to A.R.S. § 41-621 and § 35-154, this section shall not apply.
- 6.4 Force Majeure.

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- 6.4.1 Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of force majeure. The term "*force majeure*" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes acts of God; acts of the public enemy; war; riots; strikes; mobilization; labor disputes; civil disorders; fire; flood; lockouts; injunctions-intervention-acts; or failures or refusals to act by government authority; and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence.
- 6.4.2 Force Majeure shall not include the following occurrences:
- 6.4.2.1 Late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, or an oversold condition of the market;
  - 6.4.2.2 Late performance by a subcontractor unless the delay arises out of a force majeure occurrence in accordance with this force majeure term and condition; or
  - 6.4.2.3 Inability of either the Contractor or any subcontractor to acquire or maintain any required insurance, bonds, licenses or permits.
- 6.4.3 If either party is delayed at any time in the progress of the work by force majeure, the delayed party shall notify the other party in writing of such delay, as soon as is practicable and no later than the following working day, of the commencement thereof and shall specify the causes of such delay in such notice. Such notice shall be delivered or mailed certified-return receipt and shall make a specific reference to this article, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by Contract Amendment for a period of time equal to the time that results or effects of such delay prevent the delayed party from performing in accordance with this Contract.
- 6.4.4 Any delay or failure in performance by either party hereto shall not constitute default hereunder or give rise to any claim for damages or loss of anticipated profits if, and to the extent that such delay or failure is caused by force majeure.
- 6.5 Third Party Antitrust Violations. The Contractor assigns to the State any claim for overcharges resulting from antitrust violations to the extent that those violations concern materials or services supplied by third parties to the Contractor, toward fulfillment of this Contract.

## 7. Warranties

- 7.1 Liens. The Contractor warrants that the materials supplied under this Contract are free of liens and shall remain free of liens.
- 7.2 Quality. Unless otherwise modified elsewhere in these terms and conditions, the Contractor warrants that, for one year after acceptance by the State of the materials, they shall be:
- 7.2.1 Of a quality to pass without objection in the trade under the Contract description;
  - 7.2.2 Fit for the intended purposes for which the materials are used;
  - 7.2.3 Within the variations permitted by the Contract and are of even kind, quantity, and quality within each unit and among all units;

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- 7.2.4 Adequately contained, packaged and marked as the Contract may require; and
- 7.2.5 Conform to the written promises or affirmations of fact made by the Contractor.

- 7.3 Fitness. The Contractor warrants that any material supplied to the State shall fully conform to all requirements of the Contract and all representations of the Contractor, and shall be fit for all purposes and uses required by the Contract.
- 7.4 Inspection/Testing. The warranties set forth in subparagraphs 7.1 through 7.3 of this paragraph are not affected by inspection or testing of or payment for the materials by the State.
- 7.5 Compliance With Applicable Laws. The materials and services supplied under this Contract shall comply with all applicable Federal, state and local laws, and the Contractor shall maintain all applicable license and permit requirements.
- 7.6 Survival of Rights and Obligations after Contract Expiration or Termination.
  - 7.6.1 Contractor's Representations and Warranties. All representations and warranties made by the Contractor under this Contract shall survive the expiration or termination hereof. In addition, the parties hereto acknowledge that pursuant to A.R.S. § 12-510, except as provided in A.R.S. § 12-529, the State is not subject to or barred by any limitations of actions prescribed in A.R.S., Title 12, Chapter 5.
  - 7.6.2 Purchase Orders. The Contractor shall, in accordance with all terms and conditions of the Contract, fully perform and shall be obligated to comply with all purchase orders received by the Contractor prior to the expiration or termination hereof, unless otherwise directed in writing by the Procurement Officer, including, without limitation, all purchase orders received prior to but not fully performed and satisfied at the expiration or termination of this Contract.

## 8. State's Contractual Remedies

- 8.1 Right to Assurance. If the State in good faith has reason to believe that the Contractor does not intend to, or is unable to perform or continue performing under this Contract, the Procurement Officer may demand in writing that the Contractor give a written assurance of intent to perform. Failure by the Contractor to provide written assurance within the number of Days specified in the demand may, at the State's option, be the basis for terminating the Contract under the Uniform Terms and Conditions or other rights and remedies available by law or provided by the contract.
- 8.2 Stop Work Order.
  - 8.2.1 The State may, at any time, by written order to the Contractor, require the Contractor to stop all or any part, of the work called for by this Contract for period(s) of days indicated by the State after the order is delivered to the Contractor. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage.
  - 8.2.2 If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the Contractor shall resume work. The Procurement Officer shall make an



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equitable adjustment in the delivery schedule or Contract price, or both, and the Contract shall be amended in writing accordingly.

- 8.3 Non-exclusive Remedies. The rights and the remedies of the State under this Contract are not exclusive.
- 8.4 Nonconforming Tender. Materials or services supplied under this Contract shall fully comply with the Contract. The delivery of materials or services or a portion of the materials or services that do not fully comply constitutes a breach of contract. On delivery of nonconforming materials or services, the State may terminate the Contract for default under applicable termination clauses in the Contract, exercise any of its rights and remedies under the Uniform Commercial Code, or pursue any other right or remedy available to it.
- 8.5 Right of Offset. The State shall be entitled to offset against any sums due the Contractor, any expenses or costs incurred by the State, or damages assessed by the State concerning the Contractor's non-conforming performance or failure to perform the Contract, including expenses, costs and damages described in the Uniform Terms and Conditions.

## 9. Contract Termination

- 9.1 Cancellation for Conflict of Interest. Pursuant to A.R.S. § 38-511, the State may cancel this Contract within three (3) years after Contract execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of the State is or becomes at any time while the Contract or an extension of the Contract is in effect an employee of or a consultant to any other party to this Contract with respect to the subject matter of the Contract. The cancellation shall be effective when the Contractor receives written notice of the cancellation unless the notice specifies a later time. If the Contractor is a political subdivision of the State, it may also cancel this Contract as provided in A.R.S. § 38-511.
- 9.2 Gratuities. The State may, by written notice, terminate this Contract, in whole or in part, if the State determines that employment or a Gratuity was offered or made by the Contractor or a representative of the Contractor to any officer or employee of the State for the purpose of influencing the outcome of the procurement or securing the Contract, an amendment to the Contract, or favorable treatment concerning the Contract, including the making of any determination or decision about contract performance. The State, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three times the value of the Gratuity offered by the Contractor.
- 9.3 Suspension or Debarment. The State may, by written notice to the Contractor, immediately terminate this Contract if the State determines that the Contractor has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body. Submittal of an offer or execution of a contract shall attest that the Contractor is not currently suspended or debarred. If the Contractor becomes suspended or debarred, the Contractor shall immediately notify the State.
- 9.4 Termination for Convenience. The State reserves the right to terminate the Contract, in whole or in part at any time when in the best interest of the State, without penalty or recourse. Upon receipt of the written notice, the Contractor shall stop all work, as directed in the notice, notify all subcontractors of the effective date of the termination and minimize all further costs to the State. In the event of

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termination under this paragraph, all documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the State upon demand. The Contractor shall be entitled to receive just and equitable compensation for work in progress, work completed and materials accepted before the effective date of the termination. The cost principles and procedures provided in A.A.C. R2-7-701 shall apply.

## 9.5 Termination for Default.

9.5.1 In addition to the rights reserved in the contract, the State may terminate the Contract in whole or in part due to the failure of the Contractor to comply with any term or condition of the Contract, to acquire and maintain all required insurance policies, bonds, licenses and permits, or to make satisfactory progress in performing the Contract. The Procurement Officer shall provide written notice of the termination and the reasons for it to the Contractor.

9.5.2 Upon termination under this paragraph, all goods, materials, documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the State on demand.

9.5.3 The State may, upon termination of this Contract, procure, on terms and in the manner that it deems appropriate, materials or services to replace those under this Contract. The Contractor shall be liable to the State for any excess costs incurred by the State in procuring materials or services in substitution for those due from the Contractor.

## 9.6 Continuation of Performance Through Termination. The Contractor shall continue to perform, in accordance with the requirements of the Contract, up to the date of termination, as directed in the termination notice.

## **10. Arbitration**

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

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

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- 5.3 The Contractor fails to complete the work required or furnish the materials required within the time stipulated by the contract;
- 5.4 The Contractor fails to make progress in the performance of the contract and/or gives the Procurement officer reason to believe that the Contractor will not or cannot perform to the requirements of the contract;
- 5.5 Upon receipt of the written notice of concern, the Contractor shall have a minimum of ten (10) days (Procurement officer may determine a longer period) to provide a satisfactory response to the Procurement officer. Failure on the part of the Contractor to adequately address all issues of concern may result in the Procurement officer resorting to any single or combinations of the following remedies.
  - 5.5.1 Cancel any contract;
  - 5.5.2 Reserve all rights or claims to damage for breach of any covenant of the contract;
  - 5.5.3 Perform any test or analysis on materials for compliance with the specifications of the contract. If the result of any test confirms a material no-compliance with the specifications, any reasonable expense of testing shall be borne by the Contractor;
  - 5.5.4 In case of default, the Procurement officer reserves the right to purchase materials, or to complete the required work in accordance with the Arizona Procurement Code. The Procurement officer may recover reasonable excess costs from the Contractor by:
    - 5.5.4.1 Deduction from an unpaid balance;
    - 5.5.4.2 Collection against the bid and/or performance bond; or
    - 5.5.4.3 Any combination of the above or any other remedies as provided by law.

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

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

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

8. **Confidentiality of Records and Disclosure of Confidential Information:**

- 8.1 The Contractor shall not, without prior written approval from AHCCCS, either during or after the performance of the services required by this contract, use, other than for such performance, or

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disclose to any person other than AHCCCS personnel with a need to know, any information, data, material, or exhibits created, developed, produced, or otherwise obtained during the course of the work required by this contract. This nondisclosure requirement shall also pertain to any information contained in reports, documents, or other records furnished to the Contractor by AHCCCS.

- 8.2 The Contractor shall establish and maintain written policies procedures and controls, approved by AHCCCS, governing access to, duplication of, and dissemination of all such information for the purpose of assuring that no information contained in its records or obtained from AHCCCS or others carrying out its functions under the contract, is used or disclosed by it, its agents, officers or employees, except as required to efficiently perform duties under the contract. Persons requesting such information shall be referred to AHCCCS. The Contractor's data safeguard program shall further conform to the data confidentiality and security requirements of AHCCCS policy and procedures, and all-relevant state and federal requirements, including HIPAA standards.
- 8.3 The disclosure of information in summary, statistical, or other form that does not identify particular individuals is permitted only with prior AHCCCS approval. The use or disclosure of information concerning Members will be limited to purposes directly connected with the scope of this contract.
- 8.4 The Contractor shall advise its employees, agents and subcontractors, if any, that they are subject to these confidentiality requirements. A signed confidentiality statement containing language approved by AHCCCS will be obtained from all employees, agents and subcontractors, if any, and maintained in the individual's personnel file with a copy sent to AHCCCS upon request.

9. **Covenant against Contingent Fees:** The Contractor warrants that no person or agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee. For violation of this warranty, the Procurement officer shall have the right to annul this contract without liability.

10. **RFP and Contract Order of Precedence:**

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

- 10.1 The RFP consists of the following, in order of Precedence:
  - 10.1.1 HIPAA Business Associates Agreement or Addendum (if included)
  - 10.1.2 Special Terms and Conditions;
  - 10.1.3 Uniform Terms and Conditions;
  - 10.1.4 Statement or Scope of Work;
  - 10.1.5 Specifications;
  - 10.1.6 Attachments;
  - 10.1.7 Exhibits;
  - 10.1.8 Documents referenced or included in the Solicitation.
  - 10.1.9 AHCCCS policies and procedures incorporated by reference.

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- 10.2 The awarded Contract between AHCCCS and the Contractor consist of the following in order of Precedence:
  - 10.2.1 All Contract Amendments issued after award in descending order,
  - 10.2.2 The Request for Proposal (RFP) as described above; and
  - 10.2.3 The proposal submitted by the Contractor in response to the RFP including any Best and Final Offers.
  
- 10.3 In the event of a conflict in language between the Offeror's proposal (including any Best and Final Offers) and the RFP (including AHCCCS policies and procedures incorporated by reference), the provisions and requirements set forth and/or referenced in the RFP (including AHCCCS policies and procedures incorporated by reference) shall govern.
  
- 10.4 The contract shall be construed according to the laws of the State of Arizona. The State of Arizona is not obligated for the expenditures under the contract until funds have been encumbered.

### **11. Administrative Changes**

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

### **12. Fraud and Abuse:**

- 12.1 It shall be the responsibility of the Contractor to report all cases of suspected fraud and abuse by subcontractors, members or employees. The Contractor shall provide written notification of all such incidents to the Procurement officer.
- 12.2 As stated in A.R.S. § 13-2310, incorporated herein by reference, any person who knowingly obtains any benefit by means of false or fraudulent pretenses, representations, promises or material omissions is guilty of a class 2 felony.
- 12.3 Contractors are required to research potential overpayments identified by a fraud and abuse investigation or audit conducted by AHCCCS. After conducting a cost benefit analysis to determine if such action is warranted, the Contractor should attempt to recover any overpayments identified due to erroneous, false or fraudulent billings.

13. **Independent Contractor and Employees of Contractor:** The Contractor represents himself/herself to be an independent contractor offering such services to the general public and shall not represent himself/herself or his/her employees to be an employee of the State of Arizona and/or AHCCCS. Therefore, the Contractor shall assume all legal and financial responsibility for taxes, FICA, employee fringe benefits, workers compensation, employee insurance, etc. All employees of the Contractor employed or in performance of work under this Contract shall be employees of the Contractor at all times and not of AHCCCS. The Contractor shall comply with the Social Security Act, Workers' Compensation laws and unemployment laws of the State of Arizona as well as federal, state and local legislation relevant to the Contractor's business.

## SPECIAL TERMS AND CONDITIONS

14. **Licenses:** Contractor shall maintain in current status all federal, state and local licenses and permits required for the operation of the business conducted by the Contractor.
15. **Lobbying:** No funds paid to the Contractor by AHCCCS, or interest earned thereon, shall be used for the purpose of influencing or attempting to influence an officer or employee of any federal or State agency, a member of the United States Congress or State Legislature, an officer or employee of a member of the United States Congress or State Legislature in connection with awarding of any federal or State contract, the making of any federal or State grant, the making of any federal or State loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any federal or State contract, grant, loan, or cooperative agreement. The Contractor shall disclose if any funds other than those paid to the Contractor by AHCCCS have been used or will be used to influence the persons and entities indicated above and will assist AHCCCS in making such disclosures to CMS.
16. **No Guaranteed Quantities:** AHCCCS does not guarantee the Contractor any minimum or maximum quantity of services or goods to be provided under this contract.
17. **Non-exclusive Contract:** Any contract resulting from this solicitation shall be awarded with the understanding and agreement that it is for the sole convenience of AHCCCS. The state reserves the right to obtain like goods or services from another source when necessary.
18. **Ownership of Information and Data:**
  - 18.1 Any data or information system, including all software, documentation and manuals, developed by Contractor pursuant to this contract, shall be deemed to be owned by AHCCCS. The federal government reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use and to authorize others to use for federal government purposes, such data or information system, software, documentation and manuals. Proprietary software which is provided at established catalog or market prices and sold or leased to the general public shall not be subject to the ownership or licensing provisions of this section.
  - 18.2 Data, information and reports collected or prepared by Contractor in the course of performing its duties and obligations under this contract shall be deemed to be owned by AHCCCS. The ownership provision is in consideration of Contractor's use of public funds in collecting or preparing such data, information and reports. These items shall not be used by Contractor for any independent project of Contractor or publicized by Contractor without the prior written permission of the Procurement officer. Subject to applicable state and federal laws and regulations, AHCCCS shall have full and complete rights to reproduce, duplicate, disclose and otherwise use all such information. At the termination of the contract, Contractor shall make available all such data to the Procurement officer within thirty (30) days following termination of the contract or such longer period as approved by the Procurement officer. For purposes of this subsection, the term "data" shall not include member medical records.
  - 18.3 Except as otherwise provided in this section, if any copyrightable or patentable material is developed by Contractor in the course of performance of this contract, the federal government, AHCCCS and the State of Arizona shall have a royalty-free, nonexclusive, and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the work for state or federal government purposes.

## SPECIAL TERMS AND CONDITIONS

Contractor shall additionally be subject to the applicable provisions of 45 CFR Part 74 and 45 CFR Parts 6 and 8.

### **19. Records:**

- 19.1 In addition to the requirements set forth in this contract under the Uniform Terms and Conditions, all books and records shall be maintained to the extent and in such detail as required by AHCCCS Rules and Policies. The AHCCCS records management guidelines are located at: <http://www.azahcccs.gov>. Records shall include, but not be limited to, financial statements, case files (both hard copy and stored data), and other records specified by AHCCCS.
- 19.2 The Contractor shall make available at its office at all reasonable times during the term of this contract and the period set forth in in this section, any of its records for inspection, audit or reproduction by any authorized representative of AHCCCS, State or Federal government.
- 19.3 The Contractor shall preserve and make available all records for a period of five (5) years from the date of final payment under this contract except as provided below:
  - 19.3.1 If this contract is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for a period of five years from the date of any such termination.
  - 19.3.2 Records that relate to grievances, disputes, litigation or the settlement of claims arising out of the performance of this contract, or costs and expenses of this contract to which exception has been taken by AHCCCS, shall be retained by the Contractor for a period of five years after the date of final disposition or resolution thereof.
  - 19.3.3 Completed case files shall be scheduled for archive shipment to AHCCCS, as defined by AHCCCS Policy and Procedures.

**20. Responsibility for Payments Indemnification:** The Contractor shall be responsible for issuing payment for services performed by the Contractor's employees and will indemnify and save AHCCCS harmless for all claims whatsoever growing out of the lawful demands of employees, subcontractors, suppliers or any other third party incurred in the furtherance of the performance of the contract. The Contractor shall, at AHCCCS' request, furnish satisfactory evidence that all obligations of the nature hereinabove designated have been paid, discharged or waived.

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

- 21.1 The initial term of this contract shall be for three (3) initial years with two (2) one-year options to extend, not to exceed a total contracting period of five (5) years. The terms and conditions of any such contract extension shall remain the same as the original contract, as amended. All contract extensions shall be through contract amendment, and shall be at the sole option of AHCCCS.
- 21.2 If the Contractor chooses not to renew this contract, the Contractor may be liable for certain costs associated with the transition of its members to a different Contractor. If the Contractor provides the Procurement officer written notice of its intent not to renew this contract at least 180 days before its expiration, this liability for transition costs may be waived by the Procurement officer.
- 21.3 Contract amendments, including renewals, are subject to approval by the Centers for Medicare and Medicaid Services (CMS).



## SPECIAL TERMS AND CONDITIONS

### 22. WARRANTY

- 22.1 Unless otherwise modified elsewhere in the terms and conditions, the Contractor warrants that, for one year after acceptance by the State, the Materials shall be fully compatible with the State's computer hardware and software environment.
- 22.2 Contractor represents and warrants to the State that Contractor has the skill and knowledge possessed by members of its trade or profession and Contractor will apply that skill and knowledge with care and diligence so Contractor and Contractor's employees and any authorized subcontractors shall perform the Services described in this Contract in accordance with the Scope of Work.
- 22.3 Contractor represents and warrants that the Materials provided through this Contract and Scope of Work shall be free of viruses, backdoors, worms, spyware, malware and other malicious code that will hamper performance of the Materials, collect unlawful personally identifiable information on users or prevent the Materials from performing as required under the terms and conditions of this Contract.

### 23. INTELLECTUAL PROPERTY

- 23.1 Ownership of Intellectual Property. Any and all intellectual property, including but not limited to copyright, invention, trademark, trade name, service mark, or trade secrets created or conceived solely pursuant to or as a result of this Contract and any related subcontract (collectively, the "Intellectual Property"), shall be work made for hire and the State shall be the owner of such Intellectual Property. The agency, department, division board or commission of the State of Arizona requesting the issuance of this Contract shall own (for and on behalf of the State) the entire right, title and interest to the Intellectual Property through the world. Software and other Materials developed or otherwise obtained by or for Contractor or its affiliates independently of this Contract ("Independent Materials") do not constitute Intellectual Property. If Contractor creates derivative works of Independent Materials, then the elements of such derivative works created pursuant to this Contract shall constitute Intellectual Property owned by the State. Contractor shall notify the State, within thirty (30) days, of the creation of any Intellectual Property by it or its subcontractor(s). Contractor, on behalf of itself and any subcontractor(s), agrees to execute any and all document(s) necessary to assure ownership of the Intellectual Property vests in the State and shall take no affirmative actions that might have the effect of vesting all or part of the Intellectual Property in any entity other than the State, The Intellectual Property shall not be disclosed by Contractor or its subcontractor(s) to any entity not the State without the express written authorization of the agency, department, division, board or commission of the State of Arizona requesting the issuance of this Contract.
- 23.2 Notwithstanding the foregoing, if the State elects, in its sole and absolute discretion, to relinquish its ownership interest in any or all of the Intellectual Property, the State shall have the rights to use, modify, reproduce, release, perform, display, sublicense or disclose such Intellectual Property within State government and operations without restriction for any activity in which the State is a party (collectively, "Government Purpose Rights").
- 23.3 With respect to attorneys' fees and costs, but not liability and the State shall have the right to approve or disapprove any settlement which approval shall not be unreasonably withheld or delayed. The State shall reasonably cooperate in its defense and any related settlement negotiations.

## SPECIAL TERMS AND CONDITIONS

### 24. INTELLECTUAL PROPERTY INDEMNIFICATION

- 24.1 With respect solely to Materials provided or proposed by Contractor or Contractor's agents, employees, or subcontractors (each a "Contractor Party") for the performance of this Contract, Contractor shall indemnify, defend and hold harmless the State its departments, agencies, boards, commissions, universities, officers, agents and employees (collectively, the "Indemnitee"), against any third-party claims for liability including but not limited to, reasonable costs and expenses, including attorneys' fees, for infringement or violation of any patent, trademark, copyright or trade security, by such Materials or the State's use thereof.
- 24.2 In addition, with respect to claims arising from computer hardware or software manufactured or developed solely by a third party, Contractor shall pass through to the State such indemnity rights as it receives from such third party (the "Third Party Obligation") and will cooperate in enforcing them; provided, however, that (i) if the third party manufacturer fails to honor the Third Party Obligation, or (ii) the Third Party Obligation is insufficient to fully indemnify the State, Contractor shall indemnify, defend and hold harmless the State against such claims in their entirety or for the balance of any liability not fully covered by the Third Party Obligation.
- 24.3 The State shall reasonably notify Contractor of any claim for which the Contractor may be liable under this section. If the Contractor is insured pursuant to ARS 41-621 and 35-154, this section shall not apply. Contractor shall have control, subject to the reasonable approval of the State, of the defense of any action on such claim and all negotiation for its settlement or compromise, provided, however, that when substantial principles of government or public law are involved or when involvement of the State is otherwise mandated by law, the State may elect, in its sole and absolute discretion, to participate in such action at its own expense with respect to attorneys' fees and costs, but not liability, and the State shall have the right to approve or disapprove any settlement, which approval shall not be unreasonably withheld or delayed. The State shall reasonably cooperate in the defense and any related settlement negotiations.
- 24.4 If Contractor believes at any time that any Materials provided or in the use pursuant to this Contract infringe a third party's intellectual property rights, Contractor shall, at Contractor's sole cost and expense, and upon receipt of the state's prior written consent, which shall not be unreasonably withheld, (i) replace in infringing Material with a non-infringing Material; (ii) obtain for the State the right to continue to use the infringing Material; or (iii) modify the infringing Material to be non-infringing, provided that following any replacement or modification made pursuant to the foregoing, the Material continues to function in accordance with the Contract. Contractor's failure or inability to accomplish any of the foregoing shall be deemed a material breach of this Contract.
- 24.5 Notwithstanding the foregoing, Contractor shall not be liable for infringement based solely on any Indemnitee's:
- 24.5.1 Modification of Materials provided by Contractor other than as contemplated by the Contract or the specifications of such Materials or as otherwise authorized or proposed in any way by Contractor or a Contractor Party;
  - 24.5.2 Use of the Materials in a manner other than as contemplated by this Contract or the specifications of such Materials, or as otherwise authorized or proposed in any way by Contractor or a Contractor Party; or
  - 24.5.3 Use of the Materials in combination, operation, or use with other products in a manner not contemplated by the Contract, or, the specifications of such Materials, or as otherwise authorized or proposed in any way by Contractor or a Contractor Party.
- 24.6 Contractor certifies, represents and warrants to the State that it has appropriate systems and controls in place to ensure that State funds will not be used in the performance of the Contractor for the acquisition, operation or maintenance of Materials in violation of intellectual property laws.

SPECIAL TERMS AND CONDITIONS

**INSURANCE REQUIREMENTS**

**1. Insurance Requirements**

Contractor and subcontractors shall procure and maintain, until all of their obligations have been discharged, including any warranty periods under this Contract, insurance against claims for injury to persons or damage to property arising from, or in connection with, the performance of the work hereunder by the Contractor, its agents, representatives, employees or subcontractors.

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

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

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

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

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

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

- a. The policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor.
- b. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

**2.2. Business Automobile Liability**

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

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

- a. Policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by, or on behalf of, the Contractor involving automobiles owned, hired and/or non-owned by the Contractor.
- b. Policy shall contain a waiver of subrogation endorsement as required by this written agreement in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

**SPECIAL TERMS AND CONDITIONS**

**INSURANCE REQUIREMENTS**

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

- Workers' Compensation Statutory
  - Employers' Liability
    - Each Accident \$1,000,000
    - Disease – Each Employee \$1,000,000
    - Disease – Policy Limit \$1,000,000
- a. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.
- b. This requirement shall not apply to each Contractor or subcontractor that is exempt under A.R.S. § 23-901, and when such Contractor or subcontractor executes the appropriate waiver form (Sole Proprietor or Independent Contractor).

**2.4. Network Security (Cyber) and Privacy Liability**

- Each Claim \$2,000,000
  - Annual Aggregate \$2,000,000
- a. Such insurance shall include, but not be limited to, coverage for third party claims and losses with respect to network risks (such as data breaches, unauthorized access or use, ID theft, theft of data) and invasion of privacy regardless of the type of media involved in the loss of private information, crisis management and identity theft response costs. This should also include breach notification costs, credit remediation and credit monitoring, defense and claims expenses, regulatory defense costs plus fines and penalties, cyber extortion, computer program and electronic data restoration expenses coverage (data asset protection), network business interruption, computer fraud coverage, and funds transfer loss.
- b. In the event that the Network Security and Privacy Liability insurance required by this Contract is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of this Contract and, either continuous coverage will be maintained, or an extended discovery period will be exercised for a period of two (2) years beginning at the time work under this Contract is completed.
- c. 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 vicarious liability of the insured arising out of the activities performed by or on behalf of the Contractor.
- d. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.
- e.

**3. Additional Insurance Requirements**

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

The Contractor's policies, as applicable, shall stipulate that the insurance afforded the Contractor shall be primary and that any insurance carried by the Department, its agents, officials, employees or the State of Arizona shall be excess and not contributory insurance, as provided by A.R.S. § 41-621 (E).

SPECIAL TERMS AND CONDITIONS

**INSURANCE REQUIREMENTS**

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

**4. Notice of Cancellation**

Applicable to all insurance policies required within the Insurance Requirements of this Contract, Contractor's insurance shall not be permitted to expire, be suspended, be canceled, or be materially changed for any reason without thirty (30) days prior written notice to the State of Arizona. Within two (2) business days of receipt, Contractor shall provide notice to the State of Arizona if they receive notice of a policy that has been or will be suspended, canceled, materially changed for any reason, has expired, or will be expiring. Such notice shall be mailed, emailed, hand delivered or sent by facsimile transmission to AHCCCS.

**5. Acceptability of Insurers**

Contractor's insurance shall be placed with companies licensed in the State of Arizona or hold approved non-admitted status on the Arizona Department of Insurance List of Qualified Unauthorized Insurers. Insurers shall have an "A.M. Best" rating of not less than A- VII. The State of Arizona in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency. If the Contractor utilizes the Social Service Contractors Indemnity Pool ("SSCIP") or other prior approved insurance pool for insurance coverage, SSCIP or the other prior approved insurance pool is exempt from the A.M. Best's rating requirements listed in this section. If the Contractor chooses to use SSCIP or another approved insurance pool as its insurance provider, the Contractor would be considered in full compliance with insurance requirements relating to the A.M. Best rating requirements.

**6. Verification of Coverage**

Contractor shall furnish the State of Arizona with certificates of insurance (valid ACORD form or equivalent approved by the State of Arizona) evidencing that Contractor has the insurance as required by this Contract. An authorized representative of the insurer shall sign the certificates.

All such certificates of insurance and policy endorsements shall be received by the State before work commences. The State's receipt of any certificates of insurance or policy endorsements that do not comply with this written agreement shall not waive or otherwise affect the requirements of this agreement.

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

All certificates required by this Contract shall be sent directly to AHCCCS. The State of Arizona project/contract number and project description shall be noted on the certificate of insurance. The State of Arizona reserves the right to require complete copies of all insurance policies required by this Contract at any time.

**7. Subcontractors**

Contractor's certificate(s) shall include all subcontractors as insureds under its policies or Contractor shall be responsible for ensuring and/or verifying that all subcontractors have valid and collectable insurance as evidenced by the certificates of insurance and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum Insurance Requirements identified above. The Department reserves the right to require, at any time throughout the life of the Contract, proof from the Contractor that its subcontractors have the required coverage.

**8. Approval and Modifications**

SPECIAL TERMS AND CONDITIONS

**INSURANCE REQUIREMENTS**

AHCCCS, in consultation with State Risk, reserves the right to review or make modifications to the insurance limits, required coverages, or endorsements throughout the life of this contract, as deemed necessary. Such action will not require a formal Contract amendment but may be made by administrative action.

**9. Exceptions**

In the event the Contractor or subcontractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a certificate of self-insurance. If the Contractor or subcontractor(s) is/are a State of Arizona agency, board, commission, or university, none of the above shall apply.

# HIPAA BUSINESS ASSOCIATES ADDENDUM

## BUSINESS ASSOCIATE ADDENDUM

Updated April 2020

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

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

### 1. DEFINITIONS

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

### 2. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

Business Associate agrees to:

Not use or disclose protected health information ("PHI") other than as permitted or required by this Addendum or as required by law;

2. Use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to electronic PHI, to prevent use or disclosure of protected health information other than as provided for by this Addendum;

3. Report to AHCCCS any use or disclosure of PHI not provided for by this Addendum of which it becomes aware, including breaches of unsecured protected health information as required at 45 CFR §164.410, and any security incident of which it becomes aware in the following manner;

1. Reporting. Business Associate shall report to AHCCCS any use or disclosure of PHI that is not authorized by the Contract, by law, or in writing by AHCCCS. Business Associate shall make an initial report to the AHCCCS Privacy Official not more than twenty-four (24) hours after Business Associate learns of such unauthorized use or disclosure. The initial report shall include all of the following information to the extent known to the Business Associate at the time of the initial report:

- A. A description of the nature of the unauthorized use or disclosure, including the number of individuals affected by the unauthorized use or disclosure;
- B. A description of the PHI used or disclosed;
- C. The date(s) on which the unauthorized use or disclosure occurred;
- D. The date(s) on which the unauthorized use or disclosure was discovered;

## HIPAA BUSINESS ASSOCIATES ADDENDUM

- E. Identify the person(s) who used or disclosed the PHI in an unauthorized manner;
- F. Identify the person(s) who received PHI disclosed in an unauthorized manner;
- G. A description of actions, efforts, or plans undertaken by the Business associate to mitigate the harm of the unauthorized disclosure;
- H. A description of corrective actions undertaken or planned to prevent future similar unauthorized use or disclosure;
- I. An assessment of whether a breach, as defined in 45 CFR 164.402, including, if necessary, an assessment of the probability of harm, and
- J. Such other information, as may be reasonably requested by the AHCCCS Privacy Official.

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

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



# HIPAA BUSINESS ASSOCIATES ADDENDUM

## 3. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE

1. Business Associate may only use or disclosure PHI as necessary to perform the services and obligations set forth in the underlying Contract;
2. Business Associate may use or disclose protected health information as required by law;
3. Business Associate agrees to make uses and disclosures and requests for protected health information consistent with Minimum Necessary, as required at 45 § CFR 164.502(b) and 164.514(d).
4. Business Associate may not use or disclose protected health information in a manner that would violate Subpart E of 45 CFR Part 164 if done by AHCCCS, except for the specific uses and disclosures set forth below in (3.5 and 3.6);
5. Business Associate may use protected health information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate; and
6. Business Associate may provide data aggregation services relating to the health care operations of AHCCCS.

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

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

## 5. TERM AND TERMINATION

1. Term: This Addendum is effective upon the effective date of the underlying Contract and shall terminate on the date AHCCCS terminates the contract for cause as authorized in paragraph (b) of this Section, or for any other reason permitted under the contract, whichever is sooner.

# HIPAA BUSINESS ASSOCIATES ADDENDUM

2. Termination for Cause: Business Associate authorizes termination of the Contract by AHCCCS if AHCCCS determines that Business Associate has breached a material term of this Addendum and Business Associate has not cured the breach or ended the violation within the time specified by AHCCCS.
3. Obligations of Business Associate Upon Termination: Upon termination, cancellation, expiration or other conclusion of the Contract, Business Associate, with respect to PHI received from AHCCCS, or created, maintained, or received by Business Associate on behalf of AHCCCS, shall:
  1. Retain only that PHI which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities;
  2. Destroy or return to AHCCCS all remaining PHI that the Business Associate still maintains in any form;
  3. Continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic PHI to prevent use or disclosure of the PHI, other than as provided for in this Section, for as long as Business Associate retains the PHI;
  4. Not use or disclose the PHI retained by Business Associate other than for the purposes for which such protected health information was retained and subject to the same conditions set out in this Addendum that applied prior to termination; and
  5. 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.
4. Survival: The obligations of Business Associate under this Section shall survive the termination of the Contract.

## 6. INDEMNIFICATION AND MISCELLANEOUS

1. Indemnification: Business Associate shall indemnify, hold harmless and defend AHCCCS from and against any and all claims, losses, liabilities, costs, civil and criminal penalties, and other expenses resulting from, or relating to, the acts or omissions of Business Associate, its employees, agents, and sub-contractors in connection with the representations, duties and obligations of Business Associate under this Addendum. The parties' respective rights and obligations under this Section shall survive termination of the Contract.
2. Regulatory References: A reference in this Addendum to a section in the HIPAA rules means the section as in effect or as amended.
3. Amendment: The parties agree to take such action as is necessary to amend this Addendum from time to time as is necessary for compliance with the requirements of the HIPAA rules or any other applicable law.
4. Interpretation: Any ambiguity in this Addendum shall be interpreted to permit compliance with the HIPAA rules.

**END OF SOLICITATION**

**Intentionally left blank.**