



Notice of Request for Proposal

SOLICITATION #YH27-0002

AHCCCS Medicaid School-Based Claiming

Issue Date:	September 4, 2026
AHCCCS Procurement Officer:	Cynthia Smolens, Senior Procurement Specialist Email: procurement@azahcccs.gov
Pre-Proposal Conference:	NONE
Questions Due:	September 24, 2026 by 3:00 PM Arizona Time
INTENT TO BID DUE	October 15, 2026 by 3:00 PM Arizona Time
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>	October 20, 2026 by 3:00 PM ARIZONA TIME
Final RFP Award (subject to change)	January 8, 2027
Services Start Date (subject to change)	July 1, 2027

Proposals will only be accepted as described in Exhibit A - Solicitation Instructions to Offerors.

LATE PROPOSALS WILL NOT BE CONSIDERED. No extension or grace period will be given for delays or incomplete proposals caused by internet connectivity problems, file uploading difficulties, or misunderstanding of the submission requirements.

It is the responsibility of the Prospective Offeror to routinely check the AHCCCS website for Solicitation Amendments. Additional instructions for preparing an Offer are included in this solicitation. 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 for the accommodation.

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ATTACHMENTS and EXHIBITS 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 – Intent to Bid

Attachment 2 – Offer and Acceptance Page

Attachment 3 – Pricing Proposal

Attachment 4 – Questionnaire

Exhibit A – Solicitation Instructions to Offerors

Exhibit B – Sample Quarterly Certification of State (Non-Federal) Matching Funds

Exhibit C – Sample Claim Cover Letter Format

Exhibit D – Chart of Deliverables

Questions and Answers Form

SOLICITATION SUMMARY

Solicitation Summary

1. What is AHCCCS Soliciting?

- 1.1. This solicitation is issued to establish a contract with a single entity or organization to act as a third party administrator to:
 - 1.1.1. Assist LEAs to appropriately claim for reimbursement under the MSBC program.
 - 1.1.2. Ensure that the Medicaid program pays only for appropriate school-based claiming activities.
 - 1.1.3. Protect the fiscal integrity of the Medicaid program by providing a clear articulation of the requirements for school-based claiming.
 - 1.1.4. Help ensure consistency in the application of federal school-based claiming requirements.
 - 1.1.5. Assist in the implementation of operational and oversight functions.
 - 1.1.6. Educate all LEAs throughout the state about Medicaid school-based claiming.
 - 1.1.7. Train and provide technical assistance to all participating LEAs.
 - 1.1.8. Perform certain key claims functions related to the submittal and payment of LEA interim claims.
 - 1.1.9. Perform key functions related to development of annual cost based reimbursement.
 - 1.1.10. Perform key functions related to random moment time studies.
 - 1.1.11. Conduct compliance reviews of all participating LEAs.

The State reserves the right to accept any item or combination of items specified in the Solicitation, unless the Offeror expressly restricts an item or combination of items in its Offer, and conditions its response on receiving all items for which it provided a proposal. In the event of such a restriction, the State will evaluate whether an award on such a basis will result in the best value and is in the best interest for the State. The State may otherwise determine, at its sole discretion, that such restriction is non-responsive and deem the Offeror ineligible for further evaluation.

2. HISTORICAL CONTRACT INFORMATION:

This is a re-solicitation of Contract YH21-0007 which is approaching the end of the Term of Contract. <https://www.azahcccs.gov/Resources/OversightOfHealthPlans/SolicitationsAndContracts/closed.html#YH210007>

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.

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Scope of Work

1. Purpose and Background

- 1.1. The purpose of this Request for Proposal (RFP) is to solicit proposals from organizations with third party administration experience related to claims processing and reimbursement, education, outreach, and support of federal and state Medicaid programs. The Division of Fee-for-Service Management (DFSM) is a division within AHCCCS. The DFSM serves as the health plan for Fee-for-Service (FFS) Medicaid members, reimburses claims for other populations of individuals not enrolled with a MCO, and manages the Medicaid School Based Claiming (MSBC) program for FFS and MCO-enrolled children. MSBC is a joint federal/state program that offers reimbursement for both the provision of covered medically necessary school-based services and the costs of administrative activities which supports the Medicaid school-based program as outlined in Arizona's State Plan Amendment.
- 1.2. Arizona participates in two Medicaid reimbursement programs for school-based services, the Direct Service Claiming (DSC) program and the Medicaid Administrative Claiming (MAC) program. These two school-based programs assist participating school districts, referred to as Local Education Agencies (LEAs), including charter schools and the Arizona School for the Deaf and Blind (ASDB), by reimbursing them for their costs to provide Medicaid covered services to enrolled students. The DSC Program allows LEAs to receive reimbursement for the cost to provide some Medicaid covered services to Title XIX eligible students. The purpose of the MAC program allows LEAs to receive reimbursement for Medicaid outreach and administrative activities that are done routinely within the school setting related to the delivery of Medicaid covered services. In the four quarters of State Fiscal Year (SFY) 2025, LEAs statewide claimed approximately \$16.3 million for administrative outreach. The Centers for Medicare and Medicaid Services (CMS) is the federal agency that regulate these two school-based programs. In Arizona, these programs are overseen by AHCCCS, which contracts with a Third Party Administrator (TPA) to administer both the DSC and MAC programs. Both types of claiming must comply with federal and state rules and regulations related to provider qualifications, covered services, claiming requirements, and documentation.
- 1.3. Arizona's MSBC program reimburses LEAs for documented medically necessary services that are provided to children who are both Medicaid enrolled and who have medical or mental/behavioral health services identified as medically necessary in an Individualized Education Program (IEP), Individualized Family Service Plan (IFSP), 504 Plan, other individualized health or behavioral health plan, or where medical necessity has been otherwise established. Assessment, diagnostic, evaluation services, routine vision and hearing screenings, crisis services are not required to be present in an IEP, IFSP or other medical plan of care but must be documented in the student's medical record. The LEAs can receive reimbursement for medically necessary physical therapy, occupational therapy, speech therapy, audiology services, nursing services, health aides, specialized transportation, and behavioral health services. These activities are considered "direct medical services." In SFY 2025, 49,000 students

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received Medicaid eligible services as prescribed in their IEPs. The average Medicaid Eligibility Rate (MER) was 56.29% and included 101 participating LEAs throughout the state.

- 1.4. AHCCCS retains a percentage of the federal reimbursement from Medicaid school-based claims for the purpose of performing oversight activities, including but not limited to policy development, claims processing, provider enrollment and auditing. The percentage will be communicated upon award of the contract as well as any changes thereafter. AHCCCS reserves the right to subcontract components of its oversight responsibilities.
- 1.5. Beginning with SFY 2012, CMS approved Arizona to revise the existing fee-for-service reimbursement methodology for the direct services. This methodology utilized to reimburse LEAs is based on actual costs associated with the delivery of medically necessary services to Medicaid-eligible Special Education Students. The LEAs are required to submit interim fee-for-service claims for the DSC services they provide. The LEAs receive interim payments which are reconciled with their actual costs annually. In SFY 2025 the DSC program received and processed approximately 2.2- million interim claims and the LEAs received over \$36.5 million statewide.

2. 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.

For more information regarding AHCCCS see About Us:
<https://www.azahcccs.gov/AHCCCS/AboutUs/index.html>

The awarded Contract will be between two (2) parties, the Arizona Health Care Cost Containment System ("AHCCCS") and the awarded Contractor.

3. CONTRACTOR REQUIREMENTS – The Contractor shall:

3.1. Program Promotion and Contracting Component

- 3.1.1. Serve as a third party administrator and the single point of contact for LEAs that are both interested in participating or are participating in the Medicaid School-Based Claiming Program.
- 3.1.2. Have a toll-free statewide telephone number in order to facilitate communication between the LEA and the Contractor. Any LEA that wants to participate in the program must sign a participation agreement with the Contractor. Develop and submit to AHCCCS, for prior approval, Model Participation Agreements for all LEAs interested in participating in the MSBC program. The Model Participation Agreements shall include at a minimum:
 - 3.1.2.1. Responsibilities and requirements of LEAs that participate in the program.
 - 3.1.2.2. Responsibilities of the Contractor.

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3.2. Education, Training and Technical Assistance Component

- 3.2.1. Be responsible for educating, training and providing necessary technical assistance to the LEAs. While education is available for all LEAs in the state regardless of whether they have entered into a participation agreement, the training and provision of technical assistance is targeted to those LEAs that have entered into participation agreements.
- 3.2.2. Submit for prior approval by AHCCCS, all written materials developed by the Contractor, including any materials developed for a website.
- 3.2.3. Ensure that all materials are in compliance with federal and state laws, regulations and policies relevant to the Medicaid School-Based program.
- 3.2.4. Ensure all the materials are in compliance with the following AHCCCS manuals and CMS approved guides for the MSBC program. These documents are available in the Bidders Library under this solicitation on the AHCCCS website.
 - 3.2.4.1. AHCCCS Medical Policy Manual - Policy 710
 - 3.2.4.2. AHCCCS Fee-for-Service Provider Manual
 - 3.2.4.3. CMS reviewed "Arizona Medicaid School-Based Claiming Time Study Implementation Guide for Direct Services and Administrative Claiming"
 - 3.2.4.4. CMS reviewed "Guide to Cost Reporting for the School-Based Services Direct Service Claiming Program"
 - 3.2.4.5. A Comprehensive Guide to Medicaid Services and Administrative Claiming 2023
- 3.2.5. Educate the LEAs
 - 3.2.5.1. Provide information to all interested LEAs regarding the Medicaid School-Based Claiming program. This information shall (1) include an overview of the specific requirements that the LEAs must comply with in order to receive AHCCCS reimbursement for qualifying covered services provided by the LEAs to eligible children, and (2) involve meeting with interested LEAs as well as distributing written educational materials developed by the Contractor.
 - 3.2.5.2. Be responsible for informing the LEAs about any changes to the program, e.g., expansion of covered services, changes in policy, or documentation requirements.
 - 3.2.5.3. Communicate the requirements for participating in the Medicaid School-Based Claiming program as a LEA . At a minimum in order to participate in the program, a LEA must:
 - 3.2.5.3.1. Register as a group billing entity with AHCCCS if claiming for direct medical services, as well as obtaining a national provider identifier (NPI) number.
 - 3.2.5.3.2. Register each school-based provider individually.
 - 3.2.5.3.3. Enter into a participation agreement with the Contractor to allow the Contractor to coordinate and bill for the qualifying covered services provided by the schools to eligible children.
 - 3.2.5.3.4. Ensure that all billed services meet the requirements for qualifying covered services.
 - 3.2.5.3.5. Certify non-federal public funds expended to provide qualifying Medicaid covered services to Medicaid enrolled students.
- 3.2.6. Training
 - 3.2.6.1. Ensure the delivery and documentation of all necessary training to participating LEAs (i.e., those that have entered into a participation agreement with the Contractor).

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- 3.2.6.2. Develop a training plan that shall involve both initial and on-going training of the participating LEAs. This training shall include but is not limited to the following:
 - 3.2.6.2.1. Program requirements related to eligible children and qualifying covered services.
 - 3.2.6.2.2. Provider registration, including the need for an NPI number, for both individual providers as well as the LEAs as group billers for Direct Medical Services.
 - 3.2.6.2.3. Eligibility verification.
 - 3.2.6.2.4. Reimbursement.
 - 3.2.6.2.5. Appropriate and timely submission of clean claims including the appropriate use of International Classification of Diseases (ICD) Manual; Physicians' Current Procedural Terminology (CPT) Manual; Health Care Procedure Coding System (HCPCS) Manual.
 - 3.2.6.2.6. Documentation and record keeping.
 - 3.2.6.2.7. Certification of non-federal public funds expended to provide the qualifying Medicaid covered services to Medicaid enrolled students and the calculation of reimbursement by AHCCCS to the LEA for those expenditures.
 - 3.2.6.2.8. Confidentiality.
 - 3.2.6.2.9. Grievance and appeals.
 - 3.2.6.2.10. Third party liability.
 - 3.2.6.2.11. Fraud and abuse.
 - 3.2.6.2.12. Submission requirements for annual costs for Cost Based Reimbursement.
 - 3.2.6.2.13. Random Moment Time Study.
 - 3.2.6.2.14. Medicaid Administrative Claiming process.
- 3.2.7. Technical Assistance
 - 3.2.7.1. Provide technical assistance to the participating LEAs as necessary and/or as requested by the LEAs.
 - 3.2.7.2. Provide technical assistance to selected LEAs for whom areas of non-compliance have been identified in program compliance reviews conducted either by the Contractor or AHCCCS and/or have a high volume of denied claims.
- 3.3. Program Handbook
 - 3.3.1. Produce and provide a handbook to all participating LEAs. This handbook and any subsequent amendments must be submitted to AHCCCS for prior approval. The handbook shall include at a minimum, the following:
 - 3.3.1.1. Introduction to the Contractor, explaining the Contractor's organization and administrative structure.
 - 3.3.1.2. LEA responsibilities and the Contractor's expectations of LEAs and their providers.
 - 3.3.1.3. Overview of the Contractor's responsibilities to the LEA and their providers.
 - 3.3.1.4. Overview of the description of program services.
 - 3.3.1.5. Grievance rights of LEAs and their providers.
 - 3.3.1.6. Interim claims submission policies and procedures.
 - 3.3.1.7. Remittance advice overview and explanation.
 - 3.3.1.8. Qualified providers and their role in the DSC program.

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- 3.3.1.9. Documentation requirements.
- 3.3.1.10. Random Moment Time Study process and requirements.
- 3.3.1.11. Staff Pool development, time frames and requirements.
- 3.3.1.12. Information on completing and submitting required financial data.
- 3.3.1.13. Information, technical assistance, annual cost reporting, reconciliation, and settlement related to the completion of Cost Based Reimbursement for both the LEAs and AHCCCS.
- 3.3.1.14. Information and completing and submitting Medicaid Administrative Claims (MAC).
- 3.3.1.15. Program compliance.

3.4. **Claim Disputes**

- 3.4.1. Establish a claims dispute process designed to allow the LEAs to make an inquiry or complaint directly to the Contractor. If a LEA does not accept the findings or response of the Contractor, the claims dispute process must provide for appeal to AHCCCS. In general, the Contractor must resolve any grievance within thirty (30) days of the date it is filed. A LEA may appeal the denial of a claim for reimbursement or recoupment of an overpayment by AHCCCS or the Contractor in accordance with A.A.C. Title 9 Chapter 34 Article 4.

3.5. **Compliance Reviews**

- 3.5.1. Develop, implement and administer an annual compliance review program, compliance policies and procedures for the Random Moment Time Study (RMTS), annual desk reviews, health aide prepayment reviews, and comprehensive compliance reviews to ensure that the participating LEAs are appropriately claiming for services provided under the Medicaid School-Based Claiming program. Components of the compliance review program shall include, but are not limited to, a review of:
 - 3.5.1.1. Student files including the IEPs, Individualized Family Service Plan (IFSP), 504 plan, other individualized health or behavioral health plan, or where medical necessity has been established and meets plan requirements for the date of service, authorization for services by a qualified provider, adequate documentation of medical necessity of the services provided.
 - 3.5.1.2. Individual provider files, provider contracts.
 - 3.5.1.3. Student/individual provider attendance records.
 - 3.5.1.4. Provider documentation showing that covered services were rendered.
 - 3.5.1.5. LEA related documentation including copies of claims submitted, and financial documents necessary to verify the certification of public expenditures by the LEA to provide covered services to members.
 - 3.5.1.6. LEA related documentation to support reported cost for both the administrative claims and the annual Cost Based Reimbursement.
- 3.5.2. Develop an initial comprehensive compliance review plan including all program components. The plan shall be submitted within sixty (60) days of contract award to AHCCCS for approval. Thereafter, the Contractor shall submit an annual plan for review and approval no later than July 1.
- 3.5.3. Submit a quarterly summary report to AHCCCS of the compliance reviews, including cases of non-compliance and a summary of the corrective action steps taken to remedy the situation, forty-five (45) days following the end of the quarter. The Contractor shall retain originals or electronic copy on file. Any non-compliance issues that are identified by the

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Contractor, and which could jeopardize the receipt of federal funds due to the failure of the LEA(s) to conform to contract requirements, shall be communicated to AHCCCS.

3.6. **Pre-payment Review Process**

Establish an electronic pre-payment review system designed to ensure the claims paid for personal care or health aide services to the LEAs correspond to the Medicaid eligible services (i.e. scope, frequency, and duration) identified in the plan of care. LEAs are required to submit school based attendant care prepayment review requests and upload all required documentation for each health aide prescription that exceeds a time limit determined by AHCCCS and Contractor.

3.7. **Qualified Staff**

Ensure that the Contractor's staff responsible for carrying out the functions under this contract has the appropriate training, education and experience necessary to fulfill the requirements of their position and this contract. This is to include understanding of federal and state laws, rules, regulations, and policies.

4. **COST BASED REIMBURSEMENT METHODOLOGY – The Contractor shall:**

4.1. Provide to AHCCCS within sixty (60) days of contract award, an implementation strategy, consistent with the CMS approved Cost Based Reimbursement methodology, to address at a minimum the following:

4.1.1. The Random Moment Time Study (RMTS) process to include but is not limited to:

4.1.1.1. Maintenance of online time study system.

4.1.1.2. Development of and provision of training.

4.1.1.3. Monitoring response rate.

4.1.1.4. Central coding of responses and summarization of results.

4.1.2. Management and payment of claims for direct medical services (receipt of claims which validate services provided, monitor eligibility of member, provide audit trail).

4.1.3. Cost reporting (financial reports, both quarterly and annual) to include but is not limited to:

4.1.3.1. Collection of expenditure data.

4.1.3.2. Calculation of administrative claims.

4.1.3.3. Collection of annual expenditure data for calculation of Cost Based Reimbursement.

4.1.4. Cost reconciliation and cost settlement to include but not limited to:

4.1.4.1. Calculation of total interim payments by LEA.

4.1.4.2. Collection of all necessary expenditure data by LEA.

4.1.4.3. In-depth prepayment review of all expenditure data to determine and validate the appropriateness of cost data.

4.1.4.4. Development of final reconciliation of claim for AHCCCS. The final reconciliation claim must be submitted to AHCCCS within -nineteen (19) months from the cost report due date (up to 5 months after the state fiscal year ends).

4.1.4.5. Distribution of annual reconciliation payments or collection of reconciliation recoupment by LEA.

4.1.4.6. Post payment review of all Cost Based Reimbursement expenditure data.

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5. CLAIMING FOR ADMINISTRATIVE SCHOOL-BASED SERVICES – The Contractor shall:

5.1. Claiming Methodology for Administrative Services

- 5.1.1. Comply with the procedures contained within the most current CMS Medicaid School-based Administrative Claiming Guide.
- 5.1.2. Review and comply with the AHCCCS Administrative Claiming Methodology prior to the beginning of the contract.
- 5.1.3. Within sixty (60) days of the award of the contract, submit for approval the claim calculator methodology it intends to use in order to process the MAC claim. Any subsequent updates to the methodology must be approved by AHCCCS prior to implementation.
- 5.1.4. Provide to all participating LEAs information on the specific reporting requirement for the administrative claim.

5.2. Administrative claiming Submittal Process

- 5.2.1. Submit one (1) claim for January – June to AHCCCS no later than 115 days after the end of the period. Submit one (1) claim for July - December to AHCCCS no later than 175 days after the end of the period. Claims shall be submitted in the format described in the Agency methodology, be in accordance with CMS Medicaid School-based Administrative Claiming Guide, and meet the requirements defined in this Contract. The claim must be submitted with a cover letter clearly identifying it as the official administrative claim (See Exhibit C for sample) as well as providing the supporting documentation. Administrative Claims are paid bi-annually.
- 5.2.2. Any adjustments to previous - claim must be submitted with the next claim following the overpayment determination.
- 5.2.3. AHCCCS shall provide Federal Financial Participation (FFP) to the Contractor within one hundred fifty (150) days after the approved claim submission.

5.3. Administrative Claiming Payment Process

- 5.3.1. Reimbursement for the services provided under this Contract is contingent upon the availability of federal funds. This contract shall be amended to reflect any changes in federal regulations affecting the matching percentages and/or costs eligible for administrative matching funds, which become effective subsequent to the effective date of the Contract.
- 5.3.2. Be the sole entity to receive FFP from AHCCCS and shall be responsible for distributing these federal funds to the LEAs. The amount of the payment will be less than the AHCCCS Administration Fee determined by AHCCCS.
- 5.3.3. Accept sole responsibility (i.e., AHCCCS is held harmless) for any deferrals, disallowances, or penalties imposed by CMS resulting from functions and claims made under this Contract.
- 5.3.4. In accordance with the provision of 2 CFR Part 200, 45 CFR Parts 74 and 95 and the CMS Medicaid School-based Administrative Claiming Guide, the Contractor will be reimbursed no more than the federal rate of reimbursement for Title XIX allowable administrative activities provided, as based upon a time accounting system.

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5.4. **Denied Claims**

5.4.1. The Contractor shall refund to AHCCCS upon demand any reimbursed claim amounts, including Contractors administrative fees, determined to be unallowable by CMS and/or AHCCCS. AHCCCS requires immediate and full reimbursement of all claims deferred and/or disallowed by CMS. Claims deemed unallowable by CMS and/or AHCCCS will not be reimbursed.

6. **INTERIM CLAIMS FOR DIRECT MEDICAL SERVICES – The Contractor shall:**

Perform claims functions as described within this contract, serving as the claims clearinghouse for all participating LEAs. AHCCCS requirements pertaining to claims submittal and payment are described below and are also established in the AHCCCS Fee-For-Service Provider Manual.

6.1. **Direct Medical Covered Services and Eligible Child**

6.1.1. Provide interim payments to participating LEAs for AHCCCS approved services provided to eligible children. AHCCCS, in cooperation with the Arizona Department of Education (ADE), may consider adding other AHCCCS covered services that shall be eligible for direct fee-for-service reimbursement to LEAs through a State Plan Amendment and revisions to the AHCCCS Medical Policy Manual. All qualifying covered services, including any additional covered services added in the future, must be:

- 6.1.1.1. Identified on an eligible child's Individualized Education Program (IEP), IFSP, 504 plan, other individualized health or behavioral health plan, or where medical necessity has been established and meets plan requirements for the date of service.
- 6.1.1.2. Provided by qualified registered AHCCCS providers who are employed by or subcontracted with the LEAs or their individual schools.
- 6.1.1.3. Provided on school grounds unless the IEP, IFSP, 504 plan, other individualized health or behavioral health plan, or where medical necessity has been established and meets plan requirements for the date of service, specifies that an eligible child be educated in an alternative setting (e.g., at home) due to the condition of the child.
- 6.1.1.4. Ordered or prescribed by either a licensed physician or by other qualified providers who are authorized in accordance with federal and state laws and enrolled as an AHCCCS provider.
- 6.1.1.5. Prescribed and provided in accordance with the AHCCCS Medical Policy Manual.
- 6.1.1.6. Considered medically necessary services as set forth in A.A.C. R9-22-101.

6.2. **Direct Medical Service Interim Claims Submittal Process**

6.2.1. Include the following basic components for the Direct Medical Services:

- 6.2.1.1. Require the LEAs to submit to the Contractor within six (6) months from the date of service, CMS 1500 claim forms for qualifying covered services provided to eligible children. Initial claims received later than six (6) months from the date of service by the Contractor shall be denied. The LEAs must only bill for their actual costs and AHCCCS reimburses the amount the LEA billed for the service or the AHCCCS capped fee-for-service schedule, whichever is less.

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- 6.2.1.2. Prior to submitting the claims, the LEA or (at the Contractor's option) the Contractor, on the LEA's behalf, shall bill all third party payers in accordance with the provisions of 42 CFR 433.139. The claim will be denied if the LEAs or their contracted providers fail to pursue third party liability as required by Federal law. The Contractor must receive the initial claim within six (6) months from the date of service, even if payment from the other insurer has not been received[]78[6.
- 6.2.1.3. Review each claim to ensure, to the extent possible, that the LEA submits clean claims. This review shall include checking the quality and completeness of the data entered on the claim and the validity of the data fields. At a minimum these edits shall Verify:
 - 6.2.1.3.1. Required claim fields are completed and contain correct values.
 - 6.2.1.3.2. Service provided meets the definition of an eligible covered service.
 - 6.2.1.3.3. The student to whom the service was provided meets the definition of an enrolled student on the claim service date.
 - 6.2.1.3.4. No duplication of services.
 - 6.2.1.3.5. Service provided by an eligible provider who is enrolled with AHCCCS on the claim service date.
 - 6.2.1.3.6. Initial claim is received within six (6) months of the date of service or eligibility posting date, whichever is greater.
 - 6.2.1.3.7. No duplication of payments, e.g., reimbursement for the service has not been previously paid.
 - 6.2.1.3.8. The service begin date is on or after July 1, 2027 and is a valid date.
 - 6.2.1.3.9. In the case of transportation claims, that another eligible service was provided on the same day.
 - 6.2.1.3.10. The minimum service limits for codes are based on a normal school day. Time based services should not exceed the normal school day per student per day.
 - 6.2.1.3.11. Pre-payment edits ensure compliance with IEP, IFSP, 504 plan, other individualized health or behavioral health plan, or where medical necessity has been otherwise established and meet plan requirements for the date of service.
 - 6.2.1.3.12. Weekend and Holiday edits deny services billed on weekends or holidays. If an LEA does not observe a state holiday, they may submit proof of the LEA schedule, and the contractor should submit the claim to AHCCCS for exception.
- 6.2.1.4. If the Contractor identifies any problem with the claim, the Contractor shall deny the claim to the LEA with an explanation about the problem. The Contractor shall work with the LEAs to assist them in correcting the errors so that revised claims can be submitted to the Contractor no later than twelve (12) months from the date of service or eligibility posting, whichever is greater.
- 6.2.1.5. Collect all the clean claims submitted by the LEAs. Upon receipt of the LEAs' claims, the Contractor shall electronically submit, within fifteen (15) days, an electronic claims file to AHCCCS in accordance with the HIPAA compliant electronic claim transaction in the 837P 005010X222A1 Health Care Claim:

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Professional format (See section 14.3). The Contractor shall not hold claims, with the exception of claims for transportation and Health Aides. Transportation claims for which the Contractor is waiting for a claim for an associated medical service may be held for a maximum forty-five (45) days. Health Aides' claims may be held for a maximum of thirty (30) days.

6.3. **Direct Medical Services Interim Claim Payment**

- 6.3.1. Within forty-five (45) days of the receipt of clean claims from the LEA, the Contractor shall send out the appropriate payments to each individual LEA and shall provide each LEA with a corresponding remittance advice associated with their submitted claims.
- 6.3.2. Withhold from the individual LEA payments an administrative fee as set forth in this contract in order to pay for the Contractor's administrative costs.
- 6.3.3. Accept electronic payment from AHCCCS and issue electronic payments to LEAs.

6.4. **Claims Denial for Direct Medical Services**

- 6.4.1. Assist the LEA in resubmitting denied claims and provide technical assistance to LEAs that have high claims denial rate. The Contractor is responsible for development of a corrective action plan as deemed necessary. For denied claims that were originally received within the appropriate six (6) month time frame or eligibility posting date, whichever is greater, the LEA may resubmit a denied claim (on a new claim form) up to twelve (12) months from the date of service or eligibility posting date, whichever greater.
- 6.4.2. Payment Recoupment: The Contractor shall reimburse AHCCCS upon demand, or AHCCCS may deduct from future claim payments including the Contractor's Administrative fee to the Contractor, any amounts:
 - 6.4.2.1. Paid by AHCCCS for which the LEAs books, records, and other documents are not sufficient to clearly validate that those amounts were used by the LEA to deliver qualifying covered services to eligible children, or which fail to conform with federal requirements as specified in 2 CFR Part 200 and 45 CFR Part 74;
 - 6.4.2.2. Sustained as an audit finding resulting from a financial statement audit or an audit conducted in accordance with the Single Audit Act of 1984; or
 - 6.4.2.3. Determined by the federal government and/or by AHCCCS to be unallowable, deferred or disallowed for any reason.

6.5. **Duplicate Claims Payment**

- 6.5.1. To mitigate duplicate claims being paid, as some of the functions for the services under this Contract may overlap, the Contractor shall have a mechanism in place to ensure non-duplication of claims through the administrative claiming and direct medical services claiming for the LEAs.

7. **STATE MATCHING FUNDS – Refer to Exhibit B – Sample Quarterly Certification of State (Non-Federal) Matching Funds – The Contractor shall:**

- 7.1. Use the appropriate reimbursement rate or FMAP as annually determined by the Federal government for paying qualifying covered School-Based claiming services and shall use the state match percentage per the Federal directive. This percentage is subject to change per Federal directive.

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- 7.2. Immediately communicate any changes in the state match percentage to the participating LEAs upon being informed by AHCCCS of such changes.
- 7.3. Ensure that each LEA submits a certification of state match signed by the LEA CFO or appropriate LEA designee on a quarterly basis to the Contractor. The non-federal funds required to be expended, as state match funds, are the sole responsibility of the participating LEAs. The Contractor shall not submit claims for LEAs that have not certified the availability of state matching funds. Refer to Exhibit B as a sample.
- 7.4. Immediately notify AHCCCS if such matching funds become limited or unavailable to any participating LEA.
- 7.5. Audit the LEAs methodology for identifying the LEA State Matching Funds.
8. **AHCCCS OPERATIONAL REVIEWS – The Contractor shall:**
 - 8.1. Cooperate with any operational reviews that AHCCCS and/or the Federal government conducts of the Contractor's operation and/or the performance of the LEAs as it relates to this contract. . The types and duration of the review shall be solely at the discretion of AHCCCS. AHCCCS reserves the right to conduct reviews without advance notice.
 - 8.2. Make available any requested records within thirty (30) days at the Contractor's offices or at AHCCCS or any other office designated by AHCCCS.
9. **FINANCIAL AUDIT – The Contractor shall:**
 - 9.1. Submit an annual audited financial statement to AHCCCS within ten (10) months of the Contractor's fiscal year end. This financial audit shall be prepared in accordance with the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. <https://www.ecfr.gov/current/title-2/section-200.514> The annual audit shall include operations related to this contract.
 - 9.1.1. If the Contractor does not obtain such audit, or make such records or annual audited financial statement(s) available, AHCCCS may withhold payment of any funds due to the Contractor until such time the Contractor is deemed to be in compliance with this requirement.
 - 9.2. Maintain an accounting system with supporting fiscal records adequate to assure that claims for Federal funds are in accordance with this Contract and any applicable laws, regulations and policies.
10. **RECORDS RETENTION AND DESTRUCTION – The Contractor shall:**
 - 10.1. As required by A.R.S. § 35-214, retain all necessary financial and programmatic records, supporting documentation, statistical records and other documents related to this Contract.
 - 10.2. Respond to any requests from CMS and AHCCCS to inspect records on a timely basis and assist as requested in any audit or monitoring activities.
 - 10.2.1. CMS and AHCCCS have the right to examine and make copies, excerpts or transcripts from all records, contact and conduct private interviews with the Subcontractor(s) clients and

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employees and conduct on-site reviews of all matters relating to service delivery as specified in this Contract.

10.2.2. If a litigation claim or other action involving records has been initiated prior to expiration of the five (5) year retention period, records shall be retained until completion of the action and resolution of all issues which arise from it or until the end of the five (5) year period, whichever is later.

10.3. Give AHCCCS reasonable notice prior to changes to the Contractor's retention policies and practices.

10.4. Require the same records retention requirement of their subcontractors.

11. CONTRACTOR'S PROGRAM COORDINATION RESPONSIBILITIES – The Contractor shall:

11.1. Designated Contact Person

Designate one person whom AHCCCS may contact for issues relating to the contract. The designated person must be the person providing general direction to Contractor employees and/or subcontractors who is primarily responsible for its success. This person shall ensure that all services performed and materials used shall be accomplished in consultation with, and under the supervision of AHCCCS.

11.1.1. Notify AHCCCS within five (5) days of any changes to the following:

11.1.1.1. The name of contact person

11.1.1.2. Telephone, fax and email address

11.1.1.3. Chief Program Administrator or his/her designee

11.1.1.4. Name and/or address of the person whom notices are sent

11.2. Coordination of Services

As deemed necessary, consult with and cooperate with AHCCCS and its contracted AHCCCS health plans. Note that this coordination must be in compliance with Paragraph 8.5, Duplicate Claims Payments.

11.3. Information Systems

Access specific information that is available in the AHCCCS Companion Guides found on the Electronic Data Interchange (EDI) Technical Documents page on the AHCCCS website at Electronic Data Interchange (EDI) Documents. The Contractor is authorized to exchange data with AHCCCS relating to the information requirements of its contract and as required to support the data elements to be provided by AHCCCS in specific formats.

11.3.1. The Contractor must ensure its ability to place and retrieve electronic data from the AHCCCS MFT server. Information includes, but is not limited to:

11.3.1.1. Third Party Liability

11.3.1.2. Member Enrollment File

11.3.1.3. Registered Provider File

11.3.1.4. Submit HIPAA compliant electronic claim transaction in the 837P 005010X222A1 Health Care Claim: Professional format.

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- 11.3.1.5. Accept HIPAA compliant electronic remittance in the 835 005010X221A1 Health Care Claim Payment/Advice format.
- 11.3.2. The Contractor shall be compliant with the adoption of ICD 10CM coding standards. The information recorded and submitted to AHCCCS shall be in accordance with all procedures, policies, rules or statutes in effect during the terms of this contract. If any changes occur, both parties agree to conform to these changes following appropriate notification by AHCCCS.
- 11.3.3. The Contractor is responsible for the following:
 - 11.3.3.1. 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.
 - 11.3.3.2. Identifying any inconsistencies immediately upon receipt of data from AHCCCS.
 - 11.3.3.3. Obtaining a Contractor-specific security code for use in all data transmissions made in accordance with contract requirements. Each data transmission by the Contractor shall include the Contractor's security code. The Contractor agrees that by use of its security code, it certifies that any data transmitted is accurate and truthful, to the best of the Contractor's knowledge. The costs of software changes are included in administrative costs paid to the Contractor. There is not a separate payment for software changes. A AHCCCS system contact will be assigned after contract award.
 - 11.3.3.4. Complying with all administrative simplification provisions resulting from the Health Insurance Portability and Accountability Act (HIPAA).
- 11.4. **Contractor Reports**
 - 11.4.1. Submit to AHCCCS the reports and deliverables outlined in the Deliverables Chart. The submission of late, inaccurate or otherwise incomplete reports shall constitute failure to report subject to the penalty provisions described in this contract. Standards applied for determining adequacy of required reports are as follows:
 - 11.4.1.1. Timeliness: Reports or other required data shall be received on or before scheduled due dates.
 - 11.4.1.2. Accuracy: Reports or other required data shall be prepared in strict conformity with appropriate authoritative sources and/or AHCCCS defined standards.
 - 11.4.1.3. Completeness: All required information shall be fully disclosed in a manner that is both responsive and pertinent to report intent with no material omissions.
 - 11.4.2. Comply with all changes specified by AHCCCS. AHCCCS requirements regarding reports, report contents and frequency of submission of reports are subject to change at any time during the term of the contract.

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12. FINANCIAL PROVISION - ACCURACY OF DATA AND REPORTS – The Contractor shall:

Agree that all statements, reports and claims (financial and otherwise) shall be certified as true, accurate, and complete, and that the Subcontractor(s) or LEAs shall not submit for payment purposes any claims, statements, or reports which it knows or has reason to suspect are not properly prepared or payable pursuant to Federal and state law, applicable Federal regulations, and this Contract.

13. PERFORMANCE and FIDELITY BONDS – The Contractor shall:

13.1. Within ten (10) business days after contract effective date, and annually thereafter by no later than June 1, submit to AHCCCS a performance bond of standard commercial scope issued by a surety company doing business in this State (see Exhibit D – Chart of Deliverables). The performance bond shall be an irrevocable security, payable to the Arizona Health Care Cost Containment System, an agency of the State of Arizona, based on 100% of one month's total Medicaid School-Based Claiming program DSC and MAC payments. Historical data for the last 12 months of DSC and MAC will be used to determine this amount (an estimated amount value of \$5,000,000.00 based on data from SFY 2026).

13.2. Personnel Bonding Requirements: Provide evidence of a fidelity bond in the amount of \$2,000,000 covering any loss to AHCCCS or the State due to any fraudulent or dishonest act on the part of any officer[LD9.1], agent, subcontractor, or employee of the Contractor.

14. CONFIDENTIALITY – The Contractor shall:

Maintain the confidentiality of client records and eligibility information received from the AHCCCS safeguard data and use the data only in the administration, technical assistance, and coordination of the Medicaid School-based claiming activities.

15. DELIVERABLES

The Contractor shall provide deliverables according to the timeline established in Exhibit D – Chart of Deliverables

16. TRANSITIONS DUE TO CONTRACT TERMINATION OR EXPIRATION - The Contractor shall:

16.1. Notify LEA's and cooperate with AHCCCS to coordinate transition of services.

16.2. Continue processing all outstanding DSC and MAC claims rendered prior to contract termination or expiration.

16.3. Provide Monthly, Quarterly, Bi-annual and Annual Deliverables for the contracted time period.

16.4. Cooperate with AHCCCS to complete and finalize any open reconciliations until release has been granted by AHCCCS.

16.5. Cost Based Reimbursement Requirements:

16.5.1. Complete cost-based reconciliation activities on prior contract years

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- 16.5.2. Should the contractor fail to conduct and complete 100% of the reconciliation process following the end of any contract year, AHCCCS reserves the right to hire another entity or firm to complete the reconciliation process at the expense of the Contractor.
- 16.5.3. Retain, preserve, and make available all records, within the timeframes required by state and federal law. This includes but is not limited to, 45 CFR 164.530(j)(2) and 42 CFR 438.3(u), and transfer of member data and disposition of any related member medical records in a timely manner to ensure adequate MCO and provider access to appropriate records for the provision of timely care to members, to minimize disruption (e.g. due to incompatibility of systems), and to ensure transfer of data for timely and accurate submission of deliverables.

17. AHCCCS Will:

- 17.1. Under section 3.5 Compliance Reviews, review the non-compliance summary report and work with the Contractor to recoup federal monies paid and/or preclude the LEA(s) from receiving future payments.
- 17.2. Under section 5.4 Denied Claims, inform the Contractor of any such claims submitted under this Contract, which are deferred, disallowed or deemed unallowable by CMS. AHCCCS will require immediate and full reimbursement of all claims deferred and/or disallowed by CMS. Claims deemed unallowable by CMS and/or AHCCCS will not be reimbursed.
- 17.3. Under section 6.3 Direct Medical Services Interim Claim Payment:
 - 17.3.1. Provide interim payments for approved claims for LEAs in an amount equal to the appropriate Federal Medical Assistance Percentage (FMAP) multiplied by the lesser of the AHCCCS fee-for-service rate for the qualifying covered service or the amount billed by the LEA provider, less an AHCCCS administrative fee and less a TPA fee as determined by AHCCCS.
 - 17.3.2. Send an electronic payment to the Contractor for each electronic claim file submitted. The accompanying Health Insurance Portability and Accountability Act (HIPAA)-compliant 835 remittance advice shall be transmitted to the Contractor electronically (i.e., delivered using a secure Managed File Transfer (MFT) or other secure method). Payments made by AHCCCS to the Contractor for qualifying covered services provided by the LEAs are conditioned upon the availability to AHCCCS of federal funds authorized for expenditures of AHCCCS covered services. Claims deemed unallowable by CMS and/or AHCCCS shall not be reimbursed.
 - 17.3.3. Withhold amounts from these payments to LEAs to pay for any payment recoupments (see section 6.4.2 Payment Recoupment section).
- 17.4. Under section 7 State Matching Funds:
 - 17.4.1. Notify the Contractor of changes in the state match percentage as soon as AHCCCS has knowledge of such changes.
 - 17.4.2. Limit or deny reimbursement of Federal funds until such time as the appropriate matching funds are available.
- 17.5. Under section 13 Performance and Fidelity Bonds, in the event of a default by the Contractor, 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:

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- 17.5.1. Paying any damages sustained by reason of non-performance or other breach of Contractor's obligations under this contract;
- 17.5.2. 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;
- 17.5.3. Covering a transition period, if any, where the Contractor does not cooperate fully with AHCCCS or a successor Contractor; and
- 17.5.4. Use by AHCCCS in the event the Contractor becomes insolvent.

17.6. Under section 16 Transition: Due To Contract Termination or Expiration, work to complete any pending reconciliations, allowing for appropriate lag time for claims run-out and/or changes to be entered into the system.

18. AHCCCS May:

- 18.1. Conduct an Operational Readiness Review on the successful Offeror and will, subject to the availability of resources, provide technical assistance as appropriate. The Readiness Review may be conducted prior to the start of business. The purpose of a Readiness Review is to assess a new Contractor's readiness and ability to provide third party administration functions for Medicaid School-Based Claiming. A new Contractor will be permitted to commence operations only if the Readiness Review factors are met to AHCCCS' satisfaction.

19. EXHIBITS

Exhibits included in this solicitation are listed as follows:

- 19.1. Exhibit A – Solicitation Instructions to Offerors
- 19.2. Exhibit B – Sample Quarterly Certification of State (Non-Federal) Matching Funds
- 19.3. Exhibit C – Sample Claim Cover Letter Format
- 19.4. Exhibit D – Chart of Deliverables

20. PRICING AND PAYMENT – The Contractor shall submit Attachment 3 – Price Proposal

Payment for this contracts consists of two (2) components:

- 20.1. Medicaid School-based Claiming Administrative Services: The percentage (%) per amount paid per bi-annual claim. Funds for Administrative Services will be passed through directly to the Contractor who will withhold their fee as established in this Contract and in the Contractor's agreement with the individual school districts. Funds will be passed through when the claim is approved for payment by AHCCCS.
- 20.2. Medicaid School-based Claiming Direct Medical Services: The dollar (\$) amount per claim. Funds for Direct Medical Services will be passed through to the Contractor in an amount equal to one half of the fee amount, which is a direct pass through from the federal government. The school districts are responsible for the payment of the remaining half.

DEFINITIONS

Definition of Terms

As used in the Instructions to Offerors, the terms listed below are defined as follows:

1. **AAC: Arizona Administrative Code:** The Office of the Arizona Secretary of State provides the official A.A.C. online at: <http://www.azsos.gov/rules/arizona-administrative-code>
2. **ADMINISTRATIVE SERVICES:** Local Education Agencies (LEAs) may perform administrative activities that directly support the Medicaid program. Some or all of the costs of these administrative activities may be reimbursable to the LEA. Administrative services use time studies to identify how much the district spends on “administrative activities” that are described in the CMS Delivering Services in School Based Settings: A Comprehensive Guide to Medicaid Services and Administrative Claiming 2023.
3. **ADOE:** Arizona Department of Education.
4. **AI/Artificial Intelligence:** The science and engineering of making machines capable of performing tasks that are typically associated with human intelligence, such as learning and problem-solving, and includes without limitation: AI systems, classic AI, external AI, generative AI, and large language model (LLM) AI.
5. **A.R.S.: ARIZONA REVISED STATUTES:** The Arizona State Legislature provides the official A.R.S. online at: <http://www.azleg.gov/ArizonaRevisedStatutes.asp>
6. **ASFS:** AHCCCS Secure File Share.
7. **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.
8. **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.
9. **ALTCS:** Arizona Long Term Care System, a program under AHCCCS that delivers long term, acute/ambulatory health, behavioral health, and case management services to eligible members, authorized by A.R.S. § 36-2932.
10. **ARIZONA SCHOOL-BASED SERVICES ADMINISTRATIVE CLAIM METHODOLOGY:** The mechanism approved by both AHCCCS and CMS used for the computation of the claim for administrative costs incurred by Arizona school districts and allowable under the Medicaid program. The methodology serves as the basis for developing the claim for the cost of allowable administrative activities and additionally ensures that school-based administrative claiming programs are in accordance with the existing policies outlined in the CMS Delivering Services in School Based Settings: A Comprehensive Guide to Medicaid Services and Administrative Claiming 2023
11. **ATTACHMENT:** Any item the Solicitation requires an Offeror to submit as part of the Offer.
12. **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.
13. **CBR:** Cost Based Reconciliation. The methodology used to reimburse LEA is based on actual costs associated with the delivery of medically necessary services to Medicaid-eligible Special Education Students.
14. **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. CMS Delivering Services in School Based Settings: A Comprehensive Guide to Medicaid Services and Administrative Claiming 2023: This Guide, issued May 2023 by CMS, describes the processes through which school-based

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- programs must administer and file claims with the federal government for the Medicaid Administrative services they provide. This Guide is available as an Attachment to this RFP.
15. **CLEAN CLAIMS:** As defined by ARS § 36-2904 (G)(1) is a claim that may be processed without obtaining additional information from the provider of service or from a third party but does not include claims under investigation for fraud or abuse or claims under review for medical necessity.
 16. **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.
 17. **CONTRACT AMENDMENT:** A written document signed by the Procurement officer that is issued for the purpose of making changes in the contract.
 18. **CONTRACTOR:** A person who has a contract with AHCCCS.
 19. **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.
 20. **DELIVERABLES:** All items that the Contractor is required to deliver under this Contract.
 21. **DIRECT MEDICAL SERVICES:** Medical or mental/behavioral health services rendered by qualified providers who are employed by, or contracted with, the student's participating Local Education Agency (LEA) to Title XIX Medicaid enrolled student beneficiaries.
 22. **DIRECT SERVICE CLAIMING (DSC):** Claiming for medical services provided by or through a Local Education Agency (LEA) participating in the School Based Claiming Program to Title XIX Medicaid enrolled student beneficiaries that require medical or mental/behavioral health services identified as medically necessary in an Individualized Education Program (IEP), Individualized Family Service Plan (IFSP), 504 Plan, other individualized health or behavioral health plan, or where medical necessity has been otherwise established.
 23. **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.
 24. **EPSDT:** The Title XIX Early and Periodic Screening, Diagnostic and Treatment Program.
 25. **EXHIBIT:** Any item labeled as an Exhibit in the Solicitation or placed in the Exhibits section of the Solicitation.
 26. **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.
 27. **FFP (FEDERAL FINANCIAL PARTICIPATION):** The Federal share of reimbursement for services provided in accordance with Federal requirements for school-based Medicaid services.
 28. **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.
 29. **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.

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30. **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.
31. **IDEA:** Individuals with Disabilities Education Act as established in Federal statute, ensures that children with special education needs receive a free and appropriate public education.
32. **IEP:** Individualized Education Plan is a formal written plan developed and implemented for the purposes of providing special education and related services to a child with a disability who is determined eligible under IDEA, Part B.
33. **IFSP:** An Individualized Family Service Plan is a plan to obtain special education services for young children within U.S. public schools. It is provided by law to families of eligible children from birth to 3 years old. Once a child turns 3 years old, a child is eligible to transition to an Individualized Education Plan (IEP).
34. **KEY PERSONNEL:** Contractor's Authorized Representative, the Project Manager, and all other Contractor personnel designated as Key Persons.
35. **LEA:** Local Education Agency as defined by 34 CFR 300.28, and for purposes of this contract includes public school districts, charter schools not sponsored by a school district and the State School for the Deaf and Blind.
36. **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.
37. **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.
38. **MAY:** Indicates something that is not mandatory but permissible.
39. **MEDICAID:** A Federal/State program authorized by Title XIX of the Social Security Act, as amended.
40. **MEDICAID ADMINISTRATIVE CLAIMING (MAC) PROGRAM:** Bi-annual claim which provides reimbursement for a percentage of the time LEAs spend providing administrative support for direct services, as well as efforts by LEAs to assure that Title XIX eligible children and their families are informed about the Title XIX EPSDT program, are helped to understand its importance, and are encouraged to seek EPSDT services.
41. **MEDICAID SCHOOL-BASED CLAIMING (MSBC) PROGRAM:** The program that encompasses both DSC and MAC.
42. **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).
43. **NOT SUSCEPTIBLE FOR AWARD.** The relevant offer has been determined by the Procurement Officer to fail one or more of the tests and comparisons set forth therein. NOTE: A determination of Not Susceptible for Award and a determination of Responsive are mutually exclusive.
44. **OFFER:** A response to a solicitation.
45. **OFFEROR:** A vendor or person who responds to a Solicitation.
46. **OPEN CARE:** Medicaid covered services furnished to Medicaid enrolled student beneficiaries that require medical or behavioral health services identified as medically necessary in an IEP, IFSP, 504 Plan, other individualized health or behavioral health plan, or where medical necessity has been otherwise established.

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47. **PARTICIPATING LEA:** Local Education Agency as defined by 34 CFR 300.28, and for purposes of this contract includes public school districts, charter schools not sponsored by a school district and the State School for the Deaf and Blind.
48. **PERSON:** Any corporation, business, individual, union, committee, club or other organization or group of individuals.
49. **PMMIS:** Prepaid Medicaid Management Information System, the management information system used by AHCCCS.
50. **PRICING DOCUMENT:** Part of the Solicitation Requirements.
51. **PROJECT MANAGER:** the person representing both Agencies who serves as the Contractor's primary point of contact for the term of the Contract.
52. **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.
53. **QUALIFYING CHILD:** A child, receiving direct medical services, who is at least 3 years old and under 22 years of age and who has been determined by AHCCCS to be enrolled under Title XIX and medical or behavioral health services identified as medically necessary in an IEP, IFSP, 504 Plan, other individualized health or behavioral health plan, or where medical necessity has been otherwise established.
54. **QUALIFYING COVERED SERVICE:** An AHCCCS covered service as set forth in Section 1905(a) of the Social Security Act and listed in the AHCCCS Medicaid State Plan as a covered service and as further defined in this contract and the AHCCCS Medical Policy Manual. The service must also be medically necessary and included in the qualified child's IEP, IFSP, 504 Plan, other individualized health or behavioral health plan, or where medical necessity has been otherwise established.
55. **QUALIFYING PROVIDER:** A person who provides qualifying covered services and who meets all the applicable licensure/certification requirements, is registered with AHCCCS, and has obtained an AHCCCS provider ID number and is employed by or working under contract with an LEA or one of its individual schools.
56. **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.
57. **RELATED SERVICE:** A supportive service as defined by 34 CFR 300.34 that is provided to a qualifying child in order that the child may benefit from a special education.
58. **REQUEST FOR PROPOSAL (RFP):** Document prepared by AHCCCS which describes the services required and which instructs a prospective Offeror how to prepare a response (proposal).
59. **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.

DEFINITIONS

60. **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.
61. **SERVICES:** Means all effort to be expended by the Contractor under the Contract, including advice and expertise, and development and delivery of deliverables
62. **SHALL, MUST:** Indicates a mandatory requirement. Failure to meet these mandatory requirements may result in the rejection of a proposal as non-responsive.
63. **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.
64. **SMALL BUSINESS:** means a for-profit or not-for-profit organization, including its affiliates, with fewer than 100 full-time employees or gross annual receipts of less than \$4 million for the last complete fiscal year.
65. **SOLICITATION:** An Invitation for Bids ("IFB"), a Request for Proposals ("RFP"), or a Request for Quotations ("RFQ").
66. **SOLICITATION AMENDMENT:** A written document that is authorized by the Procurement officer and issued for the purpose of making changes to the Solicitation.
67. **SPECIAL EDUCATION:** A service as defined by 34 CFR 300.39 that is provided to a qualifying child in order that the child may benefit from a free and appropriate public education.
68. **STATE:** The State of Arizona and AHCCCS.
69. **STATE FISCAL YEAR:** The period beginning with July 1 and ending June 30.
70. **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.
71. **THIRD PARTY:** An individual, entity or program that is or may be liable to pay all or part of the medical cost of injury, disease or disability of an AHCCCS applicant, eligible person or member (including a qualified child), as defined A.A.C. R9-22, Article 10.
72. **THIRD PARTY LIABILITY:** The resources available from an individual, entity program that is or may be, by agreement, circumstance or otherwise, liable to pay all or part of the medical expenses incurred by an applicant, eligible person or member (including a qualified child) as defined in A.A.C. R9-22, Article 10.
73. **TITLE XIX:** Title XIX of the Social Security Act means Medicaid as defined in 42 U.S.C. 7.19.**504 Plan:** The 504 Plan is a plan developed to ensure that a child who has a disability identified under the law and is attending an elementary or secondary educational institution receives accommodations that will ensure their academic success and access to the learning environment. Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794 (Section 504

SPECIAL TERMS AND CONDITIONS

Special Terms and Conditions

1. **Term of Contract and Option to Renew:**

- 1.1. 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.
- 1.2. 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.
- 1.3. 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.

2. **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.

3. **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.

4. **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.

5. **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:

- 5.1. The Contractor provides material that does not meet the specifications of the contract;

SPECIAL TERMS AND CONDITIONS

- 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 in 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. The Procurement officer may resort to any single or combination of the following remedies:
 - 5.5.1. Cancel any contract;
 - 5.5.2. Reserve all rights or claims to damage for breach of any covenants 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 non-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 combinations of the above or any other remedies as provided by law.
6. **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
- 6.1. The Contractor provides material that does not meet the specifications of the contract;
 - 6.2. The Contractor fails to adequately perform the services set forth in the specifications of the contract;
 - 6.3. The Contractor fails to complete the work required or furnish the materials required within the time stipulated by the contract;
 - 6.4. 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;
 - 6.5. Upon receipt of the written notice of concern, the Contractor shall have a minimum of ten (10) days (Procurement officer may determine a longer period) to provide a satisfactory response to the Procurement officer. Failure on the part of the Contractor to adequately address all issues of concern may result in the Procurement officer resorting to any single or combinations of the following remedies.
 - 6.5.1. Cancel any contract;
 - 6.5.2. Reserve all rights or claims to damage for breach of any covenant of the contract;
 - 6.5.3. 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;

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- 6.5.4. 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;
 - 6.5.4.1. Deduction from an unpaid balance;
 - 6.5.4.2. Collection against the bid and/or performance bond; or
 - 6.5.4.3. Any combination of the above or any other remedies as provided by law.
- 7. **Contract Disputes:** Contract disputes arising under A.R.S. § Title 36, Chapter 29 shall be adjudicated in accordance with AHCCCS Rules.
- 8. **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.
- 9. **Confidentiality of Records and Disclosure of Confidential Information:**
 - 9.1. 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.
 - 9.2. 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.
 - 9.3. 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.
 - 9.4. The Contractor shall advise its employees, agents and subcontractors, if any, that they are subject to these confidentiality requirements. A signed confidentiality statement containing language approved by AHCCCS will be obtained from all employees, agents and subcontractors, if any, and maintained in the individual's personnel file with a copy sent to AHCCCS upon request.

SPECIAL TERMS AND CONDITIONS

10. 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.

11. Contract Order of Precedence:

- a. 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:
 - i. The Constitution and laws of the United States and applicable Federal regulations;
 - ii. The Constitution and laws of Arizona, and applicable State Rules;
 - iii. The terms of the Arizona Section 1115 Demonstration Waiver for the State of Arizona;
 - iv. The Arizona State Plan;
 - v. The terms of this Contract which consists of the following in order:
 - a. HIPAA Business Associates Agreement or Addendum (if included)
 - b. The RFP, including any solicitation amendments or attachments/exhibits;
 - c. Contract Amendments issued after award in descending order;
 - vi. AHCCCS policies and procedures; and
 - vii. The Proposal of the Successful Offeror including any Best and Final Offer.
- b. In the event of a conflict in language between the Proposal (including any Best and Final Offers) and the RFP (including AHCCCS policies and procedures incorporated by reference and any Contract amendments), the provisions and requirements set forth and/or referenced in the RFP (including AHCCCS policies and procedures incorporated by reference and any Contract amendments) shall govern.
- c. 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.

12. 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.

13. Fraud and Abuse:

- 13.1. 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 AHCCCS Office of Inspector General (AHCCCS OIG) immediately.
- 13.2. 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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13.3. 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.

14. **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.

15. **Legislative Mandates**

Federal and State Legislation: AHCCCS and its Contractors are subject to legislative mandates that may result in changes to the program. AHCCCS will either amend the contract or incorporate changes in policies incorporated in the contract by reference. Rates may also be adjusted to reflect the financial impact of program changes.[

16. **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.

17. **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.

18. **No Guaranteed Quantities:**

AHCCCS does not guarantee the Contractor any minimum or maximum quantity of services or goods to be provided under this contract.

19. **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.

20. **Ownership of Information and Data:**

20.1. 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

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government reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use and to authorize others to use for federal government purposes, such data or information system, software, documentation and manuals. Proprietary software which is provided at established catalog or market prices and sold or leased to the general public shall not be subject to the ownership or licensing provisions of this section.

- 20.2. 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.
- 20.3. Except as otherwise provided in this section, if any copyrightable or patentable material is developed by Contractor in the course of performance of this contract, the federal government, AHCCCS and the State of Arizona shall have a royalty-free, nonexclusive, and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the work for state or federal government purposes. Contractor shall additionally be subject to the applicable provisions of 45 CFR Part 74 and 45 CFR Parts 6 and 8.

21. **Records:**

- 21.1. In addition to the requirements set forth in this contract under the Uniform Terms and Conditions, all books and records shall be maintained to the extent and in such detail as required by AHCCCS Rules and Policies. The AHCCCS records management guidelines are located at: <http://www.azahcccs.gov>. Records shall include, but not be limited to, financial statements, case files (both hard copy and stored data), and other records specified by AHCCCS.
- 21.2. 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.
- 21.3. 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:
- 21.3.1. 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.
- 21.3.2. 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.

SPECIAL TERMS AND CONDITIONS

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

22. **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.

Addendum A to Special Terms and Conditions Insurance Requirements

Addendum A to the Special Terms and Conditions (Insurance)

1. Indemnification Clause

- 1.1 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.
- 1.2 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

- 2.1 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.
- 2.2 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.
- 2.3 **Minimum Scope and Limits of Insurance**
Contractor shall provide coverage with limits of liability not less than those stated below.

Addendum A to Special Terms and Conditions

Insurance Requirements

2.3.1 Commercial General Liability (CGL) – Occurrence Form

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

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

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

2.3.2 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).

Addendum A to Special Terms and Conditions Insurance Requirements

2.3.3 Professional Liability (Errors and Omissions Liability)

- Each Claim \$ 2,000,000
 - Annual Aggregate \$ 2,000,000
- a. In the event that the professional liability insurance required by this Contract is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of this Contract; and that either continuous coverage will be maintained, or an extended discovery period will be exercised for a period of two (2) years beginning at the time work under this Contract is completed.
- b. Policy shall cover professional misconduct or wrongful acts for those positions defined in the Scope of work of this contract.

2.3.4 Network Security (Cyber) and Privacy Liability

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

Addendum A to Special Terms and Conditions

Insurance Requirements

2.4 Additional Insurance Requirements

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

2.4.1 The Contractor's policies, as applicable, 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).

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

2.5 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 (State Representative's Name, Address & Fax Number).

2.6 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.

2.7 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.

2.7.1 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

Addendum A to Special Terms and Conditions

Insurance Requirements

insurance or policy endorsements that do not comply with this written agreement shall not waive or otherwise affect the requirements of this agreement.

2.7.2 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.

2.7.3 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.

2.8 Subcontractors

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

2.9 Approval and Modifications

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

2.10 Exceptions

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

Addendum B to Special Terms and Conditions

AHCCCS IT SECURITY AND PRIVACY REQUIREMENTS

[Addendum B to the Special Terms and Conditions \(IT Security\)](#)

1. Mandatory Requirements:
 - 1.1. Pursuant to [State Data Classification Policy P8110](#), the Contractor will have access to the following type of Data as part of its work under the Contract:
 - ☐ Public State Data
 - ☐ Confidential State Data
 - 1.2. The Arizona Department of Homeland Security (AZDOHS) establishes cybersecurity standards, performs risk assessments, and verifies Contractor's compliance with these requirements. AZDOHS has identified GovRAMP assessments with continuous monitoring as the preferred standard for security assessments at the State.
 - 1.3. Based on the Data accessed in this contract, the Contractor is required to achieve a minimum GovRAMP, or an approved equivalent, verified status of:
 - ☐ GovRAMP Core no later than 12 months of contract award.
 - ☐ GovRAMP Ready no later than 18 months of contract award.
 - ☐ GovRAMP Authorized no later than 24 months of contract award.
 - ☐ [Any additional assessment requirements such as a Moderate Impact CJIS Overlay should be included where applicable].
 - 1.3.1. Prior to the transfer of any State Data, the Contractor shall enroll in GovRAMP Progressing Snapshot program and receive the first Snapshot within 60 days of award. No State Data can be transferred until completed.
 - 1.4. If the Contractor is providing professional services that include a cloud service component that will process, transmit, or store State Data, the cloud product utilized must meet the same requirements outlined above.
2. State Data and Information Handling Warranties
 - 2.1. Applicability. To the extent the Work includes handling of any (1) State's proprietary and sensitive Data or (2) Confidential Data or access-restricted information obtained from State or from others at State's behest.
 - 2.2. Data Protection and Confidentiality of Information Warranty. Contractor warrants that it will establish and maintain procedures and controls acceptable to State for ensuring that State's proprietary, sensitive, and Confidential Data, including Data obtained from third parties, is protected from unauthorized access and is not mishandled, misused, or inappropriately released or disclosed. Confidential State Data shall be any data that meets the definition of the same in State Data Classification Policy P8110. Additionally, all Data; 1) created by Contractor in any way related to the Contract; 2) provided to Contractor by State; or 3) prepared by others for State, shall be protected from unauthorized access and/or usage the same as Contractor would for Confidential State Data.
 - 2.2.1. To comply with the foregoing warrant, Contractor shall:

Addendum B to Special Terms and Conditions

AHCCCS IT SECURITY AND PRIVACY REQUIREMENTS

- 2.2.1.1. Provide the State and Eligible Agencies with a copy of its Disaster Recovery plan upon request. The Disaster Recovery plan shall outline the Contractor's actions, with timelines, in the event of a natural disaster, cyber-attack, or loss of ability to operate and perform services under this contract.
- 2.2.1.2. Immediately: (a) notify AHCCCS of any unauthorized access or inappropriate disclosures, whether stemming from an external Data Breach, internal Data Breach, system failure, or procedural lapse within twenty-four (24) hours of a Data Breach, by sending an email to "Breach Reporting" BreachReporting@azahcccs.gov and Data Privacy & Security Incident Reporting incidentreporting@azahcccs.gov, reporting the incident that occurred; (b) cooperate with AHCCCS to identify the source or cause and respond to each unauthorized access or inappropriate disclosure; and (c) notify AHCCCS promptly of any security threat that could result in unauthorized access or inappropriate disclosures; and
- 2.2.2. Unless AHCCCS has agreed otherwise in advance and in writing, Contractor **SHALL NOT**:
 - 2.2.2.1. Release any State Data or allow it to be released or divulged to any individual other than to its own employees, officers, or authorized agents as needed for each person's individual performance of job duties under the Contract.
 - 2.2.2.2. Respond to any requests it receives from a third party for such Data or information, and instead shall route all such requests to State's designated representative.
- 2.3. Personally Identifiable Information Warranty. Without limiting the generality of paragraph 1.2, Contractor warrants that it will employ protections for any personally identifiable information ("PII") belonging to State's employees or other contractors or members of the general public that it receives from State or otherwise acquires in its performance under the Contract. For purposes of this paragraph:
 - 2.3.1. PII has the meaning given in Arizona Revised Statute (A.R.S.) § 18-551; and
 - 2.3.2. "protections" has the meaning given in the National Institute of Standards and Technology (NIST) *Special Publication 800-160, Revision 2, Volume 1*.

NOTE (1): For convenience of reference only, Arizona Revised Statute (A.R.S.) § 18-551 is available at: <https://www.azleg.gov/ars/18/00551.htm>

NOTE (2): For convenience of reference only, NIST SP 800-160, Revision 2, Volume 1 is available at: <https://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800-160v2r1.pdf>
- 2.4. Protected Health Information Warranty. Contractor warrants that, to the extent performance under Contract involves individually identifiable health information (referred to hereinafter as protected health information ("PHI") and electronic PHI ("ePHI") as defined in the Privacy Rule referred to below), it:
 - 2.4.1. is familiar with and will comply with the applicable aspects of the following collective regulatory requirements regarding patient information privacy protection: (a) the "Privacy Rule" in CFR 45 Part 160 and Part 164 pursuant to the Health Insurance Portability and Accountability Act ("HIPAA") of 1996; (b) Arizona laws, rules, and regulations applicable to PHI/ePHI that are not preempted by CFR45-160(B) or the Employee Retirement Income Security Act of 1974 ("ERISA")

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as amended; and (c) State's current and published PHI/ePHI privacy and security policies and procedures;

- 2.4.2. will cooperate with State in the course of performing under the Contract so that both State and Contractor stay in compliance with the requirements in (1) above; and
- 2.4.3. shall sign any documents that are reasonably necessary to keep both State and Contractor in compliance with the requirements in (1) above, in particular "Business Associate Agreements" (BAA) in accordance with the Privacy Rule.

NOTE: For convenience of reference only, the Privacy Rule is available at:

<http://www.hhs.gov/hipaa/for-professionals/privacy/index.html>

3. Information Technology Work

- 3.1. **Applicability.** Section 3 applies to any Invitation for Bids, Request for Proposals, or Request for Quotations for "Information Technology."
- 3.2. **Background Checks.** Each Contractor's personnel who is an applicant for an information technology position must undergo the security clearance and background check procedure, which includes fingerprinting, as required by A.R.S. § 41-710, Eligible Agency, or Co-Op Buyer. Contractor shall obtain and pay for the security clearance and background check. Contractor personnel who will have administrator privileges on a State network must additionally provide identity and address verification and undergo State-specified training for unescorted access, confidentiality, privacy, and Data security.
- 3.3. **Physical and Facility Access.** When Contractor personnel require physical access to a State facility, Contractor shall comply with all facility-access requirements. Where required by the facility, Contractor personnel shall be accompanied by an escort designated by the State.
- 3.4. **Information Access**
 - 3.4.1. **System Measures.** Contractor shall employ appropriate system management and maintenance, fraud prevention and detection, and encryption application and tools to any systems or networks containing or transmitting proprietary, sensitive, or Confidential State Data.
 - 3.4.2. **Individual Measures.** Contractor personnel shall comply with applicable State policies and procedures regarding Data access, privacy, and security, including prohibitions on remote access and obtaining and maintaining access identifications (IDs) and passwords. Contractor is responsible to State for ensuring that any State access IDs and passwords are used only by the person to whom they were issued. Contractor shall ensure that personnel are only provided the minimum only such level of access necessary to perform their duties. Contractor shall, on request, provide a current register of the access IDs and corresponding access levels currently assigned to its personnel.
 - 3.4.3. **External Access.** Contractor shall ensure that each external person requiring access to an AHCCCS system completes and submits the current External User Affirmation Statement before access is granted, annually thereafter, and whenever otherwise required by AHCCCS. Contractor shall maintain and, upon request, provide a current register of such users and their assigned access levels

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- 3.4.4. Access Control. Contractor is responsible to State for ensuring that hardware, software, Data, information, and that has been provided by State or belongs to or is in the custody of State and is accessed or accessible by Contractor personnel is only used in connection with carrying out the Work and is never commercially exploited in any manner whatsoever not expressly permitted under the Contract. State may restrict access of Contractor personnel, or instruct Contractor to restrict their access, if in its determination the requirements of this subparagraph are not being met.
- 3.5. Pass-Through Indemnity
- 3.5.1. Indemnity from Third Party. For computer hardware or software included in the Work as discrete units that were manufactured or developed solely by a third party, Contractor may satisfy its indemnification obligations under the Contract by, to the extent permissible by law, passing through to State such indemnity as it receives from the third-party source (each a "Pass-Through Indemnity") and cooperating with State in enforcing that indemnity. If the third party fails to honor its Pass-Through Indemnity, or if a Pass-Through Indemnity is insufficient to indemnify State Indemnitees to the extent and degree, Contractor is required to do by the Uniform Terms and Conditions, then Contractor shall indemnify, defend and hold harmless State Indemnitees to the extent the Pass-Through Indemnity does not.
- 3.5.2. Notification of Claims. State shall notify Contractor promptly of any claim to which a Pass-Through Indemnity might apply. Contractor, with reasonable consultation from State, shall control of the defense of any action on any claim to which a Pass-Through Indemnity applies, including negotiations for settlement or compromise, provided that:
- 3.5.2.1. State reserves the right to elect to participate in the action at its own expense;
- 3.5.2.2. State reserves the right to approve or reject any settlement or compromise on reasonable grounds and if done so timely; and
- 3.5.2.3. State shall in any case cooperate in the defense and any related settlement negotiations.
- 3.6. Systems and Controls. In consideration for State having agreed to permit Pass-Through Indemnities in lieu of direct indemnity, Contractor agrees to establish and keep in place systems and controls appropriate to ensure that State funds under this Contract are not knowingly used for the acquisition, operation, or maintenance of Materials or Services in violation of intellectual property laws or a third party's intellectual property rights.
- 3.7. Redress of Infringement
- 3.7.1. Replace, License, or Modify. If Contractor becomes aware that any Materials or Services infringe, or are likely to be infringing, on any third party's intellectual property rights, then Contractor shall, at its sole cost and expense and in consultation with State, either:
- 3.7.1.1. replace any infringing items with non-infringing ones;
- 3.7.1.2. obtain for State the right to continue using the infringing items; or
- 3.7.1.3. modify the infringing items so that they become non-infringing, so long as they continue to function as specified following the modification.

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- 3.7.2. Cancellation Option. In every case under 15.6.1, if none of those options can reasonably be accomplished, or if the continued use of the infringing items is impracticable, State may cancel the relevant Order or terminate the Contract, and Contractor shall take back the infringing items. If State does cancel the Order or terminates the Contract, Contractor shall refund to State:
 - 3.7.2.1. for any software created for State under the Contract, the amount State paid to Contractor for creating it;
 - 3.7.2.2. for all other Materials, the net book value of the product provided according to generally accepted accounting principles; and
 - 3.7.2.3. for Services, the amount paid by State or an amount equal to twelve (12) months of charges, whichever is less.
- 3.7.3. Exceptions. Contractor will not be liable for any claim of infringement based solely on any of the following by a State Indemnatee:
 - 3.7.3.1. modification or use of Materials other than as contemplated by the Contract or expressly authorized or proposed by a Contractor Indemnitor;
 - 3.7.3.2. operation of Materials with any operating software other than that supplied by Contractor or authorized or proposed by a Contractor Indemnitor; or
 - 3.7.3.3. combination or use with other products in a manner not contemplated by the Contract or expressly authorized or proposed by a Contractor Indemnitor.
- 3.8. Information Technology Warranty
 - 3.8.1. Specified Design. Where the Scope of Work for information technology, Work provides a detailed design specification or sets out specific performance requirements, Contractor warrants that the Work will provide all functionality material to the intended use stated in the Contract, provided that, the foregoing warranty does not extend to any portions of the Materials that are:
 - 3.8.1.1. modified or altered by anyone not authorized by Contractor to do so;
 - 3.8.1.2. maintained in a way inconsistent to any applicable manufacturer recommendations; or
 - 3.8.1.3. operated in a manner not within its intended use or environment.
 - 3.8.2. COTS Software. With respect to Materials provided under the Contract that are commercial-off-the-shelf (COTS) software, Contractor warrants that:
 - 3.8.2.1. to the extent possible, it will test the software before delivery using commercially available virus detection software conforming to current industry standards;
 - 3.8.2.2. the COTS software will, to the best of its knowledge, at the time of delivery be free of viruses, backdoors, worms, spyware, malware, and other malicious code that could hamper performance, collect unlawfully any personally identifiable information, or prevent products from performing as required by the Contract; and
 - 3.8.2.3. it will provide a new or clean install of any COTS software that State has reason to believe contains harmful code.
 - 3.8.3. Payment has no Effect. The warranties in this paragraph are not affected by State's inspection, testing, or payment.

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- 3.9. **Specific Remedies.** Unless expressly stated otherwise elsewhere in the Contract, State's remedy for breach of warranty under paragraph 15.8 includes, at State's discretion, re-performance, repair, replacement, or refund of any amounts paid by State for the nonconforming Work, plus (in every case) Contractor's payment of State's additional, documented, and reasonable costs to procure materials or services equivalent in function, capability, and performance that was first called for. For clarification of intent, the foregoing obligations are limited by the limitation of liability in paragraph 2.8. If none of the foregoing options can reasonably be affected, or if the use of the materials by State is made impractical by the nonconformance, then State may seek any remedy available to it under law.
- 3.10. **Section 508 Compliance.** Unless specifically authorized in the Contract, any electronic or information technology offered to the State of Arizona under this Contract shall comply with A.R.S. §18-131 and §18-132 and Section 508 of the Rehabilitation Act of 1973, which requires that employees and members of the public shall have access to and use of information technology (IT) that is comparable to the access and use by employees and members of the public who are not individuals with disabilities.
- 3.11. **Cloud Applications.** For cloud-based solutions which host State Data outside of the State's network, or transmit and/or receipt of State Data, the terms under Section 3 on AZDOHS Information Security Program Requirements also apply.
4. **AZDOHS Information Security Program, Warranties, and Requirements**
- 4.1. **Applicability.** Section 4 applies when a cloud-based solution is being employed which hosts State Data outside of the State's network or transmits and/or receives State Data. These requirements may also apply to professional services providers as indicated in the Scope of Work.
- 4.2. For any system or solution that processes, stores, transmits, or shares AHCCCS member information, the Contractor shall comply with applicable ARC-AMPE and HIPAA requirements, and shall submit required compliance artifacts in the form and cadence specified by AHCCCS.
- 4.3. **Security Assessment Requirements.** Contractor shall ensure that any Software as a Service (SaaS), Platform as a Service (PaaS), or Infrastructure as a Service (IaaS) product utilized to process, transmit, or store State Data comply with the Statewide Information Security Program Requirements. Contractor shall ensure that systems, services, and supporting processes comply with applicable State of Arizona security requirements aligned with the NIST Cybersecurity Framework 2.0 and NIST SP 800-53, Rev. 5. AZDOHS has designated GovRAMP as the preferred method for assessing and authorizing Contractors against the Statewide Information Security Program requirements. Specific GovRAMP requirements for this contract, if any, are identified in the Scope of Work. Alternative means to satisfy this requirement may be accepted by the State at its sole discretion. AHCCCS will accept FedRAMP, GovRAMP, HITRUST, or CMS ARC-AMPE certifications.
- 4.4. Contractor shall comply with all applicable statewide enterprise architecture requirements; the most current State of Arizona information technology and information security policies, procedures, and standards from: the Arizona Strategic Enterprise Technology (ADOA-ASET); the Arizona Department of Homeland Security (AZDOHS) Information Security; Adherence to HIPAA (45 CFR §160, 162, and 164), Medicaid Confidentiality (42 CFR §431.300 et seq), and Substance Use Disorder Records (42 CFR §Part

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2); and any other agency-specific policies, procedures, and standards relating to information security and technology.

- 4.5. Contractor shall comply with all federal and State laws, most current versions of all applicable policies, procedures, standards, and contractual requirements. Applicable authorities may include HIPAA, CMS security and privacy requirements, Arizona statutes, records-retention requirements, and Payment Card Industry Security Standards (if applicable). If requirements conflict, Contractor shall promptly notify the State and comply with the more protective requirement unless otherwise directed in writing by the State. References and links in the Contract are provided for convenience only and do not relieve Contractor of its obligation to identify and comply with current requirements.

NOTE (1): For convenience of reference only, policies, procedures, and standards for ADOA-ASET can be found at: <https://aset.az.gov/policies-standards-and-procedures>

and for AZDOHS at
<https://azdohs.gov/information-technology-it-policies-standards-and-procedures>

- 4.6. Supplemental Security Assessments and Testing.
- 4.6.1. State reserves the right to conduct, hire a third party to conduct, or require the Contractor to hire an approved third party to conduct penetration tests, risk assessments, or vulnerability assessments of the Contractor's applications and environment. The Contractor will be alerted in advance of any assessment to establish a mutually agreeable timeline. Contractor shall respond to all flaws deemed serious by the State by providing an acceptable timeframe to resolve the issues and/or implement compensating controls.
- 4.6.2. Contractor shall promptly address vulnerabilities identified by the State or the security assessor. For each critical or high-risk vulnerability, Contractor shall complete corrective action within the applicable CMS-required remediation timeframe. If timely remediation is not feasible, Contractor shall document the risk, implement State-approved compensating controls, and obtain AHCCCS approval of a remediation plan and completion date before the applicable deadline expires
- 4.6.3. Other cybersecurity frameworks, trust documents, reports, and attestations, including, SOC 2 Type II reports, PCI compliance documentation (if applicable), HIPAA reports of compliance, and self-attestations, may be reviewed as supplemental evidence but shall not constitute exclusive or conclusive evidence that the Contractor has satisfied the State's risk assessment requirements.
- 4.6.4. Security Documentation and Compliance Reviews. At the State's request, Contractor shall provide the following items for review: System Logs from the Cloud system, delivered in the format, scope, timeframe, retention period, and secure transmission method specified by AHCCCS for analysis by AHCCCS Compliance and Security teams; Logs shall be complete, accurate, protected from unauthorized alteration or disclosure, and retained in accordance with applicable security, privacy, and records-retention requirements; Information Security Policies including, but not limited to, System Security Plans (SSP), Written Information Security Programs (WISP), or supporting written IT policies; and Third-Party Compliance Reports such as

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Cybersecurity Frameworks (CSF) data, Trust Documents, Self-Attestations, and industry compliance reports (including, but not limited to, SOC 2 Type II, SOC 3, PCI, or HIPAA).

- 4.6.5. The System Security Plan (SSP) shall include, at a minimum: system identification; applicable security and privacy controls; detailed configuration settings; diagrams; software and hardware inventories; the Information Security Risk Assessment (ISRA); Privacy Impact Assessment (PIA); Plan of Action and Milestones (POA&M); the independent Security Assessment Report (SAR); and an attestation by an authorized Contractor representative that the submission is complete and accurate.

- 4.6.5.1. The content of the Contractor's Information Security documentation will be held confidentially by the State and not subject to public records requests. Any requested Information Security documentation will be deleted once the review of the documentation is completed and any identified deficiencies are corrected.

- 4.6.5.2. Secure transfer of the requested documents can be coordinated with AZDOHS by emailing: GRC@AZDOHS.gov.

- 4.7. The State shall not be required to sign any Non-Disclosure Agreements (NDA) in order to review any requested information in this section.
- 4.8. Contractor must employ a government-rated Cloud compartment to better protect sensitive or regulated State Data.

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Compliance Documentation	Submission Timeline
• Current FedRAMP authorization, (if a cloud product is also enrolled in the GovRAMP Fast Track Program), or • GovRAMP Ready or Authorized Status, or equivalent current StateRAMP certification, certification for state-level cloud services, or • Current HITRUST certification, or • SOC 2 Type II Report (issued from a completed SSAE 18 assessment), or • A Security and Privacy Controls Assessment Report (SAR) performed by an independent third-party	• Include with proposal submission • Annually throughout the life of the contract
• Penetration Testing and Security and Privacy Controls Assessment Report (SAR) performed by an independent third-party.	• Prior to execution of the contract (if not included with proposal submission) • Annually
• AHCCCS Electronic Data Exchange Request Form	• Prior to execution of the contract (if not included with proposal submission) • Annually
• External User Affirmation Statement	• Prior to execution of the contract (if not included with proposal submission) • Annually
• System Security & Privacy Plan	• Prior to execution of the contract (if not included with proposal submission) • Annually
• Contingency Plan and Test Plan	• Prior to execution of the contract (if not included with proposal submission) • Annually
• Contingency Plan Test Results	• Prior to execution of the contract (if not included with proposal submission) • Annually
Incident Response Plan (IRP)	• Prior to execution of the contract (if not included with proposal submission) • Annually
Disaster Recovery Plan (DRP)	• Prior to execution of the contract (if not included with proposal submission) • Annually
Information Security Risk Assessment (ISRA)	• Prior to execution of the contract (if not included with proposal submission) • Every 3 years thereafter

UNIFORM TERMS AND CONDITIONS

[Uniform Terms and Conditions](#)

Version 10.5

1. Definition of Terms. As used in this Solicitation and any resulting contract, the terms listed below are defined as follows:
 - 1.1. "AI" means the science and engineering of making machines capable of performing tasks that are typically associated with human intelligence, such as learning and problem-solving, and includes without limitation: AI systems, classic AI, external AI, generative AI, and large language model (LLM) AI.
 - 1.2. "Attachment" means any item the Solicitation which requires the Offeror to submit as part of the Offer.
 - 1.3. "Contract" means the combination of the Solicitation, including the Instructions to Offerors, the Uniform and Special Terms and Conditions, and the Specifications and Statement or Scope of Work; the Offer and any Best and Final Offers; and any Solicitation Amendments or Contract Amendments.
 - 1.4. "Contract Amendment" means a written document signed by the Procurement Officer that is issued for the purpose of making changes in the Contract.
 - 1.5. "Contractor" means any person who has a Contract with the State.
 - 1.6. "Data" means recorded information, regardless of form or the media on which it may be recorded. The term may include technical data and computer software. The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing, or management information.
 - 1.7. "Days" means calendar days unless otherwise specified.
 - 1.8. "Exhibit" means any item labeled as an Exhibit in the Solicitation or placed in the Exhibits section of the Solicitation generally containing maps, schematics, examples of reports, or other documents that will be used to perform the requirements of the Scope of Work after contract award.
 - 1.9. "Gratuity" means 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.
 - 1.10. "Materials" means 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.
 - 1.11. "Procurement Officer" means the person, or his or her designee, duly authorized by the State to enter into and administer Contracts and make written determinations with respect to the Contract.
 - 1.12. "Services" means the furnishing of labor, time or effort by a Contractor or Subcontractor which does not involve the delivery of a specific end product other than required reports and performance, but does not include employment agreements or collective bargaining agreements.
 - 1.13. "State" means any department, commission, council, board, bureau, committee, institution, agency, government corporation or other establishment or official of the executive branch or corporation commission of the State of Arizona that executes the Contract.
 - 1.14. "State Fiscal Year" means the period beginning with July 1 and ending June 30.
 - 1.15. "Subcontract" means 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 Materials or any Services required for the performance of the Contract.
 - 1.16. "Subcontractor" means a person who contracts to perform work or render Services to a Contractor or to another Subcontractor as a part of a Contract with the State.

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2. Contract Interpretation

- 2.1. Arizona Law. The Arizona law applies to this Contract including, where applicable, the Uniform Commercial Code as adopted by the State of Arizona and the Arizona Procurement Code, Arizona Revised Statutes (A.R.S.) Title 41, Chapter 23, and its implementing rules, Arizona Administrative Code (A.A.C.) Title 2, Chapter 7.
- 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 Parol 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 any and all Data and other "records" relating to the acquisition and performance of the Contract for a period of five (5) 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 Nos. 2023-09, 2023-01, 2009-09, and any and all other applicable Federal and State laws, rules and regulations, including the Americans with Disabilities Act. Contractor shall include these provisions in contracts with Subcontractors when required by Federal or State law.
- 3.3. Audit. Pursuant to A.R.S. § 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 as required under A.R.S. § 41-2547. 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 non-compliance 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

UNIFORM TERMS AND CONDITIONS

Contract. Notices to the State required by the Contract shall be made by the Contractor to the Solicitation Contact Person indicated on the Solicitation, stated in the Contract, or listed on the State's eProcurement system. An authorized Procurement Officer and an authorized Contractor representative may change their respective person to whom notice shall be given by written notice to the other and an amendment to the Contract shall not be necessary.

- 3.6. Advertising, Publishing and Promotion of Contract. The Contractor shall not use, advertise or promote information for commercial benefit concerning this Contract without the prior written approval of the Procurement Officer.
- 3.7. Continuous Improvement. Contractor shall recommend continuous improvements on an on-going basis in relation to any Materials and Services offered under the Contract, with a view to reducing State costs and improving the quality and efficiency of the provision of Materials or Services. State may require Contractor to engage in continuous improvements throughout the term of the Contract.
- 3.8. Other Contractors. State may undertake on its own or award other contracts to the same or other suppliers for additional or related work. In such cases, the Contractor shall cooperate fully with State employees and such other suppliers and carefully coordinate, fit, connect, accommodate, adjust, or sequence its work to the related work by others. Where the Contract requires handing-off Contractor's work to others, Contractor shall cooperate as State instructs regarding the necessary transfer of its work product, Materials, Services, or records to State or the other suppliers. Contractor shall not commit or permit any act that interferes with the State's or other suppliers' performance of their work, provided that, State shall enforce the foregoing section equitably among all its suppliers so as not impose an unreasonable burden on any one of them.
- 3.9. Ownership of Intellectual Property
 - 3.9.1. Rights In Work Product. All intellectual property originated or prepared by Contractor pursuant to the Contract, including but not limited to, inventions, discoveries, intellectual copyrights, trademarks, trade names, trade secrets, technical communications, records reports, computer programs and other documentation or improvements thereto, including Contractor's administrative communications and records relating to the Contract, are considered work product and Contractor's property, provided that, State has Government Purpose Rights to that work product as and when it was delivered to State.
 - 3.9.2. "Government Purpose Rights" are:
 - 3.9.2.1. the unlimited, perpetual, irrevocable, royalty free, non-exclusive, worldwide right to use, modify, reproduce, release, perform, display, sublicense, disclose and create derivatives from that work product without restriction for any activity in which State is a party;
 - 3.9.2.2. the right to release or disclose that work product to third parties for any State government purpose; and
 - 3.9.2.3. the right to authorize those to whom it rightfully releases or discloses that work product to use, modify, release, create derivative works from the work product for any State government purpose; such recipients being understood to include the federal government, the governments of other states, and various local governments.
 - 3.9.3. "Government Purpose Rights" do not include any right to use, modify, reproduce, perform, release, display, create derivative works from or disclose that work product for any commercial purpose, or to authorize others to do so.

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- 3.9.4. Joint Developments. The Contractor and State may each use equally any ideas, concepts, know-how, or techniques developed jointly during the course of the Contract, and may do so at their respective discretion, without obligation of notice or accounting to the other party.
- 3.9.5. Pre-existing Material. All pre-existing software and other Materials developed or otherwise obtained by or for Contractor or its affiliates independently of the Contract or applicable Purchase Orders are not part of the work product to which rights are granted State under subparagraph 3.9.1 above, and will remain the exclusive property of Contractor, provided that:
- 3.9.5.1. any derivative works of such pre-existing Materials or elements thereof that are created pursuant to the Contract are part of that work product;
 - 3.9.5.2. any elements of derivative work of such pre-existing Materials that was not created pursuant to the Contract are not part of that work product; and
 - 3.9.5.3. except as expressly stated otherwise, nothing in the Contract is to be construed to interfere or diminish Contractor's or its affiliates' ownership of such pre-existing Materials.
- 3.9.6. Developments Outside Of Contract. Unless expressly stated otherwise in the Contract, this Section does not preclude Contractor from developing competing Materials outside the Contract, irrespective of any similarity to Materials delivered or to be delivered to State hereunder.
- 3.10. Property of the State. If there are any materials that are not covered by Section 3.9 above created under this Contract, including but not limited to, reports and other deliverables, these materials 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.
- 3.11. Federal Immigration and Nationality Act. 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, 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 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 or debarment of the contractor.
- 3.12. 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 Section A.R.S. § 23- 214, Subsection A.
- 3.13. Offshore Performance of Work Involving Data is 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 Data shall be performed within the defined territories of the United States.
- 3.14. Protection of State Cybersecurity Interests. The Contractor shall comply with State Executive Order No. 2023-10, which includes, but is not limited to, a prohibition against (a) downloading and installing of TikTok on all State-owned and State-leased information technology; and (b) accessing TikTok through State information technology.
- 3.15. Artificial Intelligence (AI) Prohibitions. Consistent with State policy, if Contractor supplies AI Services or Materials (either directly or through Subcontractors or the sale of licenses), such as research,

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development, training, implementation, deployment, maintenance, provision, or sale of AI systems, then Contractor is prohibited from using State of Arizona Materials or Data in generative AI queries or for building or training proprietary generative AI programs unless explicitly approved in advance by the State in writing.

3.15.1. Contractor shall also disclose the utilization of generative AI before producing works owned by the State and/or integrating generative AI into Materials or Services used by the State.

3.15.2. Contractor shall perform due diligence to ensure proper licensure of model training data for all generative AI services throughout the life of the Contract.

3.16. Certifications Required by State Law.

3.16.1. If Contractor is a Company, as defined in A.R.S. § 35-393, Contractor certifies that it is not currently engaged in a boycott of Israel as described in A.R.S. §§ 35-393 *et seq.* and will refrain from any such boycott for the duration of this Contract.

3.16.2. Contractor further certifies that it shall comply with A.R.S. § 35-394, regarding use of the forced labor of ethnic Uyghurs, as applicable.

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 Materials 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, per A.R.S. § 47-2319, all prices shall be F.O.B. (“free on board”) Destination and shall include all freight delivery and unloading at the destination.

4.3. Applicable Taxes

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

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

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

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

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

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

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- 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.
- 4.6. Should the funding for this contract become unavailable, discontinued, paused, or restructured for any reason, including State or Federal funding adjustments, the contract may be temporarily or permanently stopped, and the contract may be terminated or cancelled in whole or in part as directed by AHCCCS in writing.

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 Services or Materials, the revision of payment terms, or the substitution of Services 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 as described in Arizona State Procurement Office Standard Procedure 002. The Contractor shall clearly list any proposed Subcontractors and the Subcontractor's proposed responsibilities. The Subcontract shall incorporate by reference the terms and conditions of this Contract.
- 5.3. Assignment and Delegation. The Contractor shall not assign any right nor delegate any duty under this Contract without the prior written approval of the Procurement Officer. The State shall not unreasonably withhold approval.

6. Risk and Liability

- 6.1. Risk of Loss. The Contractor shall bear all loss of conforming Materials 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 (Not Public Agency). 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

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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 Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, 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 Subcontractor(s) is/are an agency, board, commission or university of the State of Arizona.

- 6.2.2. Public Agency Language Only. Each party (as 'indemnitor') agrees to indemnify, defend, and hold harmless the other party (as 'indemnitee') from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as 'claims') arising out of bodily injury of any person (including death) or property damage but only to the extent that such claims which result in vicarious/derivative liability to the indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the indemnitor, its officers, officials, agents, employees, or volunteers.
- 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 paragraph shall not apply.
- 6.4. Force Majeure.
- 6.4.1. Except for payment of sums due, neither the Contractor nor State 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, 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, Materials, or Services 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.

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- 6.4.3. If either the Contractor or State is delayed at any time in the progress of the work by force majeure, the delayed party shall notify the other party in writing of such delay, as soon as is practicable and no later than the following working day, of the commencement thereof and shall specify the causes of such delay in such notice. Such notice shall be delivered or mailed certified-return receipt and shall make a specific reference to this article, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by Contract Amendment for a period of time equal to the time that results or effects of such delay prevent the delayed party from performing in accordance with this Contract.
- 6.4.4. Any delay or failure in performance by either party hereto shall not constitute default hereunder or give rise to any claim for damages or loss of anticipated profits if, and to the extent that such delay or failure is caused by force majeure.
- 6.5. Third Party Antitrust Violations. The Contractor assigns to the State any claim for overcharges resulting from antitrust violations to the extent that those violations concern Materials or Services supplied by third parties to the Contractor, toward fulfillment of this Contract.

7. Warranties

- 7.1. Liens. The Contractor warrants that the Materials supplied under this Contract are free of liens and shall remain free of liens.
- 7.2. Quality. Unless otherwise modified elsewhere in the Special Terms and Conditions, the Contractor warrants that, for one (1) 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. Conformity to Requirements.
- 7.3.1. Contractor warrants that, unless expressly provided otherwise elsewhere in the Contract, the Materials and Services will for one (1) year after acceptance and in each instance:
 - 7.3.1.1. Conform to the requirements of the Contract, which by way of reminder include without limitation all descriptions, specifications, and drawings identified in the Scope of Work and any and all Contractor affirmations included as part of the Contract;
 - 7.3.1.2. Be free from defects of material and workmanship;
 - 7.3.1.3. Conform to or perform in a manner consistent with current industry standards; and
 - 7.3.1.4. Be fit for the intended purpose or use described in the Contract.
 - 7.3.2. Mere delivery or performance does not substitute for express acceptance by the State. Where inspection, testing, or other acceptance assessment of Materials or Services cannot

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be done until after installation or invoicing, the forgoing warranty will not begin until State's explicit acceptance of the Materials or Services.

- 7.4. Inspection/Testing. The warranties set forth in this Section 7 [Warranties] are not affected by inspection or testing of or payment for the Materials or Services by the State.
- 7.5. Contractor Personnel. Contractor warrants that its personnel will perform their duties under the Contract in a professional manner, applying the requisite skills and knowledge, consistent with industry standards, and in accordance with the requirements of the Contract. Contractor further warrants that its key personnel will maintain any and all certifications relevant to their work, and Contractor shall provide individual evidence of certification to State's authorized representatives upon request.
- 7.6. Compliance With Applicable Laws. The Materials and Services supplied under this Contract shall comply with all applicable federal, state, and local laws and policies (including, but not limited to, information technology policies, standards, and procedures available on the State's website and/or the website of any department, commission, council, board, bureau, committee, institution, agency, government corporation or other establishment or official of the executive branch or corporation commission of the State of Arizona). Federal requirements may be incorporated into this Contract, if required, pursuant to A.R.S. § 41-2637. Contractor shall maintain any and all applicable license and permit requirements. This requirement includes, but is not limited to, any and all Arizona state statutes that impact state contracts, regardless of whether those statutory references have been removed during the course of contract negotiations; this is notice to Contractors that the State does not have the authority to modify Arizona state law by contract.
- 7.7. Intellectual Property. Contractor warrants that the Materials and Services do not and will not infringe or violate any patent, trademark, copyright, trade secret, or other intellectual property rights or laws, except only to the extent the Specifications do not permit use of any other product and Contractor is not and cannot reasonably be expected to be aware of the infringement or violation.
- 7.8. Licenses and Permits. Contractor warrants that it will maintain all licenses required to fully perform its duties under the Contract and all required permits valid and in force.
- 7.9. Operational Continuity. Contractor warrants that it will perform without relief notwithstanding being sold or acquired; no such event will operate to mitigate or alter any of Contractor's duties hereunder absent a consented delegation under paragraph 5.3 [Assignment and Delegation] that expressly recognizes the event.
- 7.10. Performance in Public Health Emergency. Contractor warrants that it will:
 - 7.10.1. Have in effect, promptly after commencement, a plan for continuing performance in the event of a declared public health emergency that addresses, at a minimum:
 - 7.10.1.1. Identification of response personnel by name;
 - 7.10.1.2. Key succession and performance responses in the event of sudden and significant decrease in workforce; and
 - 7.10.1.3. Alternative avenues to keep sufficient product on hand or in the supply chain.
 - 7.10.2. Provide a copy of its current plan to State within three (3) business days after State's written request. If Contractor claims relief under paragraph 6.4 [Force Majeure] for an occurrence of force majeure that is a declared public health emergency, then that relief will be conditioned on Contractor having first implemented its plan and exhausted all reasonable

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opportunity for that plan implementation to overcome the effects of that occurrence, or mitigate those effects to the extent that overcoming entirely is not practicable.

7.10.3. A request from the State related to this paragraph 7.10 does not necessarily indicate that there has been an occurrence of force majeure, and the Contractor will not be entitled to any additional compensation or extension of time by virtue of having to implement a plan.

7.10.4. Failure to have or implement an appropriate plan will be a material breach of contract.

7.11. Lobbying

7.11.1. Prohibition. Contractor warrants that it will not engage in lobbying activities, as defined in 40 Code of Federal Regulations (CFR) part 34 and A.R.S. § 41-1231, *et seq.*, using monies awarded under the Contract, provided that, the foregoing does not intend to constrain Contractor's use of its own monies or property, including without limitation any net proceeds duly realized under the Contract or any value thereafter derived from those proceeds; and upon award of the Contract, it will disclose all lobbying activities to State to the extent they are an actual or potential conflict of interest or where such activities could create an appearance of impropriety. Contractor shall implement and maintain adequate controls to assure compliance with above. Contractor shall obtain an equivalent warranty from all Subcontractors and shall include an equivalent no-lobbying provision in all Subcontracts.

7.11.2. Exception. This paragraph 7.11 does not apply to the extent that the Services are defined in the Contract as being lobbying for State's benefit or on State's behalf.

7.12. Covered Telecommunications or Services. Contractor warrants that the Materials and Services rendered under this Agreement will not require Contractor to use for the State, or provide to the State to use, "covered telecommunications equipment or Services" as a substantial or essential component of any system, or as critical technology as part of any system, within the meaning of Federal Acquisition Regulation ("FAR") Section 52.204-25.

7.13. Debarment, Suspension, U.S. Government Restricted Party Lists. Contractor warrants that it is not, and its Subcontractors are not, on the U.S. government's Denied Parties List, the Unverified List, the Entities List, the Specially Designated Nationals and Blocked Parties List, and neither the Contractor nor any Subcontractors are presently debarred, suspended, proposed for debarment or otherwise declared ineligible for award of federal contracts or participation in federal assistance programs or activities.

7.14. False Statements. Contractor represents and warrants that all statements and information Contractor prepared and submitted in response to the Solicitation or as part of the Contract documents are current, complete, true, and accurate. If the Procurement Officer determines that Contractor submitted an Offer or Bid with a false statement, or makes material misrepresentations during the performance of the Contract, the Procurement Officer may determine that Contractor has materially breached the Contract and may void the submitted Offer or Bid and any resulting Contract.

7.15. Survival of Rights and Obligations after Contract Expiration or Termination.

7.15.1. Survival of Warranty. All representations and warranties made by Contractor under the Contract will survive the expiration or earlier termination of the Contract.

7.15.2. 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

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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.

- 7.15.3. Purchase Orders. The Contractor shall, in accordance with all terms and conditions of the Contract, fully perform and shall be obligated to comply with all purchase orders received by the Contractor prior to the expiration or termination hereof, unless otherwise directed in writing by the Procurement Officer, including, without limitation, all purchase orders received prior to but not fully performed and satisfied at the expiration or termination of this Contract.

8. State's Contractual Remedies

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

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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 with 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 (3) 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 or Services accepted before the effective date of the termination. The cost principles and procedures provided in A.R.S. § 41-2543 and A.A.C. Title 2, Chapter 7, Article 7, shall apply.
- 9.5. Termination for Default.
 - 9.5.1. In addition to the rights reserved in the contract, the State may terminate the Contract in whole or in part due to the failure of the Contractor to comply with any term or condition of the Contract, to acquire and maintain all required insurance policies, bonds, licenses and permits, or to make satisfactory progress in performing the Contract. The Procurement Officer shall provide written notice of the termination and the reasons for it to the Contractor.
 - 9.5.2. Upon termination under this paragraph, all goods, Materials, documents, Data, and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the State on demand.
 - 9.5.3. The State may, upon termination of this Contract, procure, on terms and in the manner that it deems appropriate, Materials or Services to replace those under this Contract. The

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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. Contract Claims. 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.
11. 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 (A.R.S. Title 41).

HIPAA Business Associate Addendum

[HIPAA BAA](#)

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:

- 2.1. Not use or disclose protected health information ("PHI") other than as permitted or required by this Addendum or as required by law;
- 2.2. 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;
- 2.3. 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;
 - 2.3.1. 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:
 - 2.3.1.1. A description of the nature of the unauthorized use or disclosure, including the number of individuals affected by the unauthorized use or disclosure;
 - 2.3.1.2. A description of the PHI used or disclosed;
 - 2.3.1.3. The date(s) on which the unauthorized use or disclosure occurred;
 - 2.3.1.4. The date(s) on which the unauthorized use or disclosure was discovered;
 - 2.3.1.5. Identify the person(s) who used or disclosed the PHI in an unauthorized manner;

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- 2.3.1.6. Identify the person(s) who received PHI disclosed in an unauthorized manner;
- 2.3.1.7. A description of actions, efforts, or plans undertaken by the Business associate to mitigate the harm of the unauthorized disclosure;
- 2.3.1.8. A description of corrective actions undertaken or planned to prevent future similar unauthorized use or disclosure;
- 2.3.1.9. An assessment of whether a breach, as defined in 45 CFR 164.402, including, if necessary, an assessment of the probability of harm, and
- 2.3.1.10. Such other information, as may be reasonably requested by the AHCCCS Privacy Official.
- 2.3.2. 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.
- 2.3.3. 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.
- 2.3.4. 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.
- 2.4. 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;
- 2.5. Make available PHI in a designated record set to AHCCCS as necessary to satisfy AHCCCS' obligations under 45 CFR §164.524;
- 2.6. 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;
- 2.7. 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;
- 2.8. To the extent Business Associate is to carry out one or more of AHCCCS' obligations under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to AHCCCS in the performance of such obligation(s); and
- 2.9. 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

- 3.1. Business Associate may only use or disclosure PHI as necessary to perform the services and obligations set forth in the underlying Contract;
- 3.2. Business Associate may use or disclose protected health information as required by law;
- 3.3. 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).

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- 3.4. 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);
- 3.5. 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
- 3.6. 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

- 4.1. 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;
- 4.2. 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
- 4.3. 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

- 5.1. 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.
- 5.2. 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.
- 5.3. 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:
 - 5.3.1. Retain only that PHI which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities;
 - 5.3.2. Destroy or return to AHCCCS all remaining PHI that the Business Associate still maintains in any form;
 - 5.3.3. 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;
 - 5.3.4. 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
 - 5.3.5. 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.

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- 5.4. Survival: The obligations of Business Associate under this Section shall survive the termination of the Contract.

6. INDEMNIFICATION AND MISCELLANEOUS

- 6.1. 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.
- 6.2. Regulatory References: A reference in this Addendum to a section in the HIPAA rules means the section as in effect or as amended.
- 6.3. 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.
- 6.4. Interpretation: Any ambiguity in this Addendum shall be interpreted to permit compliance with the HIPAA rules.

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END OF SOLICITATION