



Notice of Request for Proposal

SOLICITATION # YH23-0036

Third Party Liability (TPL) and Recovery Audit Contractor (RAC) Services

AHCCCS Procurement Officer:

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Issue Date: December 13, 2022

RFP DESCRIPTION:	Third Party Liability (TPL) and Recovery Audit Contractor (RAC) services
Pre-Proposal Conference:	A Pre-Proposal Conference has NOT been scheduled.
<p>Questions Due: <i>Questions shall be submitted to the procurement on the Q&A form provided with this RFP. Answers will be posted publicly on the AHCCCS website in the form of a Solicitation Amendment for the benefit of all Potential Offerors.</i></p>	<p>December 22, 2022 by 5:00 PM Arizona Time</p>
<p>ALL OFFERORS MUST REQUEST ACCESS TO THE AHCCCS SECURE FILE SHARE (ASFS) <i>See Proposal Submission Instructions for details</i></p>	<p>December 29, 2022 by 5:00 PM Arizona Time</p>
<p>PROPOSAL DUE DATE: <i>Proposals shall be submitted in accordance with this solicitation proposal instructions prior to the time and date indicated here, or as may be amended through a solicitation amendment.</i></p>	<p>January 12, 2023 by 3:00 PM ARIZONA TIME</p>

Late proposals shall not be considered.

OFFERORS ARE STRONGLY ENCOURAGED TO CAREFULLY READ THE ENTIRE SOLICITATION.

Persons with a disability may request 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.

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

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

Attachment 1 – Pricing Schedule – Contingency Based Compensation

Attachment 2 – Methodology Questionnaire

Attachment 3 – Boycott of Israel

Attachment 4 – Forced Labor of Ethnic Uyghurs Ban for Contracts

Exhibit A - Deliverables

Exhibit B - AHCCCS TPL Program Recoveries

Exhibit C – AHCCCS Commercial TPL Coverage Record Data Exchange Layout

Document 1 - YH23-0036 ASFS Intent to Bid

Document 2 - YH23-0036 Offeror Question and Answer 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. § 18-132 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. YH23-0036.

CONTRACT SERVICE START DATE: _____.

AWARD DATE: _____

MEGGAN LAPORTE, AHCCCS Chief Procurement Officer

SCOPE OF WORK

1. **AHCCCS 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, 2022, AHCCCS provides coverage to approximately 2.3 million members in Arizona.

Over 82.43% of the AHCCCS program's expenditures in SFY 2022 were through managed care programs. AHCCCS contracts with Managed Care Organizations (MCOs) that are responsible for providing Acute, Long Term Care, and Behavioral Health Services. A list of contracted plans can be found here:

<https://azweb.statedicaid.us/HealthPlanLinksNet/HPLinks.aspx>

The program has a total fund budget for SFY 2023 of approximately \$19 billion. AHCCCS has over 121,000 active providers in Arizona, such as individual medical and behavioral health practitioners, therapy disciplines, institutions, durable medical equipment companies and transportation entities. Additional information may be found on the AHCCCS website reporting page: <https://www.azahcccs.gov/Resources/Reports/federal.html>

2. **PURPOSE OF THE RFP**

The purpose of this Request for Proposal (RFP) is to procure the services of an organization (hereby referred to as "Contractor") which has the experience and expertise to provide AHCCCS with First Party Liability and Third Party Liability recovery services, Medicaid Recovery Audit Contractor (RAC) services, Commercial Insurance Coverage Verification/ Data Match and other related services as described in this RFP. Compensation under this contract will be based upon the Pricing Schedule accepted by AHCCCS, contained herein, and is subject to the review and approval of CMS. The contract shall be available to all AHCCCS contracted health plans for Credit Balance Recovery activities. A separate agreement will be entered into with each health plan that chooses to participate in the Credit Balance Recovery program. AHCCCS will pay the Contractor for Credit Balance Recovery activities it performs for any AHCCCS contracted health plan that enters a separate agreement with AHCCCS and the Contractor pursuant to the payment terms.

It is the intention of AHCCCS to evaluate proposals and award a contract to a single Vendor for the services specified herein

AHCCCS retains the right to amend the Scope of Work with a mutually signed Amendment for legally required, or mandated changes, including CMS requirements, Federal and State laws and rules, in order to maintain the TPL and RAC in compliance.

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. Any award is contingent upon CMS approval.

4. **CONTRACTOR RESPONSIBILITIES:**

Any changes to operating policies and procedures pertaining to the recovery processes, as defined herein, must be approved in writing by AHCCCS. All policies and procedures that are developed between the Contractor staff and the AHCCCS staff are the property of AHCCCS.

4.1. The Contractor shall:

Be responsible for all recovery programs described in this RFP.

Be responsible for commercial insurance data matching and coverage verification for all AHCCCS members. While operating these programs, the responsibilities include, but are not limited to:

- 4.1.1. Maximizing AHCCCS recoveries and cost avoidance;
- 4.1.2. Complying with all federal and state laws, regulations, policies and procedures;
- 4.1.3. Complying with reporting requirements as set forth by CMS and AHCCCS;
- 4.1.4. Researching and documenting cases with potential TPL recoveries;
- 4.1.5. Preparing any reports, data, or responses needed by AHCCCS in order to submit reports or information to executive management, government entities, auditors, or legislators;
- 4.1.6. Providing financial reports on recoveries, including reconciliation of dollars recovered vs. disbursed;

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- 4.1.7. Providing financial reports for reporting federal share of recoveries to CMS;
- 4.1.8. Coordinating with AHCCCS Health Plan Contractors as needed to ensure cases are being processed by the appropriate contractor within required timeframes;
- 4.1.9. Maintaining processes to ensure compliance with HIPAA and 42 CFR Part 2 standards;
- 4.1.10. Identifying, researching, and verifying payments made by AHCCCS to providers;
- 4.1.11. Filing, amending and releasing Liens;
- 4.1.12. Calculating and reporting AHCCCS lien and claim amounts;
- 4.1.13. Performing active estate identification monthly by date of death reports, court records, etc.;
- 4.1.14. Developing case facts and making recommendations to AHCCCS on Casualty and Estate Recovery cases and after the settlement amounts have been agreed to by AHCCCS, conduct all appropriate activities to settle the cases;
- 4.1.15. Receiving and processing all referral information within five business days of receipt, and referring Total Plan cases to the appropriate AHCCCS Health Plan Contractor;
- 4.1.16. Collecting AHCCCS Health Plan Contractor claims data that is needed to process Joint Plan cases, and following up with AHCCCS Health Plan Contractors as needed to promptly collect overdue claims data;
- 4.1.17. Providing technical assistance and training to AHCCCS Health Plan Contractors;
- 4.1.18. Receiving and processing information received from the Industrial Commission of Arizona and the Arizona Department of Transportation, and referring select data to the appropriate AHCCCS Health Plan Contractor;
- 4.1.19. Referring suspected cases of fraud/abuse, including instances of provider self-report to AHCCCS Office of Inspector General (OIG);
- 4.1.20. Entering into data sharing agreements with insurers that provide healthcare coverage to Arizona residents to help AHCCCS maintain a current database of insurance coverage information;
- 4.1.21. Conducting ongoing data matches of the AHCCCS Member eligibility files with the files of insured coverage and provide AHCCCS with daily electronically transmitted update files of Member commercial insurance policies that should be added or updated in AHCCCS' systems;
- 4.1.22. Coordinating RAC activities with AHCCCS' Office of the Inspector General (OIG);
- 4.1.23. Ensuring providers identified by the Contractor are not under investigation by AHCCCS OIG and/ or have no existing pending complaints;
- 4.1.24. Keeping AHCCCS informed of personnel who are assigned under the AHCCCS contract for recovery and reporting purposes
- 4.1.25. Timely notification and reporting of all activities and issues;
- 4.1.26. Maintaining solid internal control systems; bank procedures, and cash control;
- 4.1.27. Recommending new programs or processes that will enhance the recovery of AHCCCS expenditures;
- 4.1.28. Commenting on proposed changes in state and federal legislation, rules, policies, and procedures;
- 4.1.29. Researching, analyzing, and implementing proposed or required program or process changes;
- 4.1.30. Responding timely to surveys, requests for information, and correspondence;
- 4.1.31. Responding timely to subpoenas and other court documents;
- 4.1.32. Recommending settlement amounts to AHCCCS and then settling claim amounts in accordance with AHCCCS direction;
- 4.1.33. Providing monthly lists of open cases for each recovery program;
- 4.1.34. Conducting a monthly reconciliation of case inventory to include the number of claims and recovery amounts for each recovery program;
- 4.1.35. Maintaining an adequate staff with appropriate expertise and training;
- 4.1.36. Regularly monitoring TPL Contractor staff compliance to policies and procedures to ensure recovery cases are being worked appropriately and timely;
- 4.1.37. Establishing and maintaining contractual relationships with insurance companies for data matches and post payment billing activities;
- 4.1.38. Providing and maintaining a case management tracking system, that is accessible to AHCCCS, which documents the detail case history and all recovery activities;
- 4.1.39. Promptly providing copies of case files when requested by AHCCCS;
- 4.1.40. Periodically archiving closed recovery cases in accordance with AHCCCS and state requirements;
- 4.1.41. Providing a weekly Aging Report that shows how many cases are coming due or are overdue, broken down by each stage of the recovery programs; and
- 4.1.42. Providing all necessary legal expertise associated with cases prior to the State Fair Hearing process. This

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includes but is not limited to representing AHCCCS in foreclosure cases, interpleader actions, and alternative dispute resolution proceedings.

- 4.2. Adhere to banking procedures as specified and/or modified by AHCCCS. The Contractor's personnel authorized to endorse settlement checks are subject to AHCCCS' written approval. Settlement checks payable to AHCCCS, which require endorsement, shall be endorsed using the endorsement stamp provided by AHCCCS. Provide AHCCCS with a letter identifying its employees who are authorized to endorse checks under any resulting contract. AHCCCS shall be notified by letter, sent to the AHCCCS TPL Administrator, within five working days of making any change to the endorsement authority listing.
- 4.3. AHCCCS may provide First Party Liability and Third Party Liability cases from an AHCCCS Health Plan Contractor to the Contractor. The Contractor is obligated to pursue recovery of those cases under the same terms and conditions for similar AHCCCS recoveries.
- 4.4. Provide information to AHCCCS on any program change that they believe should be disseminated to external entities involved with recovery practices.
- 4.5. Work cooperatively with AHCCCS to prepare operational manuals for its cost avoidance and recovery programs and ensure the operational manuals are kept current to maximize AHCCCS recoveries and to remain in compliance with Federal and State requirements. Any changes shall be coordinated with AHCCCS and finalized with a revision completed within thirty (30) days of the operational change. The operational manuals will address all required timeframes per individual recovery program.
- 4.6. Comply with the requirements of HIPAA and all federal regulations as described in the "Business Associate" addendum that is included herein.
- 4.7. **First Party Liability and Third Party Liability Recovery Programs**

The sources of potential recovery that the Contractor shall pursue include, but are not limited to: Casualty and Tortfeasor, Restitution, Estate Recovery, TEFRA Liens, Trusts, Annuities, Commercial Insurance, and Credit Balance recoveries. Each of these is briefly described below. In addition, Exhibit A, "Periodic Report Requirements," contains a list of the financial and statistical reports that the Contractor must prepare and submit on a weekly, monthly or quarterly basis, as required by AHCCCS. Exhibit C - AHCCCS TPL Program Recoveries," lists examples of specific activities the Contractor must do, at a minimum, to adequately perform this contract.

 - 4.7.1. **Casualty and Tortfeasor:** Casualty and Tortfeasor recoveries are obtained from settlements or awards to FFS Members and Joint Liability and Mass Tort Cases for injuries or illness resulting from automobile accidents, malpractice suits, workers' compensation cases, etc. AHCCCS has 60 days from the date of notification of hospital discharge or medical care and treatment to file a lien. If this 60-day period has expired, AHCCCS relies on its assignment and subrogation rights as set forth in State law to enforce its claim.

The Contractor is responsible for identifying FFS Members who have claims with specific trauma codes that are consistent with injuries that may be covered by Liable Parties. In accordance with 42 CFR 433.138(e) the Contractor is required to identify FFS claims that contain trauma codes utilizing claim information provided by AHCCCS. The Contractor will treat all claims identified through this trauma code match process as a new Casualty referral.

In addition to the referrals generated by the trauma code match process, other referrals come from a variety of sources including: the Acute Care Contractors or Long Term Care Contractors, attorneys, insurance companies, Providers, Members, etc. The Contractor is responsible for processing all referrals and determining whether the case is a Mass Tort Case, Joint Liability Case, or Total Plan Case.

Certain factors have a bearing on how Casualty cases are worked for recovery. The Contractor shall recover FFS and AHCCCS Health Plan Contractor expenses on Joint Liability and Mass Tort Cases. All Reinsurance and FFS expenditures are reimbursed to AHCCCS from Joint Liability and Mass Tort Case recoveries before any

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payment is made to the AHCCCS Health Plan Contractor. The Contractor refers all Total Plan Cases, except Mass Tort Cases, to the AHCCCS Health Plan Contractor for recovery.

There are ongoing changes in law that may impact the Casualty and tortfeasor recovery process. The Contractor shall take all necessary steps to comply with any changes in law.

- 4.7.2. **Restitution:** Restitution recoveries are obtained through a Restitution court order, upon a defendant's conviction for an offense causing economic loss to any person. The court, at its sole discretion, may order that all or any portion of the fine imposed be allocated as Restitution to be paid by the defendant to any person who suffered an economic loss caused by the defendant's conduct. In ordering Restitution for economic loss, the court shall consider all loss caused by the criminal offense or offenses for which the defendant has been convicted.

Federal and State Courts will order a convicted defendant to pay Restitution to AHCCCS in criminal cases where AHCCCS has paid for medical services that are related to the victim's injuries. Requests for paid medical services information for Restitution cases are primarily requested by County Adult Probation Officers. In these cases, the County Adult Probation Officer will submit the AHCCCS claim amount to the court. After the court determines the amount of the Restitution, the court, or a staff member designated by the court, including a probation officer, shall specify the manner in which the Restitution is to be paid.

Restitution recovery is similar to the Casualty and tortfeasor recovery process in that recovery can be a FFS, Joint Liability or a Total Plan Case. The Contractor shall be responsible for processing all referrals and determining whether the case is a FFS case, a Joint Liability Case or a Total Plan Case. If needed, the Contractor will contact the applicable court to collect sufficient information to process a referral. The Contractor shall recover FFS and Acute Care Contractor and Long Term Care Contractor expenses on a Joint Liability Case. All Reinsurance and FFS expenditures are reimbursed to AHCCCS from a Joint Liability Case recovery before any payment is made to the Acute Care Contractors or Long Term Care Contractors.

Provide a monthly report that identifies the current balance due to AHCCCS on open cases. The report format and content shall be as prescribed by AHCCCS.

Establish and maintain a line of communication whereby AHCCCS will be informed of court orders pertaining to AHCCCS recovery case so as to maximize recoveries of AHCCCS expenditures. On a Joint Liability Case, when AHCCCS is paid in full, the case will be referred to the concerned AHCCCS Health Plan Contractor for collection of the balance due.

Total Plan Cases are forwarded to the appropriate AHCCCS Health Plan Contractor for recovery within 5 business days of receipt.

- 4.7.3. **Estate Recovery:** AHCCCS receives federal, state, and county funds to operate the ALTCS-EPD program. The ALTCS-DD program is funded by federal and state funds. The Contractor shall separately account for ALTCS-EPD and ALTCS-DD estate recovery collections. Section 1917 of the Social Security Act required all states to implement an estate recovery program that at a minimum recovers Title XIX payments for nursing facility services, home and community based services, and related hospital and prescription drug services provided to Medicaid individuals age 55 and older. AHCCCS only recovers from the estates of ALTCS Members. AHCCCS was granted the authority under its 1115 demonstration waiver to exempt the recovery from the estates of Acute Care Contractor program enrollees 55 or older who receive long term care services.

The AHCCCS estate claim that is filed against the Member's estate is the total of the Title XIX (ALTCS) expenditures that were incurred by AHCCCS during the Member's ALTCS enrollment period when the member was age 55 and older, minus the sum of: the Share-of-Cost payments that were paid by the Member during the enrollment period; approved payments made to a Qualified Long-Term Care Insurance Policy; and the Medicare Benefit paid by AHCCCS on, or after January 1, 2010 for dual eligible Members.

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Be responsible for processing application requests for statutory exemptions under hardship and partial recovery as defined in AHCCCS Rules, A.A.C. R9-28-911 and R9-28-912. The Contractor shall review the application and supporting documentation and make a recommendation to AHCCCS. AHCCCS will waive its estate claim when an heir meets all of the undue hardship waiver criteria. AHCCCS may also reduce the amount of the estate claim when an heir to the estate meets the criteria for a "Partial Recovery (Reduction)" of the estate claim. The Contractor shall review the application and supporting documentation and make a recommendation to AHCCCS when an heir to the estate submits a completed application for a partial recovery (reduction) of the estate claim. The Contractor shall notify the requester of the decision made on any request to waive the claim or reduce the amount of the claim. In the absence of a statutory exemption, or an undue hardship, the Contractor shall pursue recovery of the AHCCCS estate claim from the Member's estate.

Under Arizona probate law, if probate is not opened within two (2) years of the Member's death, the Member's property, including the Member's real estate, passes to the survivors free and clear of any claims. In some instances no one is willing to open an estate, so from time-to-time AHCCCS may acquire the powers and undertake the duties and liabilities of a personal representative of a decedent to protect its interest as a creditor of the estate. In these instances, AHCCCS shall be the estate's personal representative, and the Contractor may be asked to retain independent legal counsel, approved by AHCCCS, to provide ongoing legal advice in opening, administering, and closing probate. Prior to opening probate AHCCCS will provide the Contractor with guidance if the reasonable fees and costs of the independent legal counsel will be paid from proceeds of the estate or if the Contractor shall be required to pay the legal costs from the contingency fee related to the recovery.

There may also be situations where a negotiated settlement is in AHCCCS' best interest. These situations may include, but are not limited to, cases involving tax lien foreclosures, judicial foreclosures, and transferred properties. In these cases, AHCCCS will provide the Contractor with guidance if reasonable fees of independent legal counsel will be paid from proceeds of the estate or if the Contractor shall be required to pay the legal costs from the contingency fee related to the recovery. All negotiated settlements need to be pre-approved by AHCCCS.

- 4.7.4. **TEFRA Liens:** As authorized under 42 U.S.C. 1396p, AHCCCS imposes TEFRA Liens against the real property, including the Member's primary residence, of permanently institutionalized ALTCS Members meeting AHCCCS' TEFRA lien criteria. The purpose of the Lien is to recover at least some of the cost of ALTCS benefits upon sale or the transfer of the ALTCS Member's property prior to the Members' death. The Contractor shall be responsible for the preparation, filing, and release of all TEFRA Liens. If the property, subject to the TEFRA Lien, is sold prior to the Member's death, the Contractor shall pursue recovery of the AHCCCS estate claim from proceeds of the sale of the property if there is not a statutory exemption from recovery. The Contractor shall pay the Lien fees and AHCCCS will reimburse the full amount of the Lien fees.
- 4.7.5. **Trusts:** As part of ALTCS eligibility a Member may create a Trust that meets certain specifications. Only specified payments are allowed to be made from the Trust which includes tort/subrogation matters under the assignment of rights, and payments for share of cost. AHCCCS must be designated the primary beneficiary for reimbursement of ALTCS expenditures upon the Member's death, or upon the revocation of the Trust. Expenditures for burial expenses are generally not deductible from the Trust.

Upon the death of the individual or termination of the Trust, AHCCCS is paid the remaining funds from the Trust, including share-of-cost payments that have been returned to the trust account, up to the total amount of the AHCCCS expenditures on behalf of the Member. The Contractor shall pursue recovery of the amount of the AHCCCS expenditures from any remaining Trust funds. If a Member moves out of state, AHCCCS retains its beneficiary right to the Trust and is required to be notified when the Member dies, or upon the revocation of the Trust.

- 4.7.6. **Annuities:** Be responsible for making recoveries from applicable annuities when an ALTCS member or Annuitant passes.

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- 4.7.7. **ABLE Accounts:** Be responsible for making recoveries from applicable ABLE Accounts also known as STABLE Accounts. As part of ALTCS eligibility a Member may create an ABLE Account that meets certain specifications. The Contractor shall pursue recovery of the amount of the AHCCCS expenditures from any remaining ABLE funds. If a Member moves out of state, AHCCCS retains its right to the ABLE Account and is required to be notified when the Member passes.
- 4.7.8. **Credit Balance Recovery Program:** AHCCCS utilizes two Credit Balance Recovery Program processes. The first process allows an AHCCCS contracted provider to conduct a “self-audit” to identify accounts receivable credit balances and allowed the provider to return overpayments with “amnesty.” The second process involves on-site or desk reviews of the credit balances for selected providers. The Contractor shall coordinate with AHCCCS to determine which process to use for each applicable provider and conducting the Credit Balance Recovery Program on behalf of AHCCCS. At least annually, the Contractor will submit a tentative audit schedule for AHCCCS approval. The Contractor may also audit credit balances and make recoveries for AHCCCS Health Plan Contractors during its AHCCCS audits if a Credit Balance Recovery Agreement signed by the Contractor, AHCCCS Health Plan Contractor, and AHCCCS is in place.
- 4.7.9. **Commercial Insurance Recovery:** Health Insurers are required by the Deficit Reduction Act of 2005 (DRA) and A.R.S. 36-2923 to:
- 4.7.9.1. Accept the state’s right of recovery from a third party payor;
 - 4.7.9.2. Respond to an inquiry regarding a claim for payment that is submitted for payment within three (3) years of the date of service; and,
 - 4.7.9.3. Not deny a claim submitted solely on the basis of the date the claim was submitted, the type or format of the claim, or the failure to present proper documentation at the time of service as long as: (a) the claim is submitted within three years of the date of service, and (b) the action to enforce its rights with respect to the claim is commenced within six (6) years after the date of service.

AHCCCS Health Plan Contractors are required to engage in retroactive third party recovery efforts for members for whom a claim was paid, for up to two (2) years from the date of service. After two (2) years from the service date, the Contractor will direct the recovery efforts on behalf of AHCCCS for the retroactive recovery of claims not previously identified by the AHCCCS Health Plan Contractor as having a reasonable expectation of recovery.

Identify claims that may be covered by other commercial insurers, billing the appropriate carrier, and pursue recovery of the billed claims on behalf of AHCCCS.

- 4.7.10. **Commercial Insurance Coverage Verification / Data Match:** Take reasonable measures, pursuant to 42 CFR 433.138, to determine the legal liability of a Liable Party to pay for services to AHCCCS Members. To ensure that AHCCCS is in compliance with the federally mandated cost avoidance requirements to deny and avoid the cost of claims when there is a known Liable Party, the Contractor shall be responsible to maintain valid TPL records in the AHCCCS third party leads file database. In order to ensure that only a valid Liable Party record is added to the database, the Contractor shall be responsible for verifying third party leads received from various sources including, but not limited to, AHCCCS, eligibility entities, AHCCCS Health Plan Contractors and commercial insurers. Additionally, the Contractor shall be required to have a Web-based referral process in place to accept on-line insurance coverage referrals, no later than December 1, 2023.

AHCCCS is required by A.R.S. § 36-2923 to report annually to the Arizona State Legislature on the commercial insurers’ compliance with this statute. The Contractor will provide information needed for this report to include Excel lists of compliant and noncompliant carriers with the number of member policies assigned to each carrier as of the end of the State fiscal year.

- 4.7.11. **Coverage Verification:** Receive health insurance referral information files from AHCCCS weekly, Monday-Friday. Those files contain TPL coverage records that require verification of the type of coverage, the timeframe of the coverage, and other required data elements prior to submitting the verified coverage information to AHCCCS for posting in the third party coverage database. These verified commercial coverage records will be used for cost

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avoidance and cost recovery activities. The Contractor shall be responsible for the initial verification of the insurance coverage information using industry accepted practices according to AHCCCS timeliness criteria. Verified and not verified referrals should be returned to AHCCCS within 45 days of initial transmission. Referrals entered directly into the Contractor's Web-based referral product should be returned either verified or not verified to AHCCCS within seven business days. The Contractor shall also conduct a reverification of active coverage record information every six (6) months on a rolling six-month cycle based on the last verification date, or on another timetable defined by AHCCCS. All verified insurance information, as well as any updates thereto, shall be transferred to AHCCCS electronically using the established AHCCCS TPL file layout and shall include the AHCCCS assigned Master Carrier ID (MCID) number identifying the insurance carrier. See Exhibit D – AHCCCS Commercial TPL Coverage Record Data Exchange Layout for the current file layout, which may be amended as required. As of August 2022, AHCCCS' commercial insurance database contained information on 234,000 active insurance policies of current Members.

4.7.12. **Commercial Insurance Data Match:** The Deficit Reduction Act of 2005 and A.R.S. 36-2923 requires health care insurers to provide all enrollment information necessary to determine the time period in which a person who is defined as an AHCCCS eligible person, or that person's spouse or dependents, may be or have been covered by the health care insurer and the nature of that coverage. The Contractor shall enter into, and maintain, trading partner agreements with insurers that provide major medical, pharmacy, dental, and/or Medicare Supplemental coverage to allow for the receipt of commercial insurance coverage information for AHCCCS members that they insure. The Contractor shall be required to perform a data match of the eligibility information received from the health insurers with the AHCCCS recipient eligibility file at least monthly. The Contractor shall provide AHCCCS all verified matched records using the Contractor's match criteria as defined in their response to this RFP and further approved by AHCCCS. All verified data match insurance information, as well as any updates thereto, shall be transferred to AHCCCS electronically using the established TPL file layout, including the AHCCCS MCID. The eligibility file currently contains all AHCCCS members with at least one (1) day of enrollment in the previous 12 months and excludes state-only members.

4.7.13. **Other Data Matches:** In addition to obtaining member and paid claims file information from AHCCCS to perform matches, the Contractor will receive TPL leads, via AHCCCS, from:
Arizona Department of Transportation, Motor Vehicle Division, and
Arizona Industrial Commission for workers' compensation data.
Utilize this data in their recovery efforts, and to pass the non-FFS member data to the appropriate AHCCCS Health Plan Contractor in a timely manner. The Contractor shall treat all claims identified through these data matches as a Casualty referral.

4.8. **Medicaid Recovery Audit Contractor (RAC) Services**

Section 6411 of the Affordable Care Act of 2010 established the Medicaid RAC program and 42 CFR Part 455 Subpart F, implements section 1902(a)(42)(B) of the Social Security Act. The federal rule requires Medicaid RACS to review fee-for-service claims for overpayments and underpayments.

Within the contract term AHCCCS may request that the Contractor develop a methodology for a recovery audit of managed care claims.

- 4.8.1. Contractor Shall Adhere to the Following Responsibilities for Fee for Service Claims. All requirements as defined in 42 CFR 455.506 and 455.508, that include:
- 4.8.1.1. Providing at all times trained medical professionals, to the satisfaction of AHCCCS, who are in good standing with the relevant State licensing authorities, where applicable, to review Medicaid claims. In addition, the Contractor must hire certified coders for effective review of claims.
 - 4.8.1.2. Hiring 1.0 FTE Medical Director who is a Doctor of Medicine or Doctor of Osteopathy in good standing with the relevant State licensing authorities and has relevant work and educational experiences.
 - 4.8.1.3. Working collaboratively with AHCCCS to develop an education and outreach program which includes notification to providers of audit policies and protocols.
 - 4.8.1.4. Providing customer service measures such as a toll-free customer number; compiling and maintaining provided addresses and points of contact; mandatory acceptance of electronic medical records.
 - 4.8.1.5. Refraining from reviewing claims that are older than six (6) years from the date of the

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service. Eliminate claims from review that have been settled or negotiated through the State Fair Hearing Process or through AHCCCS.

- 4.8.1.6. Refraining from auditing claims that are in process of being audited by another entity.
- 4.8.1.7. Notifying providers of overpayment findings within sixty (60) calendar days of findings.
- 4.8.1.8. Referring suspected cases of fraud/abuse to AHCCCS.

- 4.9. **Audit/Review/Coordination:** Collaborating with AHCCCS to set limits on the number and frequency of medical records to be reviewed.
 - 4.9.1. Coordinate all audit and recovery efforts with AHCCCS, other contractors and entities, including but not limited to the efforts of the AHCCCS Office of Inspector General, federal and state law enforcement, the Federal Department of Justice, the Federal Bureau of Investigations, the Federal Office of Inspector General, and the Arizona State Medicaid Fraud Control Unit to ensure activities proposed are not duplicative of other program integrity activities or operations.
 - 4.9.2. Provide information on types of providers and claims recommended for review/audit; provide the reason for selecting the type; and define the scope of the review/audit (time frame, type of claim and services reviewed/audited).
 - 4.9.3. Provide a list of criteria that is utilized to identify candidates for the provider on-site audits/ desk reviews.
 - 4.9.4. Establish provider medical record request process consistent with AHCCCS policy.
 - 4.9.5. Allow providers the opportunity to present additional documentation and reconsideration consistent with AHCCCS policy.
 - 4.9.6. Invoice the provider using an AHCCCS approved format.
 - 4.9.7. Maintain tracking and reporting processes as specified by the Agency.
- 4.10. **Appeals.** The Contractor shall provide all necessary documentation and support to defend the audit findings in the appeals process, if needed, as well as witness testimony, if required any administrative appeal or court proceeding resulting from a review/audit of a Medicaid provider by the Contractor.
- 4.11. **Overpayment.** The recovery techniques utilized by the Contractor shall be legally supportable and follow the guidelines of all applicable AHCCCS policies, regulations and manuals as well as all federal laws and regulations. The Contractor shall not forward claims for adjustment if the claim is incorrectly coded but the coding error does not equate to a difference in the payment amount. For example, HCPCS code E0250 requires an RR modifier for payment. Payment with the modifier is \$25.00 per service. Without the modifier payment is \$25.00 per service. While the claim without the modifier is incorrect, there is no overpayment therefore the claim should not be forwarded for adjustment.
- 4.12. **Underpayment.** The contingency fee for underpayments will be paid for underpayments of \$250.00 or more on claims submitted on a UB04, and \$100.00 or more on claims submitted on CMS 1500 and ADA forms. However, the contractor shall still identify underpayments of any amount.
- 4.13. **Right to Terminate RAC Recoveries.** If the Contractor demonstrates, with a reasonable degree of certainty, that the fees earned on RAC recoveries during any three (3) month period following the first twelve (12) month period of the start of this contract do not cover the direct costs of the recovery efforts during that same time period, the Contractor may terminate only that portion of the audit during that time frame, but not **MEDICAID RECOVERY AUDIT CONTRACTOR (RAC) SERVICES.**
- 4.14. **Return of Erroneous Payments or Refunds**
Within thirty (30) days of written request by AHCCCS, the Contractor shall forward to AHCCCS, with proper identifying information, any fees, recoveries or refunds paid to the Contractor, which are subsequently determined to be incorrect by AHCCCS or disallowed as a result of federal or state audit or successful appeal of a provider overpayment previously determined by the RAC contractor. Written request shall be deemed given upon mailing by certified mail, return receipt requested.
- 4.15. **Recovery Restriction**
The Contractor shall not attempt TPL recovery for programs other than those described in Sections 5 through 7 of the Scope of Work without the written approval of AHCCCS.

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- 4.16. **Quarterly OIG Status Meetings.** The Contractor must coordinate quarterly audit/status meetings with the AHCCCS OIG Department. Topics to include, but are not limited to previous, current, and planned audits; Fraud, Waste, and Abuse activity, and audit findings.
- 4.17. **Provide OIG Monthly Audit Report.** The Contractor must provide AHCCCS OIG with a monthly audit report to include, but not limited to audits conducted, recovery amounts, Provider identification information, and suspected Fraud, Waste, and Abuse activity.
- 4.18. **Periodic Report Requirements**
AHCCCS requires periodic reports and other information from the Contractor. The submission of late, inaccurate, or otherwise incomplete reports shall constitute failure to report subject to the penalty provisions described in this contract.
- 4.18.1. Standards applied for determining adequacy of required reports shall be applied as follows:
- 4.18.1.1. Reports Timeliness: Reports or other required data shall be received on or before scheduled due dates.
- 4.18.1.2. Accuracy: Reports or other required data shall be prepared in strict conformity with appropriate authoritative sources and/or AHCCCS defined standards.
- 4.18.1.3. Completeness: All required information shall be fully disclosed in a manner that is both responsive and pertinent to report intent with no material omissions.
- 4.18.1.4. AHCCCS requirements regarding report format, report content, and frequency of submission of reports are subject to change at any time during the term of the contract. The Contractor shall comply with all changes specified by AHCCCS. The Contractor shall be responsible for continued reporting beyond the term of the contract for the finalization of cases, if any, retained by the Contractor beyond the transition to the new contractor. The Contractor shall comply with all reporting requirements summarized in Exhibit B - Deliverables.
- 4.19. **Metropolitan Phoenix Office**
The Contractor shall be required to have an office that is located in the metropolitan Phoenix, Arizona area and to be available to meet with AHCCCS staff in person, and online, as needed to address issues and opportunities. The Contractor's manager assigned to this contract must reside in Arizona. If the Contractor does not have an office in the metropolitan Phoenix area at the time of the contract award, the Contractor has up to six (6) months from the date of the contract award to establish and staff the office.
- 4.20. **Contractor Personnel**
After contract award, the Contractor shall forward to AHCCCS a copy of the resume of any replacements of key personnel assigned to this contract. For personnel replacement purposes, the Contractor shall provide a training plan to AHCCCS. The training plan shall show the replacement is fully trained to assume the program responsibilities.
- In the event of unsatisfactory performance (to be determined solely by AHCCCS) by a Contractor employee, the Contractor, upon request by AHCCCS, shall submit for AHCCCS approval of the professional resume of a proposed replacement employee within ten (10) days of receipt of the request from AHCCCS.
- The Contractor shall maintain sufficient staff to satisfactorily perform the contract requirements and have in place a contingency staffing and training plan in the event of an unexpected or sudden loss of employees assigned to this contract.
- The Contractor shall provide a current work schedule to include office telephone numbers, fax numbers, and e-mail addresses of personnel working on AHCCCS cases. It will also provide cell phone numbers of local managers.
- 4.21. **Pick-up and Delivery Services; Hours of Operation**
The Contractor shall provide and maintain a routine, systematic and reliable pick-up and delivery service for documents and recoveries transferred between the Contractor and AHCCCS. Even if this function is subcontracted, the Contractor shall remain entirely responsible for this contract requirement. The Contractor shall be open for business, at a minimum, Monday through Friday from 8 a.m. to 5 p.m. local (Arizona) time (except State recognized holidays), unless otherwise agreed to by AHCCCS. During the hours of operation, the Contractor shall ensure that qualified staff are

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readily available and knowledgeable to respond to and address programmatic and policy issues and to address questions from AHCCCS, AHCCCS Health Plan Contractors, insurers, members, and member representatives. The Contractor should have the ability to assist Spanish-speaking callers.

The Contractor shall respond to, or acknowledge, telephone calls and e-mails pertaining to AHCCCS cases no later than the next business day.

4.22. **Relations with the Public**

All personal contacts and written communications performed by the Contractor in connection with this contract shall be conducted in a manner which fosters and promotes cooperation and understanding, and which does not result in adverse publicity or loss of public support. The Contractor shall notify AHCCCS within five (5) days of receipt of any complaint, or threatened or actual legal action against the Contractor, pertaining to the Contractor's activities under this contract.

4.23. **Financial Statement**

Upon request, the Contractor shall submit to AHCCCS an annual audited financial statement, for itself and parent company, if applicable.

4.24. **AHCCCS Approval of Process, Correspondence, Forms**

Use only procedures, correspondence, forms, legal documents and other related documents in conjunction with administering the recovery program processes that have been approved in writing by AHCCCS prior to their usage.

Review all legal documents within one business day of receipt and notify AHCCCS of the proposed action, including copies of related documents, within two (2) business days of receipt. Any future related documents shall be provided within two (2) business days of receipt.

4.25. **Performance Bond or Bond**

Within ten (10) business days after contract award, and annually thereafter by no later than September 30, the Contractor shall submit to AHCCCS (Contracts and Purchasing) a performance bond of standard commercial scope issued by a surety company doing business in this State or a cash deposit in the amount of \$1,000,000 for the performance period of this contract to guarantee performance by the Contractor of its obligations under this contract. The performance bond shall be in a form acceptable to AHCCCS and shall be payable to the Arizona Health Care Cost Containment System, an agency of the State of Arizona.

In the event of a default by the Contractor, AHCCCS shall, in addition to any other remedies it may have under this contract, obtain payment under the performance bond or substitute security for the purposes of any of the following:

- 4.25.1. Paying any damages sustained by reason of non-performance or other breach of Contractor's obligations under this contract;
- 4.25.2. Reimbursing AHCCCS for any administrative expenses incurred by reason of a breach of Contractor's obligations under this contract, including, but not limited to, legal fees and expenses incurred after termination of this contract by AHCCCS for cause;
- 4.25.3. Covering a transition period, if any, where the Contractor does not cooperate fully with AHCCCS or a successor Contractor; and
- 4.25.4. Use by AHCCCS in the event the Contractor becomes insolvent.

In the event AHCCCS agrees to accept a cash deposit in lieu of a performance bond, the Contractor shall execute any and all documents and perform any and all acts necessary to secure and enforce AHCCCS' security interest in such substitute security including, but not limited to, security agreements and necessary UCC filings pursuant to the Arizona Uniform Commercial Code. In the event such security is agreed to and accepted by AHCCCS, the Contractor shall grant AHCCCS a security interest in the substitute security in order to secure performance of its obligations under this contract.

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Personnel Bonding Requirements: The Contractor shall provide evidence of a fidelity bond in the amount of \$1,000,000 covering any loss to AHCCCS or the State due to any fraudulent or dishonest act on the part of any officer, agent, subcontractor, or employee of the Contractor.

4.26. Transition to New Contractor

In the event this contract expires or is terminated, the Contractor shall cooperate fully in the transition of contract related activities to the successor contractor. All data, reports and records shall be returned within ninety (90) days of contract termination to AHCCCS in the same format in which it was received, unless AHCCCS approves the destruction of specific data, reports, or records. On or before the date of termination, the Contractor shall identify all open recovery cases and provide copies of each case file including but not limited to correspondence, claims and case notes. Before the date of termination, the Contractor shall also provide copies of all closed cases that have not been previously archived, as well as a download of all closed cases where a file had not been created.

Upon review and approval by AHCCCS, the Contractor may have six (6) months from the date of contract termination to finalize and close casualty, estate, TEFRA, trust, health insurance, credit balance, probate, and RAC cases that meet the criteria outlined below on behalf of AHCCCS. Restitution and annuity cases will be transitioned to the successor contractor at the contract end date.

- 4.26.1. Casualty: A compromise request has been received prior to contract end date;
- 4.26.2. Estate: An estate settlement statement has been received prior to contract end date;
- 4.26.3. *TEFRA Lien: The lien property has been sold prior to contract end date;*
- 4.26.4. Probate: The Probate has been opened in Superior Court prior to contract end date;
- 4.26.5. Trust: Member is deceased or ineligible for ALTCS prior to contract end date;
- 4.26.6. Health Insurance/Tricare: Claims billed to carriers prior to contract end date;
- 4.26.7. Credit Balance: Claims that have been identified and submitted to the provider prior to contract end date; and
- 4.26.8. RAC overpayments or underpayments that are actively in process at the time of the transition.

The six (6) month period on any recovery program may be reduced if mutually agreed upon by AHCCCS and the Contractor. AHCCCS reserves the right to recall any cases from the Contractor if AHCCCS determines that the case is not being actively pursued.

5. COMPUTER SYSTEM REQUIREMENTS

- 5.1. The Contractor shall lease, own, or have access to computer facilities that can meet the requirements of this contract and HIPAA. The Contractor's computer facilities shall have the capability of accepting and processing all referred accounts in the format provided by AHCCCS utilizing Electronic Data Interchange (EDI). The file format and content may be revised from time to time to comply with HIPAA and with AHCCCS data requirements. See Exhibit D – AHCCCS Commercial TPL Coverage Record Data Exchange Layout for current information on files.

AHCCCS requires a secure connection to its Secured File Transfer Protocol (SFTP) server. This requires adherence to the *External User Affirmation Statement* found on AHCCCS' website.

- 5.2. The Contractor is authorized to exchange data with AHCCCS relating to the information requirements of this contract and as required to support the data elements to be provided in the format specified. The information so recorded and submitted to AHCCCS shall be in accordance with all procedures, policies, rules, or statutes in effect during the term of this contract. If any of these procedures, policies, rules, or statutes are hereinafter changed, both parties agree to conform to these changes following appropriate notification to both parties by AHCCCS. The Contractor shall be responsible for any incorrect data, delayed submission or payment and/or penalty applied due to any error, omission, deletion, or erroneous insert caused by Contractor submitted data. Any data that does not meet the standards required by AHCCCS shall not be accepted by AHCCCS.
- 5.3. The Contractor shall be responsible for identifying any inconsistencies upon receipt of data from AHCCCS and communicating to AHCCCS those inconsistencies within ten (10) days. If any unreported inconsistencies are

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subsequently discovered, the Contractor shall be responsible for the necessary adjustments to correct its records at its own expense.

- 5.4. The Contractor shall accept from AHCCCS original evidence of eligibility and enrollment in a form appropriate for electronic data exchange.
- 5.5. The use of any of the above files for purposes other than identified herein is prohibited without prior written consent from AHCCCS.
- 5.6. The Contractor's computer facilities shall be able to transmit third party coverage information to AHCCCS computer system in a format acceptable to AHCCCS and to receive third party liability information from AHCCCS computer system.
- 5.7. Recovery Database: The Contractor shall maintain a database of all cases where recovery has been attempted or completed. The format and content of the data will be established through mutual agreement. The Contractor's database pertaining to AHCCCS cases shall be accessible online to the AHCCCS TPL Section staff.
- 5.8. Recovery Extract: The Contractor shall maintain and transmit to AHCCCS an electronic extract in a format, content, and time frames as prescribed by AHCCCS that contains valid recovery data pertaining to recoveries. The contractor shall write standardized queries for use by AHCCCS in monitoring contractor activities.
- 5.9. System Interface/Testing Requirements
The Contractor shall provide AHCCCS or authorized government officials with full access to its computer system for monitoring, review, and testing of the Contractor's operations relating to the contract.

The Contractor shall ensure that changing or making major upgrades to their information systems affecting processing and/or other major business components will be accompanied by a plan which includes a timeline, milestones to include adequate testing before implementation. At least six (6) months prior to the anticipated implementation date the contractor shall provide the system change plan to AHCCCS for review and comment.

- 5.10. Audit Trail Requirements
The Contractor's MIS (Management Information Systems) shall provide a complete audit trail of all entries, changes, deletions, and adjustments.
- 5.11. **Control and Security Requirements**
The Contractor shall provide adequate controls and security in accordance with HIPAA standards as approved by AHCCCS to maintain the integrity and confidentiality of computerized data. In addition, the Contractor shall provide documentation of its data control and security systems to enable AHCCCS to see compliance with Security and Privacy, to evaluate the adequacy of such systems, as evidenced by an annual audit (SSAE 16) by an outside firm, approved in advance by AHCCCS, of the security of its systems and stored data.
- 5.12. **Contractor Personnel**
 - 5.12.1. After contract award, the Contractor shall forward to AHCCCS a copy of the resume of any replacements of key personnel assigned to this contract. For personnel replacement purposes, the Contractor shall provide a training plan to AHCCCS. The training plan shall show the replacement is fully trained to assume the program responsibilities.
 - 5.12.2. In the event of unsatisfactory performance (to be determined solely by AHCCCS) by a Contractor employee, the Contractor, upon request by AHCCCS, shall submit for AHCCCS approval of the professional resume of a proposed replacement employee within ten (10) days of receipt of the request from AHCCCS.

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- 5.12.3. The Contractor shall maintain sufficient staff to satisfactorily perform the contract requirements and have in place a contingency staffing and training plan in the event of an unexpected or sudden loss of employees assigned to this contract.
- 5.12.4. The Contractor shall provide a current work schedule to include office telephone numbers, and e-mail addresses of personnel working on AHCCCS cases. It will also provide cell phone numbers of local managers.

6. COMPENSATION

- 6.1. Compensation under this contract will be based upon the Compensation Schedule accepted by AHCCCS contained herein, and is subject to the review and approval of CMS. All Contingency fees calculations shall be based upon the Net Recovery. The RAC's compensation for overpayments will be based on the actual amount recovered and the RAC will be paid a contingency fee percentage of the amount recovered. The amount will be considered recovered only after AHCCCS receives the payments from the providers and after any or all appeals are resolved. The RAC's compensation for underpayments will be based on the amount of the actual underpayment amounts paid to providers identified from the improper payment recovery review process and the Contractor will be paid a contingency fee percentage of the underpayments actually paid to providers. AHCCCS shall make payments to the Contractor in accordance with the terms of this contract provided that the Contractor's performance is in compliance with the terms and conditions of this contract. Payments to the Contractor will be made after all appropriate documentation and/or required data has been received and approved by AHCCCS.
- 6.2. AHCCCS is not exempt from county fees for the filing of Liens. The Contractor shall pay such fees in the course of performing the contract requirements and AHCCCS will reimburse the full amount of the fees. In addition, to the Contractor from AHCCCS' settlement amount from AHCCCS' settlement amount. Contractor from AHCCCS' settlement amount. to the Contractor from AHCCCS' settlement amount. to the Contractor from AHCCCS' settlement amount.
- 6.3. Only recoveries attributable to the Contractor's activities shall be reimbursable on a contingency basis. AHCCCS will not make payment to the Contractor for recoveries that require no action by the Contractor. The following, while not all inclusive, are examples of non-reimbursable activities:
 - 6.3.1. Third party payments shown on a claim as collected by the provider's action;
 - 6.3.2. Overpayments refunded voluntarily by a provider that are not part of the Credit Balance recovery effort;
 - 6.3.3. Cost avoidance from third party resources previously identified in AHCCCS files;
 - 6.3.4. Claims cost avoided subsequent to the Contractor's initial identification of a third party source; and,
 - 6.3.5. Recoveries from adjustments to future claims.
- 6.4. Payments may be made by electronic funds transfer, and AHCCCS shall not be liable for any error or delay in transfer or for indirect or consequential damages arising from the use of the electronic funds transfer process. Any charges or expenses imposed by the bank for transfers or related actions shall be borne by the Contractor. All funds received by Contractor pursuant to this contract shall be separately accounted for in accordance with generally accepted accounting principles.
- 6.5. At the beginning of the contract term, the Contractor may be assigned cases in progress that have been partially developed by the previous TPL recovery contractor. These will be identified by AHCCCS at the time of assignment to the Contractor and will be reimbursed the negotiated contracted contingency fee as per Attachment 1 Pricing Schedule.

7. INVOICES

- 7.1. The Contractor shall submit a monthly invoice to the address listed below for fees associated with this contract.
- 7.2. Each invoice shall provide the following information, as applicable:
 - 7.2.1. AHCCCS' assigned contract number
 - 7.2.2. Description of services performed for each fee
 - 7.2.3. Name of AHCCCS contact person (or program person) for this contract
 - 7.2.4. Date(s) services were performed

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- 7.2.5. Signature and title of authorized representative
- 7.3. Each invoice shall have adequate supporting documentation attached.
- 7.4. Unless otherwise described in this contract, all invoices shall be submitted to:
 - AHCCCS
 - Accounts Payable, MD 5400
 - 801 E. Jefferson Street
 - Phoenix, AZ 85034
 - 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. **DELIVERABLES:** All items that the Contractor is required to deliver under this Contract
14. **DOCUMENTATION:** Means all documents, including documents that are Deliverables described in the Statement of Work that are to be delivered by Contractor under this Contract. Documentation includes documents in hard copy or electronic form.

DEFINITIONS

15. **EXHIBIT:** Any item labeled as an Exhibit in the Solicitation or placed in the Exhibits section of the Solicitation.
16. **FEE-FOR-SERVICE (FFS):** A method of payment to an AHCCCS registered provider on an amount-per-service basis for services reimbursed directly by AHCCCS for members not enrolled with a managed care Contractor.
17. **FDSH:** Federal Data Services Hub. HEAplus interfaces with the FDSH to make several types of identity verifications.
18. **FFM:** Federally-Facilitated Marketplace.
19. **FFP (FEDERAL FINANCIAL PARTICIPATION):** The Federal share of reimbursement for services provided in accordance with Federal requirements for school-based Medicaid services.
20. **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.
21. **FIRST PARTY:** An individual, entity or program that is, or may be, liable to pay all or part of the expenditures for their own medical assistance furnished under a State plan.
22. **FIRST PARTY LIABILITY:** The legal obligation of first parties to pay part or all of the expenditures for medical assistance furnished under a Medicaid state plan.
23. **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.
24. **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.
25. **KEY PERSONNEL:** Contractor's Authorized Representative, the Project Manager, and all other Contractor personnel designated as Key Persons.
26. **KNOWLEDGE TRANSFER:** Activities designed to impart detailed information from Contractor to the Agencies in relation to the activities described in the Scope of Work. Knowledge Transfer goes beyond formalized training and documentation to include Contractor ensuring that staff is prepared to launch a successful Modularity program. Knowledge Transfer includes AHCCCS/MQD staff and other resources being integrated into Contractor's work activities and being an integral part of identifying and resolving issues. Knowledge Transfer activities include 'shoulder to shoulder' training, which is informal training with the specific intent of developing skills or knowledge working side by side with Contractor.
27. **KIDSCARE:** The State of Arizona's CHIP program.
28. **MASS TORT CASE:** A case where multiple plaintiffs or a class of plaintiffs have filed a lawsuit against the same tortfeasor(s) to recover damages arising from the same or similar set of circumstances (e.g. class action lawsuits) regardless of whether any reinsurance or Fee-For-Service payments are involved.

DEFINITIONS

29. **MASTER CARRIER ID (MCID):** A unique AHCCCS assigned ID for commercial insurance carriers
30. **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.
31. **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.
32. **MAY:** Indicates something that is not mandatory but permissible.
33. **MEDICAID:** A Federal/State program authorized by Title XIX of the Social Security Act, as amended.
34. **MILESTONE:** The completion date for a specific group of tasks or deliverables identified as a milestone in the statement of work.
35. **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).
36. **NTE:** Not-to-Exceed amount.
37. **OFFER:** A response to a solicitation.
38. **OFFEROR:** A vendor or person who responds to a Solicitation.
39. **PERSON:** Any corporation, business, individual, union, committee, club or other organization or group of individuals.
40. **PMMIS:** Prepaid Medicaid Management Information System, the management information system used by AHCCCS.
41. **PROJECT MANAGER:** the person representing both Agencies who serves as the Contractor's primary point of contact for the term of the Contract.
42. **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.
43. **RAC:** Recovery Audit Contractor.
44. **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 companies, sister companies, holding companies, and other entities controlled or managed by any such entities or persons.

DEFINITIONS

45. **SCOPE OF WORK:** The documents that describe the Services to be provided by Contractor, including the Tasks, Deliverables and Milestones, Documentation, Work Product, the attributes (including requirements and specifications) of each Deliverable, identification of the Deliverables and Services that are associated with each Task, and a completion date for each Milestone and Deliverable, the payment schedule for each Deliverable and Milestone, and any other items as agreed by the parties.
46. **SERVICE LEVEL AGREEMENT:** A type of subcontract with a corporate owner or any of its Divisions or Subsidiaries that requires specific levels of service for administrative functions or services for the Contractor specifically related to fulfilling the Contractor's obligations to AHCCCS under the terms of this Contract.
47. **SERVICES:** Means all effort to be expended by the Contractor under the Contract, including advice and expertise, and development and delivery of deliverables
48. **SHALL, MUST:** Indicates a mandatory requirement. Failure to meet these mandatory requirements may result in the rejection of a proposal as non-responsive.
49. **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.
50. **SOLICITATION:** An Invitation for Bids ("IFB"), a Request for Proposals ("RFP"), or a Request for Quotations ("RFQ").
51. **SOLICITATION AMENDMENT:** A written document that is authorized by the Procurement officer and issued for the purpose of making changes to the Solicitation.
52. **STATE:** The State of Arizona and AHCCCS.
53. **STATE FISCAL YEAR:** The period beginning with July 1 and ending June 30.
54. **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.
55. **THIRD PARTY:** An individual, entity or program that is, or may be, liable to pay all or part of the expenditures for medical assistance furnished under a State plan.
56. **THIRD PARTY LIABILITY:** The legal obligation of third parties (e.g., certain individuals, entities, insurers, or programs) to pay part or all of the expenditures for medical assistance furnished under a Medicaid state plan.
57. **TITLE XIX:** Title XIX of the Social Security Act means Medicaid as defined in 42 U.S.C. 7.19.

DEFINITIONS

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 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.

UNIFORM INSTRUCTIONS TO OFFERORS

- 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 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

UNIFORM INSTRUCTIONS TO OFFERORS

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.
- 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.

UNIFORM INSTRUCTIONS TO OFFERORS

- 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.
- 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	December 13, 2022
Pre-Proposal Conference	Not scheduled
Offeror Questions Due	December 22, 2022
Deadline to request access to ASFS server	December 29, 2022
Offeror’s Proposals Due	January 12, 2023
Contingent RFP Award (Subject to change)	March 9, 2023
Final RFP Award (Subject to change)	June 9, 2023
Services Start Date	October 1, 2023*

*Contract will be awarded contingent upon approval from CMS. No work may be performed until approval has been received from CMS.

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 Evaluation Criteria 1: Method of Approach
- 3.2 Evaluation Criteria 2: Experience and Expertise
- 3.3 Evaluation Criteria 3: 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 ASFS . Failure to follow the prescribed format for submission may result in AHCCCS determining that the submission is non-responsive. The deadline to request access to the ASFS is: December 29, 2022. Offerors must request access to ASFS by this date in order to submit a proposal. Font and Margins All proposals shall be submitted in Calibri 11 point font or larger with margins no less than ½”.

5. **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 Narrative Proposal Method of Approach
- B2 Method of Approach Questionnaire
- B2 Narrative Proposal Experience and Expertise
- B3 Cost Proposal

PART C

- C1 Intent to provide insurance
- C2 Separate, signed, legal Analysis for Confidential /Proprietary Determination (if any)
- C3 Attestation of Boycott of Israel
- C4 Attestation of Forced Labor of Ethic Uyghurs Ban for Contracts
- C5 Exceptions to any part of solicitation

5.1 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 document is requested to be kept confidential. See paragraph 11 of this section (below).

5.2 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.

Method of Approach Narrative Proposal		
This table defines how the Method of Approach Narrative Proposal should be prepared, addressing the following Proposal Response Requirements.		
Narrative Proposal Section Number	Narrative Proposal Section Header	Proposal Response Requirements
	Scope of Work	Confirm commitment to comply with all requests, requirements, policies, regulations, and laws in conjunction of this Solicitation.
4.2	Scope of Work	Commercial insurance data matching and coverage and all of 4.2.1 – 4.2.42
4.3	Scope of Work	Provide details of the company’s procedures to adhere to Banking procedures as specified or modified by AHCCCS, and the process for handling employees authorized to use the endorsement stamp.
4.8	First Party Liability and Third Party Liability Recovery programs:	Provide detailed description of the process used for potential recovery sources, and any additional sources used in section 4.8

SPECIAL INSTRUCTIONS TO OFFERORS

Method of Approach Narrative Proposal		
This table defines how the Method of Approach Narrative Proposal should be prepared, addressing the following Proposal Response Requirements.		
Narrative Proposal Section Number	Narrative Proposal Section Header	Proposal Response Requirements
4.9	Medicaid Recovery Audit Contractor (RAC) Services	Provide a detail plan of RAC services that adhere to all requirements in section 4.9.1.1 – 4.9.1.9
4.10	Audit/Review/Coordination	Detail how your company will Coordinate all audit and recovery efforts with AHCCCS, other contractors and entities, including but not limited to the efforts of the AHCCCS Office of Inspector General, federal and state law enforcement, the Federal Department of Justice, the Federal Bureau of Investigations, the Federal Office of Inspector General, and the Arizona State Medicaid Fraud Control Unit to ensure activities proposed are not duplicative of other program integrity activities or operations. Address all requirements in sections 4.10.1 - 4.10.9.
4.12	Overpayment	Detail your Overpayment techniques, explaining how they shall be legally supportable and follow all required policies, regulation, manuals as well as all federal laws and regulations
4.15	Erroneous Payments or Refunds	Detail the process to comply with the Return of Erroneous payments or Refunds section.
4.22	Pick-up and Delivery Services; Hours of Operation	Provide the plan for establishing a systematic and reliable pick-up and delivery service for documents and recoveries transferred between the Contractor and AHCCCS and per section 4.20 requirements.

All Offerors shall submit the completed Attachment 2 Methodology Questionnaire with detail answers to each question.

SPECIAL INSTRUCTIONS TO OFFERORS

Experience/Expertise Narrative Proposal		
This table defines how the Experience/Expertise Narrative Proposal should be prepared, addressing the following Proposal Response Requirements		
Narrative Proposal Section Number	Narrative Proposal Section Header	Proposal Response Requirements
1.0	Company Background and Experience of Firm	<p>The Offeror shall submit:</p> <ul style="list-style-type: none"> • Legal form of the Offeror’s business organization, the state in which formed, the types of business ventures in which the Offeror is involved • Information documenting successful and reliable experience in past performances as related to the services in this RFP
1.1	Experience of Key Personnel	<p>The Offeror shall submit:</p> <ul style="list-style-type: none"> • 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, defined in the RFP who must meet the minimum qualifications • Organizational chart which clearly shows the reporting and lines of authority; to include all proposed Key Staff and any proposed subcontractors, and the Point of Contact between the Offeror and the AHCCCS Project Manager
1.2	Resumes	Please submit Resume of all Key personnel. Insure all information is current and accurate. This information may be shown on the form attached as Exhibit C to this RFP or in a similar manner.

5.3 COST:

- 5.3.1. 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.
- 5.3.2. 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.

SPECIAL INSTRUCTIONS TO OFFERORS

- 5.4 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.
- 5.4.1. 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: Other pricing proposals submitted for this RFP.
- 5.4.2. Expenditures and pricing of any current or expired contract if the solicitation is a re-bid of a current service.
- 5.4.2.1. Public or Independently obtained information based upon market research.
- 5.4.2.2. Cost bids submitted by the Offeror in relation to any closely related procurement.
- 5.4.2.3. Awarded Pricing obtained from other contracts held by the Offeror.
- 5.4.2.4. Pricing obtained from other contracts for the same or similar service awarded by a public entity.
- 5.4.2.5. Other information as deemed appropriate by the Procurement Officer.
- 5.4.3. 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.
- 5.5 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.
- 5.6 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.
- 6. 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.
- 7. 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

SPECIAL INSTRUCTIONS TO OFFERORS

right to reject any Offeror who does not demonstrate financial stability sufficient for the scope of this contract award.

8. **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.
9. **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.
10. **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.
11. **Request for Confidential/Proprietary Determination:**
 - 11.1 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.
 - 11.2 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.
 - 11.3 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.
 - 11.4 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.
 - 11.5 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 in the file name This will ensure that our office is crystal clear on which version of your proposal is acceptable for public viewing.

SPECIAL INSTRUCTIONS TO OFFERORS

11.6 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.

12. **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:

- 12.1 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;
- 12.2 Whether the Offeror has had a Contract that was terminated by AHCCCS for any reason;
- 12.3 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;
- 12.4 Whether the Offeror is legally qualified to contract with the State and the Offeror's financial, business, personnel, or other resources, including sub-contractors;
 - 12.4.1. 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.
- 12.5 Whether the Offeror promptly supplied all requested information concerning its responsibility;
- 12.6 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;
- 12.7 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;
- 12.8 Whether the Offer limits the rights of the State;
- 12.9 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;
- 12.10 Whether the Offer materially changes the contents set forth in the Solicitation, which includes the Scope of Work, Terms and Conditions, or Instructions;
- 12.11 Whether the Offeror provides misleading or inaccurate information;
- 12.12 Whether the Offer fails to meet the minimum mandatory requirements of the RFP;
- 12.13 Whether the Offer satisfies the requirements of the RFP in a cost effective manner, as determined by AHCCCS;
- 12.14 Whether the Offeror's pricing is unrealistic, or unreasonably or unsubstantiatedly high; or
- 12.15 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 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

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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.
- 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.

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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.

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.

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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.
- 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.

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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;
 - 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

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all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage.

8.2.2 If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the Contractor shall resume work. The Procurement Officer shall make an equitable adjustment in the delivery schedule or Contract price, or both, and the Contract shall be amended in writing accordingly.

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 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.

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- 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;
 - 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

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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. § 36-2901.03.
 - 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 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

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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/Specifications;
 - 10.1.5 Attachments;
 - 10.1.6 Exhibits;
 - 10.1.7 Documents referenced or included in the Solicitation.
 - 10.1.8 AHCCCS policies and procedures incorporated by reference.
- 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.

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- 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.
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 royaltyfree, 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.

SPECIAL TERMS AND CONDITIONS

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 royaltyfree, nonexclusive, and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the work for state or federal government purposes. Contractor shall additionally be subject to the applicable provisions of 45 CFR Part 74 and 45 CFR Parts 6 and 8.

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. 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 When the Procurement officer issues an amendment to extend the contract, the provisions of such extension will be deemed to have been accepted 60 days after the date of mailing by the Procurement officer, even if the extension amendment has not been signed by the Contractor, unless within that time the Contractor notifies the Procurement officer in writing that it refuses to sign the extension amendment. If the Contractor provides such notification, the Procurement officer will initiate contract termination proceedings.

21.3 If the Contractor chooses not to renew this contract, the Contractor may be liable for certain costs associated with the transition of its members to a different Contractor. If the Contractor provides the Procurement officer 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.

21.4 Contract amendments, including renewals, are subject to approval by the Centers for Medicare and Medicaid Services (CMS)

SPECIAL TERMS AND CONDITIONS

22. **Warranty of Services:** The Contractor warrants that all services provided under this contract will conform to the requirements stated herein. AHCCCS' acceptance of services provided by the Contractor shall not relieve the Contractor from its obligations under this warranty. In addition to its other remedies, the Procurement officer may, at the Contractor's expense, require prompt correction of any services failing to meet the Contractor's warranty herein. Services corrected by the Contractor shall be subject to all of the provisions of this contract in the manner and to the same extent as the services originally furnished.
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").
24. **INDEMNIFICATION**
- 24.1 Contractor shall indemnify, defend with counsel reasonably approved by the State, and hold harmless, the State, its departments, agencies, boards, commissions, universities, officers, agents and employees (collectively, the "Indemnitee") from and against any and all claims, actions, damages, costs (including attorneys' fees), and losses arising under this Contract, including, but not limited to, bodily injury or personal injury (including death) or loss or damage to tangible or intangible property, but excluding damages arising solely from the gross negligence or willful misconduct of the Indemnitee. This indemnification obligation includes any claim or amount arising out of, or recovered under, the Workers' Compensation Law or arising out of the failure of the Contractor to comply with any federal, state or local law, statute, ordinance, rule, regulation or court decree. Contractor shall have control, subject to the reasonable approval of the State, of the defense of any action on such claim and all negotiations for its settlement or compromise, provided, however, that when substantial principles of government of 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 its defense and any related settlement negotiations

SPECIAL TERMS AND CONDITIONS

1. **Indemnification Clause**

To the fullest extent permitted by law, Contractor shall defend, indemnify and hold harmless the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees (hereinafter referred to as "Indemnatee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Contractor or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of, or recovered under, the Workers' Compensation Law or arising out of the failure of such Contractor to conform to any federal, state, or local law, statute, ordinance, rule, regulation, or court decree. It is the specific intention of the parties that the Indemnatee shall, in all instances, except for Claims arising solely from the negligent or willful acts, or omissions of the Indemnatee, be indemnified by Contractor from and against any and all claims. It is agreed that Contractor will be responsible for primary loss investigation, defense, and judgment costs where this indemnification is applicable. In consideration of the award of this contract, the Contractor agrees to waive all rights of subrogation against the State of Arizona, its officers, officials, agents, and employees for losses arising from the work performed by the Contractor for the State of Arizona.

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

2. **Insurance Requirements**

1. 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.
2. 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.

3. **Minimum Scope and limits of Insurance**

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

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

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

- General Aggregate \$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.

INSURANCE REQUIREMENTS

- b. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officer, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.
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 insured 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.
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.)
4. **Commercial Crime Policy or Blanket Fidelity Bond**
- Coverage amount is \$1,000,000
- Coverage should include but is not limited to:
- a. Employee Dishonesty (to include coverage for theft and mysterious disappearance and inventory shortage).
 - b. Money & Securities Inside/Outside
 - c. Computer Fraud
 - d. Funds Transferred (if applicable)
 - e. Forgery or Alteration
 - f. The policy shall be endorsed to include the State of Arizona (and the respective agency) as Loss Payee
 - g. The policy shall not contain a condition requiring a conviction or arrest in order to file a claim.
 - h. Coverage shall be extended to 3rd parties.
5. **Additional Insurance Requirements**
The policies shall include, or be endorsed to include, as required by this written agreement, the following provisions.
- 3.5.1 The Contractor's policies, as applicable, shall stipulate that the insurance afforded the Contractor shall be primary and that any insurance carried by the Department, its agents, officials, employees or the State of Arizona shall be excess and not contributory insurance, as provided by A.R.S §41-621 (E).

INSURANCE REQUIREMENTS

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

6. **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 must 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 sent directly to the Department and shall be mailed, emailed, hand delivered or sent by facsimile transmission to procurement@azahcccs.gov.

7. **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.

8. **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.

3.8.1 All such certificates of insurance and policy endorsements must 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.

3.8.2 Each insurance policy required by this Contract must 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.

3.8.3 All certificates required by this Contract shall be sent directly to the Department. 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.

9. **Subcontractors**

Contractor's certification (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.

10. **Approval and Modifications**

The Contracting Agency, 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

INSURANCE REQUIREMENTS

deemed necessary. Such action will not require a formal Contract Amendment but may be made by administrative action.

11. Exceptions

In the event the Contractor or subcontractor(s) is/are 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:

1. 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;
 - E. Identify the person(s) who used or disclosed the PHI in an unauthorized manner;

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- 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 mitigated 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 of more of AHCCCS' obligations under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to AHCCCS in the performance of such obligation(s); and
- 9. Make its internal practices, books and records available to AHCCCS and the Secretary for purposes of determining compliance with the HIPAA rules.

3. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE

HIPAA BUSINESS ASSOCIATES ADDENDUM

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) 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.
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:

HIPAA BUSINESS ASSOCIATES ADDENDUM

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.