



INTERGOVERNMENTAL AGREEMENT
Agreement #YH23-0002-04 1

This Intergovernmental Agreement ("Agreement") is entered into by and between the Arizona Health Care Cost Containment System ("AHCCCS"), the agency of the State of Arizona authorized to administer the Medicaid and behavioral health systems in the State of Arizona, and the Navajo Nation, a federally-recognized Indian Tribe.

Project Title: Tribal ALTCS Case Management Services

WHEREAS, AHCCCS has authority to contract for services specified herein in accordance A.R.S. Title 36, Chapters 29 and 34, and A.R.S. §§ 11-951 and 11-952; and

WHEREAS, the Navajo Nation has the authority to contract for the performance of the services provided herein pursuant to the laws, rules and sovereign authority of the Navajo Nation; and

NOW, THEREFORE, the Navajo Nation and AHCCCS (collectively, the "Parties" or individually, a "Party"), pursuant to the above and in consideration of the matters set forth herein, do mutually agree as follows:

Navajo Nation

Jonathan Nez 07-07-2022
Signature date
Jonathan Nez
Printed Name
President
Title

AHCCCS

Meggan LaPorte (Jul 11, 2022 11:15 PDT)
Signature date
Meggan LaPorte, CPPO, MSW
Printed Name
Chief Procurement Officer
Title

This Agreement has been reviewed by the undersigned Tribal Government Attorney who has determined that this Agreement is in the appropriate form and is within the power and authority of the Tribal Contractor.

LATONIA B. JOHNSON 7/5/22
Signature date
LATONIA B. JOHNSON
Printed Name
Assistant Attorney General
Title

In accordance with A.R.S. § 11-952, this Agreement has been reviewed by the undersigned General Counsel of the agency, who has determined that the Agreement is in the proper form and is within the powers granted under the laws of the State of Arizona to AHCCCS.

Nicole Fries (Jul 7, 2022 14:21 PDT)
Signature date
Nicole Fries
Printed Name
Associate General Counsel
Title

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## SCOPE OF WORK

### 1. Background and Purpose.

- 1.1. The Navajo Nation and the State of Arizona, through AHCCCS, recognize that it is beneficial to acknowledge and understand the history of the Navajo Nation, and the significance of that history in the healing of the Navajo people through the provision of services accessible through the Arizona Long Term Care System ("ALTCS"). While each Indian Tribe has its own unique history and culture, all share a common experience of trauma and immense loss. It is recognized that history affects the health of American Indians today, especially that of tribal elders who struggled for survival. The State of Arizona, through AHCCCS, acknowledges the need to form a partnership with the Navajo Nation to meet the health needs of tribal members eligible for ALTCS. The State recognizes the sovereign right of the Navajo Nation to determine the applicability of and the extent to which its tribal values and belief systems will be incorporated into the services it provides to tribal members eligible for ALTCS.
- 1.2. This Agreement reiterates the commitment to the government-to-government relationship that exists between the State of Arizona and the Navajo Nation. The development and implementation of the Agreement is in recognition of this special relationship.
- 1.3. The State of Arizona, through AHCCCS, recognizes the right of tribal governments to self-govern, and supports tribal sovereignty and self-determination.
- 1.4. AHCCCS has the authority to administer the Medicaid and behavioral health systems in the State of Arizona. The purpose of this Agreement is to delegate from AHCCCS to the Tribe the duties described herein.
- 1.5. The Tribe agrees to use the funding provided through this Agreement to administer the programs described in this Agreement solely for the benefit of individuals and families who:
  - 1.5.1. Are members of a federally-recognized Indian Tribe and/or their dependents;
  - 1.5.2. Reside in or near the Navajo Nation; and
  - 1.5.3. Have been determined by AHCCCS to be eligible for ALTCS services on a fee-for-service basis.
- 1.6. Throughout this Agreement, "day" or "days" means "calendar day" or "calendar days" unless otherwise specified.
- 1.7. Throughout this Agreement, the individuals and families who are eligible for the Tribe's services will be referred to as "Members."

### 2. Enrollment of Members.

- 2.1. On an initial and ongoing basis, AHCCCS will determine whether an individual qualifies for ALTCS services and whether an individual qualifies for the Tribe's services.
  - 2.1.1. If a Member chooses to receive services through the Tribe, AHCCCS will enroll the Member with the Tribe.
  - 2.1.2. AHCCCS will provide the Tribe with daily notification of any action taken by AHCCCS to enroll or disenroll Members with the Tribe.
  - 2.1.3. On a monthly basis, AHCCCS will provide the Tribe with a list of Members enrolled with the Tribe.

2.1.4. Under certain circumstances, such as a Member's temporary absence from the State of Arizona, a Member will remain on ALTCS but qualify solely for acute care services. If a Member becomes eligible only for acute care services, AHCCCS will notify the Tribe of this change.

2.2. Member Change Report. In addition to the requirements of AMPM Exhibit 1620-2, the Tribe will file a Member Change Report under the following circumstances:

2.2.1. Within two business days, the Tribe will notify AHCCCS of any change in a Member's demographic information (e.g. change in residence or placement; the Member's death; etc.).

2.2.2. Within two business days, the Tribe will notify AHCCCS of any change in a Member's circumstances that may affect ALTCS eligibility, the Member's share of cost, or AHCCCS' responsibility to pay for services (e.g. change in Member's income or resources; placement into the Arizona State Hospital or another public institution such as a jail or prison; the existence of third party liability; the Member's refusal to receive ALTCS services; etc.).

2.2.3. Within two business days, the Tribe will notify AHCCCS when a Member becomes absent from the State of Arizona for more than thirty days or plans to leave the State of Arizona for more than thirty days.

### 3. Case Management.

3.1. In addition to the provisions below, the Tribe will provide case management services in compliance with the requirements of AHCCCS Medical Policy Manual ("AMPM") Chapter 1600, which is expressly incorporated by reference into, and made a substantive part of, this Agreement.

3.2. AMPM Section 1630(C)(5) and (J) are excluded from this Agreement. In those sections of AMPM Section 1630, policy and and this Agreement conflict, therefore this Agreement controls.

### 4. Provider Network.

4.1. The Tribe will refer Members to AHCCCS-registered providers, including Indian Health Services and Tribally-owned/operated 638 system providers.

4.2. AHCCCS will notify the Tribe of changes to the Fee-for-Service provider network due to provider terminations or suspensions. If AHCCCS makes such a change to the provider network, the Tribe will collaborate with AHCCCS' Division of Fee-For-Service Management ("AHCCCS-DFSM") to ensure Members' continuity of care by identifying Members who need to transition to a different provider.

#### 4.3. Network Assistance

4.3.1. The Tribe will track gaps in accessibility of services needed by Members, including identifying barriers to accessing care.

4.3.2. Within five business days of identifying any gaps in AHCCCS-DFSM's provider network and/or any barriers to accessing care, the Tribe will notify AHCCCS of those identified gaps and/or barriers.

4.3.3. The Tribe will assist AHCCCS in identifying any gaps in AHCCCS-DFSM's provider network involving providers with specialized health competencies for children/adolescents and adults including developmental disability, sexual offender treatment, sexual abuse trauma, and adolescent substance abuse services.

4.3.4. The Tribe will assist AHCCCS in identifying the number of providers competent in delivering services to Members with developmental disabilities and the number of providers with bilingual capabilities (including sign language).

4.3.5. Nothing in this section will be construed to require the Tribe to provide AHCCCS with an "inventory" of providers serving Members.

- 4.4. The Tribe will track and notify AHCCCS of out of state placements.
- 4.5. The Tribe will collaborate with AHCCCS to ensure that providers will not be restricted or inhibited in any way from communicating freely with, or advocating for, persons regarding:
  - 4.5.1. Medical and behavioral health needs and treatment options, even if those service options are not covered by AHCCCS or if an alternative treatment is self-administered;
  - 4.5.2. Any information the Member needs in order to decide among all relevant treatment options;
  - 4.5.3. The risks, benefits, and consequences of treatment or non-treatment; and
  - 4.5.4. The Member's right to participate in decisions regarding his or her health care, including the right to refuse treatment, and to express preferences about future treatment decisions.
5. **Person-Centered Service Planning.** In addition to the requirements of AMPM Chapter 1600, the Tribe will comply with the following:
  - 5.1. Except for the services described below in Sections 5.2 and 5.3, the Tribe may authorize placements and services for Members in compliance with the law and AHCCCS policies including AMPM Chapter 1600.
    - 5.1.1. If the Tribe authorizes a placement and/or service, it will notify AHCCCS-DFSM's Tribal ALTCS Unit by updating the Pre-Paid Medical Management Information System (PMMIS), an interface for ALTCS Case Management.
    - 5.1.2. If the Tribe denies authorization for a requested placement or service, the Tribe will initiate the appropriate appeal process as described in Section 7 ("Member Complaints, Grievances and Appeals").
  - 5.2. Within three business day of receiving the request, the Tribe will forward a request for prior authorization for the following services to AHCCCS-DFSM:
    - 5.2.1. Durable Medical Equipment when the cost of the item exceeds \$500.00;
    - 5.2.2. Incontinence supplies;
    - 5.2.3. Specialty beds;
    - 5.2.4. Specialty wound care treatments;
    - 5.2.5. Specialty facility rates;
    - 5.2.6. Home modifications;
    - 5.2.7. Non-emergency hospitalization, including psychiatric hospitalization;
    - 5.2.8. Podiatry services not covered by Medicare;
    - 5.2.9. Physician services for scheduled surgeries not covered by Medicare;
    - 5.2.10. Non-emergency medical transportation exceeding 100 miles; and
    - 5.2.11. All meals, lodging and services of an escort accompanying a member during transportation as described in Ariz. Admin. Code § R9-22-211(F).
  - 5.3. Within three business day of receiving the request, the Tribe will forward requests for prior authorization for out-of-state placements to AHCCCS-DFSM. The Tribe will not place a Member in a facility outside of Arizona unless the placement has been prior authorized by AHCCCS-DFSM Tribal ALTCS Unit. Placement of Members into personal residences outside of the State of Arizona will not be approved by AHCCCS-DFSM.
  - 5.4. Services rendered outside of the United States are not covered.
  - 5.5. The Tribe will monitor Agreement services provided to Members to ensure that those services are medically necessary, cost effective, federally reimbursable, and meet all legal and policy requirements.
6. **Persons who Have Been Determined to Be Seriously Mentally Ill ("SMI").**
  - 6.1. Overview: Persons who have been determined to be SMI have distinct behavioral health care needs.

AHCCCS and the Tribe are committed to meeting the behavioral health care needs of all Members, including persons who have been determined to be SMI. Towards that end, the Tribe will fulfill the requirements set forth in this section to meet the needs of persons determined to be SMI.

6.2. Determining that a Member is SMI.

6.2.1. A Determining Entity is the AHCCCS designee authorized to make SMI determinations or a Tribal Regional Behavioral Health Authority authorized to make SMI determinations for its assigned tribal members. If a Determining Entity determines that a Member is SMI, the Determining Entity will notify AHCCCS of the determination. AHCCCS will then notify the Tribe that the Member is eligible for SMI services.

6.2.2. If the Tribe suspects that an adult Member is seriously mentally ill as described in A.R.S. § 36-550(4), the Arizona Administrative Code Title 9, Chapter 21, Article 3, and AMPM Policy 320-P, the Tribe will refer the adult Member to a Determining Entity for a SMI evaluation and eligibility determination.

6.3. Delivery of Services. Delivery of services for persons determined to have a serious mental illness will comport with Arizona Administrative Code Title 9, Chapter 21, and AMPM Policy 320-R. In addition to the other services described in this Scope of Work, the Tribe will fulfill the following service delivery requirements for Members who have been determined to have a SMI.

6.3.1. Special Assistance

6.3.1.1. Special Assistance is the support provided to a person determined to have a SMI who is also unable to articulate treatment preferences and/or participate effectively in the development of the Individual Service Plan (ISP), Inpatient Treatment and Discharge Plan (ITDP), and/or the grievance investigation and/or appeal processes due to cognitive/intellectual impairment and/or a medical condition.

6.3.1.2. The Tribe will require its staff serving persons with a SMI to have the necessary skill and knowledge to identify and refer all persons in need of Special Assistance to the AHCCCS Office of Human Rights ("OHR").

6.3.1.3. The Tribe will require its staff serving persons with a SMI to communicate regularly with any person designated by OHR (OHR advocate, guardian, family member or friend) to provide Special Assistance to the Member.

6.3.2. Housing and Non-Medicaid Services for SMI Members

6.3.2.1. At AHCCCS' discretion and in collaboration with the Tribe, the development of non-Medicaid funded supports will be based upon the availability of funding, approval of the Tribe's spending plan for non-Medicaid funded supports, and the identified need of the Tribe's Members.

6.3.2.2. Off-Reservation Residential Placements or Independent Housing: The Tribe will not place SMI Members in a residential program where more than twenty-five percent (25%) of any housing complex can house individuals with a serious mental illness.

6.3.2.3. Supervisory Care Homes and Unlicensed Board & Care Homes

a) The Tribe will assess the living situation for all SMI Members to ensure that the Member's basic needs are met in an environment that is safe, secure and consistent with their behavioral health needs.

b) The Tribe will ensure that any situations observed that pose a threat to the health or safety of a SMI Members is promptly resolved.

6.3.2.4. The Tribe will assist SMI Members in locating appropriate housing supports, consistent with each Members' individual needs and preferences.

6.3.3. Services for Incarcerated Individuals Determined to be SMI

6.3.3.1. The Tribe will work with jails and prisons to coordinate the discharge and transition of incarcerated SMI Members to ensure the continuation of prescribed medication and other behavioral health services.

- 6.3.3.2. The Tribe will collaborate with the appropriate County and Tribal diversion programs to meet the behavioral health needs of SMI Members.
- 6.3.4. Arizona State Hospital
  - 6.3.4.1. The Tribe will collaborate with the Arizona State Hospital administration to agree upon protocols for referral, bed utilization and census management, coordination of care, discharge planning, and dispute resolution.
  - 6.3.4.2. The Tribe will ensure continuity of care for Members admitted to the Arizona State Hospital, including:
    - a) Diversion of potential admission from the Arizona State Hospital, as appropriate;
    - b) Coordination of the admission process with the Arizona State Hospital Admissions Office;
    - c) Participation in the Arizona State Hospital treatment and discharge planning;
    - d) Forwarding of available clinical and medical record information upon or shortly after admission; and
    - e) Responding promptly to any other requested communication and/or collaboration with the Arizona State Hospital.

**7. Member Complaints, Grievances and Appeals.**

- 7.1. The Tribe will have in place a written Grievance and Appeal System that defines Members' rights regarding disputed matters with the Tribe. The Tribe's Grievance and Appeal System will include a complaints process (the procedures for addressing member complaints that are not appeals or grievances), an appeals process, and an SMI appeals and grievance process. The Tribe will work with each Member to attempt resolution of disputes at the lowest level possible.
- 7.2. The Tribe will ensure that it provides written information to Members that clearly explains the Grievance and Appeal System. This written information must include a description of:
  - 7.2.1. The right to file complaints, appeals, and SMI appeals and grievances;
  - 7.2.2. The requirements and timeframes for filing complaints, appeals, and SMI appeals and grievances;
  - 7.2.3. The availability of assistance in the filing process and the toll-free numbers that Members can use to file complaints, appeals, and SMI appeals and grievances;
  - 7.2.4. That a provider may file an appeal or SMI appeal/grievance on behalf of a Member with the Member's written consent;
  - 7.2.5. The right to a State fair hearing and the method for obtaining a State fair hearing; and
  - 7.2.6. The rules that govern representation at the hearing.
- 7.3. Complaints: the Tribe will develop and implement written internal procedures that guide the informal dispute resolution process including timeframes for resolution.
- 7.4. Appeals for Members who have not been determined to be SMI.
  - 7.4.1. For any "action" taken by AHCCCS as defined by Arizona Administrative Code § R9-34-302(A) (e.g. denial of prior authorization for an AHCCCS-covered service), the Tribe will assist the Member in filing and pursuing any applicable appeal.
  - 7.4.2. For any "action" taken by the Tribe as defined by Arizona Administrative Code § R9-34-302(A) (e.g. denial of an authorization for an AHCCCS-covered service), the Tribewill issue a Notice of Action to the Member using the Notice of Action template provided by AHCCCS. The Tribe will issue the Notice of Action to the Member within the timeframes required of AHCCCS to issue a Notice of Action under Arizona Administrative Code §§ R9-34-306 and 307.
- 7.5. Appeals and grievances for Members who have been determined to be SMI.
  - 7.5.1. For any adverse decision made by AHCCCS regarding service and treatment plans, the

implementation of service and treatment decisions, assessments and evaluations, or behavioral health services (e.g. denial of prior authorization for an AHCCCS-covered behavioral health service), the Tribe will assist the Member in filing and pursuing any appeal allowed under Arizona Administrative Code § R9-21-401.

- 7.5.2. For any adverse decision made by the Tribe regarding service and treatment plans, the implementation of service and treatment decisions, assessments and evaluations, or behavioral health services (e.g. denial of prior authorization for an AHCCCS-covered behavioral health service), the Tribe will issue a Notice of Action to the Member using the SMI Notice of Action template provided by AHCCCS. The Tribe will issue the SMI Notice of Action to the Member at the time that the Tribe informs the Member of the adverse decision.
- 7.5.3. The Tribe will assist a Member with a SMI in filing any grievance allowed by Arizona Administrative Code § R9-21-403. The Tribe will assist AHCCCS in processing SMI grievances by ensuring its staff comply with procedural requirements including, but not limited to, the provision of required notices to persons with a serious mental illness, participating in an investigation, providing requested documents, and participating in informal conferences or administrative hearings.

- 7.6. The Tribe will fully cooperate with AHCCCS in the event AHCCCS decides to intervene in, participate in, or review any Grievance and Appeal System process or proceeding. The Tribe will comply with or implement any AHCCCS directive within the time specified pending formal resolution of the issue.

## **8. Quality Management.**

- 8.1. The Tribe will institute processes to assess, plan, implement and evaluate the quality of care and quality of services provided to Members. The Tribe will identify quality of care concerns and accept quality of care referrals from any source.
- 8.2. The Tribe will assist AHCCCS Division of Fee-for-Service Management (DFSM) Quality Management (QM) on reporting and performance improvement activities in accordance with AHCCCS Medical Policy Manual (AMPM) Policy 830.
  - 8.2.1. The Tribe will inform DFSM QM within one (1) calendar day of its knowledge of high profile incidents/accidents involving Member(s). These high-profile incidents/accidents include any situation or occurrence that involves a Member, provider, and/or the Tribe that has resulted, or has the potential to result, in media attention/involvement.
  - 8.2.2. The Tribe will forward all reports of incident/accident/death, including incidents of abuse, neglect, exploitation, healthcare-acquired conditions and unexpected deaths for all Members to DFSM QM. AHCCCS and the Tribe may work collaboratively to investigate and resolve the report.
  - 8.2.3. The Tribe will assist DFSM QM in tracking and trending, and in providing assistance to Members in a timely manner, when quality of care or quality of service concerns exist.
  - 8.2.4. The Tribe will actively participate in data collection and analysis in partnership with AHCCCS. Information will be shared among AHCCCS, the managed care entities, and tribal ALTCS programs to improve coordination of care throughout AHCCCS.
  - 8.2.5. The Tribe will assist DFSM QM, as needed, in the process to resolve quality of care issues. Member and system resolutions may occur independently from one another.
- 8.3. The Tribe will coordinate with AHCCCS when Members placed in facilities must be relocated due to quality of care or quality of service concerns.

## **9. Communication with Members, Members' Families, Stakeholders and Providers.**

- 9.1. The Tribe will be proactive in communicating information to Members, Members' families, stakeholders and providers to foster a community that understands the ALTCS health delivery system. Such

communication will include:

- 9.1.1. How to access services, including emergency behavioral health/crisis services;
  - 9.1.2. Customer service contact information, for both the Tribe and AHCCCS;
  - 9.1.3. Information pertaining to new initiatives, projects, programs, and/or opportunities within the tribal ALTCS system; and
  - 9.1.4. Information describing the AHCCCS-registered provider network.
- 9.2. Upon request, the Tribe will assist AHCCCS in the dissemination of information to Members prepared by the federal government or AHCCCS. The cost of disseminating and communicating information to Members will be borne by the Tribe.
- 9.3. All advertisements, publications, and printed materials which are produced by the Tribe that refer to AHCCCS-covered services will state that such services are funded through AHCCCS.
- 9.4. **Communications with Members**
- 9.4.1. **Written Communication**
    - 9.4.1.1. The Tribe will educate Members about covered services, including where and how to access services.
    - 9.4.1.2. **Member Handbook.**
      - a) The Tribe will provide each Member with a Member Handbook based on a template provided by AHCCCS that the Tribe may adapt with Tribe-specific information.
      - b) The Member Handbook will be reviewed and updated by the Tribe at least annually.
      - c) The Member Handbook will be provided to Members within ten (10) days of enrollment with the Tribe.
      - d) The Tribe's updated Member Handbook must be provided to all Members on an annual basis.
    - 9.4.1.3. **Other information.**
      - a) The Tribe will provide written materials in an easily understood language and format.
      - b) When program changes occur, written notification will be provided to the affected persons at least thirty (30) days before implementation.
      - c) All informational materials intended for distribution to Members will be reviewed for accuracy by the Tribe.
  - 9.4.2. **Oral Interpretation Requirements:** the Tribe will make oral interpretation services available free of charge to all persons enrolled with AHCCCS based on eligibility for federally-funded services. This applies to all non-English languages regardless of prevalence.
- 9.5. **Written Translation Requirements**
- 9.5.1. All materials will be translated into another language when the Tribe is aware that the other language is primarily spoken by three thousand (3,000) or ten percent (10%), whichever is less, of Members in the service area who also have Limited English Proficiency ("LEP").
  - 9.5.2. All vital materials should be translated into another language when the Tribe is aware that the other language is spoken by one thousand (1,000) or five percent (5%), whichever is less, of Members in the service area who also have LEP. Vital materials include, at a minimum, notice for denials, reductions, suspensions or terminations of services and consent forms.
  - 9.5.3. All written notices informing persons of their right to interpretation and translation services will be translated when the Tribe is aware that one thousand (1,000) or five percent (5%), whichever is less, of the Members in the service area speak that language and have LEP.
  - 9.5.4. Written materials will be available in alternative formats for the visually impaired.



9.5.5. The Tribe will inform all Members that information is available in alternative formats and how to access those formats.

9.6. Web Posting/ Online Media

9.6.1. The Tribe will maintain a website that is up to date, informative, relative, and user friendly. The website will be organized to allow for easy access of information by Members, their family members, providers and stakeholders.

9.6.2. The website will contain at a minimum the following information or links:

9.6.2.1. How to access services;

9.6.2.2. Member Handbook;

9.6.2.3. Customer service contact information for the Tribe and AHCCCS;

9.6.2.4. Tribe's hours of operation; and

9.6.2.5. Information for advocacy organizations, including advocacy for family members.

10. Key Personnel and Staff Requirements.

10.1. The Tribe will have a sufficient number of personnel capable of and devoted to the successful accomplishment of work to be performed under this Agreement. The Tribe will ensure that all staff have appropriate training, education, experience, orientation, credentialing, and the appropriate licenses, as applicable, to fulfill the requirements of their positions.

10.2. The Tribe, AHCCCS Finance, and AHCCCS ALTCS Program Staff will coordinate and work together to meet Key Personnel and Staff Requirements. The Tribe may seek assistance from AHCCCS when needed and AHCCCS program staff may be available to prioritize and respond to the health care needs of enrolled members. The Tribe may be supported by AHCCCS at appropriate levels, however it is ultimately the responsibility of the Tribe that efforts are made to find personnel to meet the functions outlined in Section 10 and that the Tribe's ALTCS program is functional and compliant with this Agreement.

10.3. Case Managers: the Tribe will employ a sufficient number of case managers to meet the case management ratios listed in AMPM Policy 1630. The Tribe will ensure that the Case Managers meet the administrative standards enumerated in AMPM Policy 1630.

10.4. Key Personnel. The Tribe will assign a specific individual or individuals to the following key positions:

10.4.1. Director, who has ultimate responsibility to oversee the management of, and adherence to, the requirements set forth in this Agreement.

10.4.2. Chief Clinical Officer, who is a licensed registered nurse or behavioral health professional with appropriate education and experience to actively participate in all major clinical decisions and quality management components.

10.4.3. Program Administrator, who is a registered nurse or an individual with a master's degree in health services, healthcare administration, or business administration (if not required to make medical necessity determinations). The primary functions of the Program Administrator are:

10.4.3.1. Develop, implement and monitor the provision of care coordination, care management and case management functions; and

10.4.3.2. Monitor, analyze and implement appropriate interventions based on utilization data provided by AHCCCS, including identifying and correcting over and under utilization of services.

10.4.3.3. Responsible for overseeing case managers as they develop a Person-Centered Service Plan (PCSP) for the members enrolled with Tribal ALTCS. Responsibility also includes staffing complex cases and providing internal support and resolution to case managers before escalating to AHCCCS DMFS Tribal ALTCS Unit.

10.4.4. An individual may fulfill more than one Key Personnel function so long as that individual can meet

all of the duties required of each function by the Agreement.

- 10.5. If Key Personnel are not available for work under this Agreement for a continuous period exceeding thirty calendar days, or are expected to devote substantially less effort to the work than initially expected, the Tribe will notify AHCCCS within seven calendar days, and will replace the Key Personnel with other qualified personnel. When feasible, the Tribe will provide written notice to AHCCCS thirty days prior to removing Key Personnel.
- 10.6. Other Staff Requirements
  - 10.6.1. In addition to the required Key Personnel listed above, the Tribe will assign staff to fulfill the following functions:
    - 10.6.1.1. Financial Manager, who is responsible for accurate and timely submission of financial reporting requirements;
    - 10.6.1.2. Quality Management Administrator, who is responsible for oversight of the quality management requirements of the Agreement and coordinates with AHCCCS- DFSM CQM; and
    - 10.6.1.3. Continuing of Operations Plan Contact, who will be the point of contact responsible for communicating with AHCCCS to coordinate the care of individuals enrolled with the Tribe during cases of an emergency (e.g. fires or other public emergency situations). The contact person(s) who is (are) designated by the Tribe will be accessible 24 hours a day, seven days a week to work with AHCCCS and/or other governmental agencies on urgent issue resolutions. These staff person(s) will have 1) access to information necessary to identify members who may be at risk and their current health/service status, 2) ability to initiate new placements/services, and 3) availability to perform status checks at affected facilities and potentially conduct ongoing monitoring, if necessary. The Tribe will supply AHCCCS with the contact information for these staff persons, such as a telephone number, to call in these urgent situations.
  - 10.6.2. An individual may fulfill more than one staff requirement function so long as that individual can meet all of the duties required of each function by the Agreement.
- 10.7. The Tribe will not use any money provided by AHCCCS under this Agreement to pay for services and/or items furnished by an individual excluded from participation in federal healthcare programs pursuant to 42 U.S.C. § 1320a-7 and/or 42 C.F.R. Parts 1001 or 1002.
  - 10.7.1. The Tribe will determine the exclusion status of individuals and entities directly or indirectly funded through the Agreement in accordance with OIG, Special Advisory Bulletin on the Effect of Exclusion from Participation in Federal Health Care Programs, issued May 8, 2013, as the same may be amended, found at <https://oig.hhs.gov/exclusions/files/sab-05092013.pdf> . This directive includes individuals receiving wages for providing Agreement services.
  - 10.7.2. The Tribe will report any discovery of an excluded individual or entity to AHCCCS-OIG and AHCCCS-DFS, and will return to AHCCCS any monies directly or indirectly paid to that individual or entity.
- 10.8. AHCCCS will provide education and training on any applicable policies made effective during the term of this Agreement.

## 11. Management Information System.

- 11.1. The Tribe will maintain a management information system that meets AHCCCS' data processing and interface requirements as outlined in this Agreement and in the following documents incorporated by reference into this Agreement:
    - 11.1.1. Client Information System Technical Specifications Manual;
    - 11.1.2. CIS File Layout Specifications Manual;
    - 11.1.3. AHCCCS Program Support Policies and Procedure Manual; and
    - 11.1.4. The Demographic and Outcome Data Set User Guide (DUG)
  - 11.2. The management information system will be capable of sending and receiving information to and from AHCCCS, and will be capable of receiving information from service providers. All electronic data submitted will be encrypted per HIPAA privacy security requirements. The Tribe will have a sufficient number of management information system personnel to support the maintenance and functioning of the management information system. These personnel will have management information system technical knowledge as well as knowledge of health care or behavioral health delivery systems knowledge. The Tribe will also have in place a contingency plan or manual containing basic information system technical knowledge to allow for continuity of operations should key management information system personnel roles be unfilled at any time.
  - 11.3. If the Tribe plans to make any modifications that may affect any of the data interfaces, it will first provide AHCCCS the details of the planned changes, the estimated impact upon the interface process, and unit and parallel test files. The Tribe will allow sufficient time for AHCCCS to evaluate the test data before approving the proposed change. The Tribe will also notify AHCCCS in advance of the exact implementation date of all changes so AHCCCS can monitor for any unintended side effects of the change.
  - 11.4. AHCCCS will provide the Tribe at least ninety (90) days of notice prior to a system change that may affect AHCCCS unless it has been determined that the change is immediately needed and vital to system operations.
  - 11.5. The Tribe will identify staff who will utilize the PMMIS system, the SMI Grievance and Appeals database, the AHCCCS FTP Server, the AHCCCS Client Information System and all other AHCCCS systems that require user registration and monitoring of continued access and discontinuation of access rights of the Tribe's staff.
  - 11.6. AHCCCS will provide the Tribe a tutorial regarding access and data-entry information via the Client Assessment and Tracking System (CATS) of the AHCCCS Pre-Paid Medical Management Information Systems (PMMIS) for Arizona Long Term Care System (ALTCS) Case Management computer system.
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## FINANCIAL PROVISIONS

### 12. Funding.

- 12.1. Case Management Services.
  - 12.1.1. The case management model developed by AHCCCS will be used to determine the annual budget for the Tribe for case management services provided pursuant to the Agreement.
  - 12.1.2. To determine the annual budget for case management services, AHCCCS will take into account the number of staff performing work under the Agreement related to case management, their salaries, the time spent performing duties, caseload ratios, vehicle costs, Employee Related

Expenses ("ERE"), and other indirect costs.

12.1.3. The model may be updated yearly as new information becomes available.

12.1.4. Based on the annual budget, AHCCCS will make monthly payments to the Tribe in compliance with A.R.S. Titles 35, 36 and 41.

12.2. State General Funding for non-title XIX SMI Services.

12.2.1. Any State General Funds reimbursed for non-title XIX services, including housing, must be spent in accordance with a spending plan approved by AHCCCS for individuals determined to have a serious mental illness.

12.2.2. Mortgages and Financing of Property. AHCCCS will be under no obligation to assist, facilitate, or help the Tribe secure any mortgage or financing if a Tribe intends to obtain a mortgage or financing for the purchase of real property or construction of buildings on real property.

### 13. Financial Reporting and Reconciliation.

13.1. Payments are conditioned upon the rights and obligations of this Agreement and the availability to AHCCCS of funds authorized and appropriated by the State Legislature for expenditure in the manner and for the purposes stated in this Agreement. Neither AHCCCS nor the State will be liable for any purchase(s) entered into by the Tribe in anticipation of such funding.

13.2. Payments made by AHCCCS to the Tribe are conditioned upon receipt by AHCCCS of applicable timely, accurate and complete reports, documentation and any other information due from the Tribe, unless prior written approval waiving such requirement(s) is obtained from the AHCCCS Director or designee. If the Tribe is in any matter in default in the performance of any material obligation under the Agreement, including in the process of administrative appeal, arbitration, or if financial, compliance or performance audit exceptions are identified, AHCCCS may, at its sole option and in addition to other available remedies, either adjust the amount of payment or withhold payment until satisfactory resolution of the default or exception. The Tribe will have the right to 30 days written notice of AHCCCS' action in adjusting the amount of payment or withholding payment. Under no circumstances will AHCCCS authorize payments that exceed an amount specified in this Agreement without an approved written amendment to the Agreement. AHCCCS may withhold final payment to the Tribe until all final reports and deliverables are received.

13.3. The practices, procedures and standards specified in and required by the State of Arizona Accounting Manual (<http://www.gao.az.gov/publications/SAAM>) and any Uniform Financial Reporting Requirements will be used by the Tribe in the management, recording and reporting of Agreement funds received from AHCCCS and in producing audited financial statements.

13.4. Funding received through this Agreement will be retained by the Tribe to be used for the sole purpose of providing services required by this Agreement. The Tribe will maintain all funding received under this Agreement in a separate fund (account) and will provide AHCCCS with a quarterly report detailing all activities of the fund (account).

13.5. AHCCCS recognizes that interim financial statements are based on information available at the end of the reporting period, which may be incomplete. Revisions to a prior period will update or replace the previously submitted report.

13.6. The Tribe will have a system to produce complete, timely, reliable and accurate financial records and reports in accordance with the following requirements for financial reporting:

13.6.1. The Tribe will design and implement its financial operations system and reports to ensure compliance with Generally Accepted Accounting Principles, Government Auditing Standards, 2

C.F.R. Parts 200 and 300, and 45 C.F.R. Part 75.

- 13.6.2. The Tribe will submit a quarterly Certification Statement signed and dated by the Tribe's chief financial officer.
  - 13.6.3. The Tribe will submit a quarterly report by the 60th day following the end of each quarter detailing the Title XIX Revenues and Expenditures to AHCCCS. The quarterly report will be used by AHCCCS to reconcile the monthly payments made during the quarter to the Tribe. If there is an overpayment or underpayment, AHCCCS will adjust future payments to the Tribe as necessary to make the account whole. Failure of the Tribe to submit timely quarterly financial reports may result in payment delays to the Tribe.
  - 13.6.4. The Tribe will submit annual audited financial statements to AHCCCS no later than nine (9) months after the end of the state fiscal year. If the Tribe received \$750,000.00 or more during the state fiscal year, an audit conducted pursuant to 2 C.F.R. Part 200, Subpart F is required. These audited financial statements must be prepared by an independent auditor and include supplemental schedules and audit opinions.
  - 13.6.5. If applicable, the Tribe will provide AHCCCS with a copy of its most recent Indirect Cost Agreement by October 1 of each year.
- 13.7. Requests for extension of reporting deadlines will be submitted in writing and must be received by AHCCCS prior to the report due date. Approvals for extension are valid only if issued in writing by AHCCCS.
- 13.8. At AHCCCS' request, the Tribe will submit a Tribe Expenditure Report with supporting documentation for reimbursement of State General Funds used for non-title XIX SMI services.
- 13.9. In accordance with A.R.S. § 35-190, State General Funds are appropriated by the State Legislature and must be expended (based on dates of service) by June 30 of each year at both the Tribe and subcontractor levels.
- 13.9.1. The Tribe and its subcontractors may not defer State General Funds.
  - 13.9.2. No later than April 15 of each year, the Tribe will provide AHCCCS with a list of State General Funds, by funding source, that the Tribe and its subcontractors expect to expend by the end of the state fiscal year.
  - 13.9.3. The Tribe will notify its subcontractors of the requirements under this section.
- 13.10. The Tribe will reimburse AHCCCS upon request, or AHCCCS may deduct from future payments to the Tribe, any amounts determined by AHCCCS to represent:
- 13.10.1. Costs related to services which have been inaccurately reported;
  - 13.10.2. Costs related to services that have not been provided;
  - 13.10.3. Costs of services for which the Tribe's books, records, and other documents are not sufficient to clearly confirm were used by the Tribe to provide such services;
  - 13.10.4. Costs of services sustained as a financial audit exception; or
  - 13.10.5. Costs of services which have not been provided in accordance with applicable regulations, laws, policies and this Agreement, to include services which have been determined to be unnecessary.
- 13.11. "State fiscal year" means the period beginning with July 1 and ending June 30.
- 13.12. No profit is allowed under this Agreement. The Tribe is under no obligation to deliver or pay for services unfunded by the Agreement.
- 13.13. Costs and Payments
- 13.13.1. Applicable Taxes.
    - 13.13.1.1. The Tribe will be responsible for paying all applicable taxes.
    - 13.13.1.2. 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.

- 13.13.1.3. Tax Indemnification. The Tribe will pay all Federal, state and local taxes applicable to its operation and any persons employed by the Tribe. The Tribe will 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. The Tribe will add these requirements to its contracts with subcontractors. The tax indemnification in this paragraph is provided to the extent of the Navajo Nation Sovereign Immunity Act, 1 N.N.C. § 551 *et. seq.*
  - 13.13.1.4. IRS W9 Form. In order to receive payment the Tribe will have a current I.R.S. W9 Form on file with the State of Arizona, unless not required by law.
  - 13.13.2. Availability of Funds for the Next State Fiscal Year. Funds may not presently be available for performance under this Agreement beyond the current state fiscal year. No legal liability on the part of the State for any payment may arise under this Agreement beyond the current state fiscal year until funds are made available for performance of this Agreement.
  - 13.13.3. Availability of Funds for the Current State Fiscal Year. Should the State Legislature enter back into session and reduce the appropriations or for any reason and these goods or services are not funded, the State may take any of the following actions:
    - 13.13.3.1. Accept a decrease in price offered by the Tribe; or
    - 13.13.3.2. Cancel the Agreement.
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## TERMS AND CONDITIONS

### 14. Agreement Administration and Operation

#### 14.1. Term of Agreement

- 14.1.1. The term of the Agreement is from July 1, 2022, through June 30, 2027, unless otherwise terminated or extended by mutual agreement of the Parties in a duly authorized and executed amendment.
- 14.1.2. All Agreement extensions will be through written amendment executed by both Parties. The terms and conditions of any such extension will remain the same as the original Agreement, as amended.
- 14.1.3. Under no circumstances will this Agreement be extended beyond June 30, 2029.

#### 14.2. Agreement Changes

- 14.2.1. Amendments to the Agreement. The Agreement may be modified only through an Amendment within the scope of the Agreement, signed by an authorized representative of AHCCCS and Tribe. Changes to the Agreement, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by a person who is not specifically authorized by the procurement officer in writing or made unilaterally by the Tribe are violations of the Agreement. Such changes, including unauthorized written Amendments will be void and without effect, and the Tribe will not be entitled to any claim under this Agreement based on those changes.
- 14.2.2. Amendments to AHCCCS Policies Incorporated by Reference. When AHCCCS amends one of the policies incorporated by reference into this Agreement, AHCCCS will notify Tribe through the AHCCCS Policy Committee process and post the amendment to its website. The Tribe may object in writing to the policy amendment within thirty days of notice of the change or the date that

AHCCCS posted the policy amendment to its website, if later. If the Tribe objects to the policy amendment, AHCCCS may terminate the Agreement. If the Tribe does not object to the policy amendment as provided above, the policy amendment will be deemed to have been accepted by the Tribe even if the Tribe does not sign the amendment.

- 14.3. **Assignment and Delegation:** The Tribe will not assign any right nor delegate any duty under this Agreement without the prior written approval of AHCCCS. AHCCCS will not unreasonably withhold approval.
- 14.4. **Offshore Performance of Work Prohibited:** Any services that are described in the scope of work that directly serve the State of Arizona or its clients and involve access to secure or sensitive data or personal client data will be performed within the defined territories of the United States. Unless specifically stated otherwise in the specifications, this paragraph does not apply to indirect or overhead services, redundant back-up services, or services that are incidental to the performance of the Agreement. This provision applies to work performed by subcontractors at all tiers.
- 14.5. **Licenses:** The Tribe will maintain in current status all federal, state and local licenses and permits required for the operation of the business conducted by the Tribe.
- 14.6. **Agreement Interpretation**
  - 14.6.1. **Governing Law.** This Agreement will be interpreted under the applicable laws of the United States, State of Arizona, and the Navajo Nation. If any laws conflict, the laws of the United States will control.
  - 14.6.2. **Severability.** The provisions of this Agreement are severable. Any term or condition deemed illegal or invalid will not affect any other term or condition of the Agreement.
  - 14.6.3. **No Parole Evidence.** This Agreement 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 will supplement or explain any terms used in this document and no other understanding either oral or in writing will be binding.
  - 14.6.4. **No Waiver.** Either party's failure to insist on strict performance of any term or condition of the Agreement will 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.
  - 14.6.5. **Conflict with Policy or AHCCCS guidance.** If there is a conflict between this Agreement and any policies, statements, guidance documents or other information provided by AHCCCS, this Agreement shall govern.
- 14.7. **Agreement Remedies**
  - 14.7.1. **Notice and Opportunity to Cure.** In the event of a breach of the Agreement, the non-breaching party must notify the breaching party of the breach in writing. If the breach is capable of cure, the non-breaching party must describe how the breach can be cured and identify a reasonable deadline by which any cure must be completed.
  - 14.7.2. **Corrective Action Plans.** AHCCCS and the Tribe may collaboratively develop a corrective action plan to address a breach of this Agreement. The Tribe will implement the corrective action plan to bring performance into compliance with the Agreement in accordance with the corrective action plan, and within a reasonable timeframe.
  - 14.7.3. **Non-exclusive Remedies.** The rights and the remedies of AHCCCS or Tribe under this Agreement are not exclusive.
  - 14.7.4. **Technical Assistance.** AHCCCS' provision of technical assistance to the Tribe to assist in achievement of compliance with any relevant Agreement terms does not relieve the Tribe of its obligation to fully comply with any relevant Agreement term or any other terms of this

Agreement.

14.7.5. Right of Offset. AHCCCS will be entitled to offset against any sums due the Tribe, any expenses or costs incurred by AHCCCS, or damages or sanctions assessed by AHCCCS concerning the Tribe's non-conforming performance or failure to perform the Agreement following exhaustion of any applicable administrative procedures.

14.7.6. Sanctions

14.7.6.1. AHCCCS reserves the right to impose financial sanctions if the Tribe engages in any of the following conduct:

- a) Material misrepresentation or falsification of information provided to AHCCCS;
- b) Material misrepresentation or falsification of information provided to a Member, potential Member, subcontractor or health care provider;
- c) Material noncompliance with quality of care or quality management requirements;
- d) Submitting incomplete or inaccurate reports, deliverables or other information requested by AHCCCS;
- e) Submitting reports, deliverables or other information requested by AHCCCS more than 180 days after the deadline for production; or
- f) Engaging in conduct which jeopardizes Federal Financial Participation or other federal funding.

14.7.6.2. AHCCCS will consider the severity of the violation to determine the amount of sanction. The amount of the sanction will be proportionate to the severity of the non-compliance action.

14.7.6.3. AHCCCS will provide written notice to the Tribe specifying the amount of the sanction, the grounds for the sanction, the amount of funds to be withheld from the Tribe's payments, the steps necessary to avoid future sanctions and the Tribe's right to file a claim dispute to challenge the sanction.

14.7.6.4. The Tribe will complete all necessary steps to correct the violation that precipitated the sanction. AHCCCS may impose additional sanctions, which may be equal to or greater than the sanction imposed for the unresolved violation, in the event the Tribe fails to adequately correct the violation within established timeframes. Sanctions are not subject to the Notice and Opportunity to Cure provisions in section 14.7 ("Agreement Remedies").

14.8. Agreement Termination

14.8.1. Cancellation for Conflict of Interest. AHCCCS may cancel this Agreement within three (3) years after Agreement execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Agreement on behalf of the State is or becomes, at any time while the Agreement or an extension of the Agreement is in effect, an employee of or a consultant to any other party to this Agreement with respect to the subject matter of the Agreement. The cancellation will be effective when the Tribe receives written notice of the cancellation unless the notice specifies a later time.

14.8.2. Gratuities. AHCCCS may, by written notice, terminate this Agreement, in whole or in part, if the State determines that employment or a gratuity was offered or made by the Tribe or a representative of the Tribe to any officer or employee of the State for the purpose of influencing the outcome of the procurement or securing of the Agreement, an amendment to the Agreement, or favorable treatment concerning the Agreement, including the making of any determination or decision about Agreement performance. AHCCCS, in addition to any other rights or remedies, will be entitled to recover exemplary damages in the amount of three times the value of the gratuity offered by the Tribe.

14.8.3. Suspension or Debarment. AHCCCS may, by written notice to the Tribe, immediately terminate



this Agreement if AHCCCS determines that the Tribe 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 an Agreement will attest that the Tribe is not currently suspended or debarred. If the Tribe becomes suspended or debarred, the Tribe will immediately notify AHCCCS.

- 14.8.4. Termination for Convenience. Upon thirty (30) days written notice to the other Party, either Party may terminate the Agreement, in whole or in part, without penalty or recourse. The Tribe will be entitled to receive just and equitable compensation for work in progress, work completed and materials accepted before the effective date of the termination.
  - 14.8.5. Termination for Default. Subject to section 14.7 ("Agreement Remedies"), in addition to the rights reserved in the Agreement, AHCCCS may terminate the Agreement in whole or in part due to the failure of the Tribe to materially comply with any term or condition of the Agreement, or to make satisfactory progress in performing the Agreement. The Procurement Officer will provide written notice of the termination and the reasons for it to the Tribe.
  - 14.8.6. In the event that the Agreement terminates for any reason, the Parties agree to collaborate on transitioning the care of any Members potentially affected by the termination within a reasonable period of time. The Parties agree to work together to ensure that such a transition occurs in an orderly manner and without significant disruption in services to Members.
- 14.9. Sovereign Immunity: Except as provided in section 14.10.4.3 ("Enforcement") below, nothing in this Agreement will be construed as an express or implied waiver of either Party's sovereign immunity from suit in any forum or jurisdiction.
- 14.10. Agreement Disputes and Arbitration
- 14.10.1. In the event of a dispute, claim or controversy ("Dispute") arising out of or related to this Agreement, the Parties agree that it is in their mutual best interest to meet as promptly as possible for the purpose of informally resolving said Dispute before binding arbitration.
  - 14.10.2. In the event that the Parties cannot resolve their Dispute informally after attempting to work in good faith toward resolution, the Parties agree that Disputes arising out of this Agreement will be handled pursuant to binding arbitration as provided in section 14.10.3 of this Agreement.
  - 14.10.3. Arbitration and Award
    - 14.10.3.1. If a party in good faith concludes that a Dispute arising out of or related to this Agreement is not likely to be resolved by informal dispute resolution then, upon notice by that Party to the other, said Dispute shall be finally and exclusively settled by submission of such Dispute to the American Arbitration Association ("AAA") under its then prevailing procedural rules contained in the AAA's Commercial Arbitration Rules to the extent that such rules shall not be interpreted to diminish, limit, or void the limited waiver of sovereign immunity set forth in Section 1 above or to increase the enforcement rights of the Parties. Within ten (10) days after the notice of intent to arbitrate, each party shall select one person to act as arbitrator and the two selected shall select a third arbitrator within ten (10) days of their appointment. The third arbitrator shall be a practicing attorney, actively engaged in the practice of law for at least ten (10) years and a member in good standing of the bar of the State of Arizona. Alternatively, the third arbitrator may be a retired judge of the federal court or the trial court of the State of Arizona. At least one of the arbitrators shall be knowledgeable with federal Indian law and one arbitrator shall have AAA-acknowledged expertise in the appropriate subject matter. By agreement of the parties, when the amount in controversy renders the cost of three arbitrators unreasonable, the parties may agree to select a single arbitrator to resolve a dispute. All arbitration proceedings shall be held in Maricopa County, or at such other place as shall be agreed by the Parties.

- 14.10.3.2. The award shall be made within sixty (60) days of the filing of the notice of intent to arbitrate, and the arbitrators shall agree to comply with the schedule before accepting appointment. However, this time limit may be extended by agreement of the Parties or by the majority of the Parties or by the majority of the arbitrators, if necessary. Any award rendered in any such arbitration proceeding shall be final and binding upon all Parties to the proceeding. Any action to enforce the arbitration award must be filed within one hundred and eighty (180) days from the issuance of the award.
- 14.10.3.3. Enforcement. Judgment upon any award rendered by the arbitrators against the Nation may be entered in the Nation's Tribal court system ("Tribal Court") or against the State of Arizona in the Arizona State Court System ("Court System") and interpreted and/or enforced pursuant to the terms of this Agreement, and/or pursuant to the terms of the AAA's Commercial Arbitration Rules, and/or pursuant to the terms and provisions of the statutes, rules and regulations governing or providing for interpretation or enforcement of judgments applicable in any State of Arizona or Navajo Nation court.
- 14.10.4. Dispute Resolution. In the event of a dispute, claim or controversy ("Dispute") arising out of or related to this Agreement, the Parties agree that it is in their mutual best interest to meet as promptly as possible for the purpose of informally resolving said Dispute. In the event the Parties cannot resolve their Dispute informally after attempting to work in good faith, the Parties hereto agree to abide by arbitration as set forth above and that an order compelling arbitration or a judgment enforcing the arbitration award shall be the only relief of any kind provided by the State or Tribal court.
- 14.10.5. AHCCCS may take any action described in the Financial Provisions, and/or sections 14.7 ("Agreement Remedies") or 14.8 ("Agreement Termination") of these Terms and Conditions prior to initiating or engaging in any process described under Section 14.10 ("Agreement Disputes and Arbitration") of these Terms and Conditions. The Tribe may use the process described under Section 14.10 ("Agreement Disputes and Arbitration") of these Terms and Conditions to appeal such an action.
- 14.11. Subcontracts. The Tribe will not enter into any subcontract under this Agreement for the performance of any function required by this Agreement without advance written approval by AHCCCS. The Tribe will clearly list any proposed subcontractors and the subcontractor's proposed responsibilities. The subcontract will incorporate by reference the Terms and Conditions of this Agreement.
- 14.12. Cooperation with Other Contractors: AHCCCS may award other contracts for additional or related work and the Tribe will fully cooperate with such other contractors and carefully fit its own work to such other contractors' work. Tribe shall not commit or permit any act which will interfere with the performance of work by any other contractor or by AHCCCS employees. AHCCCS will equitably enforce this section to all contractors to prevent the imposition of unreasonable burdens on any contractor.
- 14.13. No Guaranteed Quantities. AHCCCS does not guarantee the Tribe any minimum or maximum quantity of services or goods to be provided under this contract.
- 14.14. Survival of Rights and Obligations after Agreement Expiration or Termination
- 14.14.1. Any provision of this Agreement that contemplates performance or observance subsequent to termination or expiration of this Agreement will survive termination or expiration of this Agreement and continue in full force and effect.
- 14.14.2. All representations and warranties made by the Tribe under this Agreement will survive the expiration or termination hereof.

## 15. Compliance

- 15.1. Reporting Fraud, Waste and Abuse. The Tribe will report, in writing, all cases of suspected fraud, waste and/or abuse involving the programs administered by AHCCCS to the AHCCCS Office of the Inspector General ("OIG"). To report fraud, waste and/or abuse, the Tribe will complete the AHCCCS "Referral for Preliminary Investigation" form and submit it to AHCCCS-OIG with a copy sent to AHCCCS-DFSM.
- 15.2. Records.
  - 15.2.1. Throughout this Agreement, "records" will include, but not be limited to, financial statements, case files (both hard copy and stored data), books, data, and any other documents relating to the acquisition and performance of the Agreement.
  - 15.2.2. All records will be maintained to the extent and in such detail as required by AHCCCS Rules and Policies. The AHCCCS records management guidelines are located in AMPM Section 1620-L.
  - 15.2.3. At any time during the term of this Agreement and five (5) years thereafter, the Tribe's or any subcontractor's records will be subject to audit by AHCCCS and, where applicable, the Federal Government, to the extent that the records relate to the performance of the Agreement or a subcontract. The Tribe will make available, at all reasonable times during the term of this Agreement and the period set forth in in this section, any of its records for inspection, audit or reproduction by any authorized representative of AHCCCS, the State of Arizona or the Federal government. If AHCCCS requests the disclosure of any record(s) from the Tribe, the Tribe will provide the requested record(s) within the timeframe requested by AHCCCS and through the delivery mechanism specified by AHCCCS (e.g. U.S. mail, facsimile, secured email, web portal, etc.).
  - 15.2.4. The Tribe and its subcontractors will preserve and make available all records for a period of five (5) years from the date of final payment under this Agreement except as provided below:
    - 15.2.4.1. If this Agreement is completely or partially terminated, the records relating to the work terminated will be preserved and made available for a period of five years from the date of any such termination.
    - 15.2.4.2. Records that relate to grievances, disputes, litigation or the settlement of claims arising out of the performance of this Agreement, or costs and expenses of this Agreement to which exception has been taken by AHCCCS, will be retained by the Tribe for a period of five years after the date of final disposition or resolution thereof.
  - 15.2.5. Completed case files will be scheduled for archive shipment to AHCCCS, as defined by AHCCCS Policy and Procedures.
  - 15.2.6. To the extent that the Agreement or applicable law require the disclosure of records to AHCCCS and/or the Federal government, such disclosure will be made at no cost to AHCCCS or the Federal government.
- 15.3. Confidentiality of Records and Disclosure of Confidential Information:
  - 15.3.1. Mutual Protection of Information
    - 15.3.1.1. Except as required or allowed by law, the Tribe shall not, without prior written approval from AHCCCS, either during or after the performance of the services required by this Agreement, 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 Agreement. This nondisclosure requirement shall also pertain to any information contained in reports, documents, or other records furnished to the Tribe by AHCCCS.
    - 15.3.1.2. Except as required or allowed by law, AHCCCS shall not, without prior written approval from the Tribe, either during or after the performance of the services required by this Agreement, use, other than for such performance, or disclose to any person other than the Tribe's 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 Agreement. This nondisclosure requirement shall also pertain to any information contained in reports, documents, or other records furnished to the AHCCCS by the Tribe.

- 15.3.2. The Tribe 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 Agreement, is used or disclosed by it, its agents, officers or employees, except as required to efficiently perform duties under the Agreement. Persons requesting such information shall be referred to AHCCCS. The Tribe'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.
  - 15.3.3. 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 Agreement.
  - 15.3.4. The Tribe 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.
- 15.4. Audits and Inspections.
- 15.4.1. The Tribe will cooperate with AHCCCS and/or the Federal government in any audit, review, investigation and/or request for information of the Tribe and/or its subcontractors. In no event will this Agreement be construed to authorize any audit, review, investigation and/or request for information outside the scope of this Agreement.
  - 15.4.2. Audits: AHCCCS may conduct periodic audits to confirm the Tribe's and subcontractor(s)' compliance with applicable law and this Agreement. These audits include, but are not limited to:
    - 15.4.2.1. Annual Case Management Service Review
      - a) AHCCCS will conduct an Annual Case Management Service Review for the purpose of ensuring compliance with applicable law and this Agreement.
      - b) The Annual Case Management Service Review will be conducted to recommend improvements, monitor the Tribe's progress toward implementing mandated programs and corrective action plans, and provide the Tribe with technical assistance as necessary.
      - c) In preparation for the Annual Case Management Service Review, AHCCCS will work with the Tribe to identify and request records needed for the Review. AHCCCS and the Tribe will work together in good faith to define the scope of the audit and schedule any on-site meetings for a mutually-convenient time.
      - d) AHCCCS will furnish a copy of the Case Management Service Review Report completed every two years to the Tribe and give the Tribe an opportunity to comment on any review findings. AHCCCS and the Tribe will develop a Corrective Action Plan to correct any deficiencies identified in the Case Management Service Review Report completed every two years.
      - e) AHCCCS may conduct follow-up reviews to monitor the Tribe's progress in implementing the Corrective Action Plan.
    - 15.4.2.2. AHCCCS Ad Hoc Reviews: In addition to any other inspections, audits or reviews described in the Agreement, AHCCCS may conduct an ad hoc audit or review anytime it reasonably believes that the Tribe and/or a subcontractor may be out of compliance with the Agreement or any law pertaining to the Agreement, or that the health or safety

of a Member is endangered.

15.4.2.3. Program Integrity Review

- a) AHCCCS-OIG and/or AHCCCS-DFSM may conduct audits of the Tribe and/or its subcontractors without notice for the purpose of ensuring program integrity.
- b) Upon notice that an audit involves program integrity, the Tribe will respond to electronic, telephonic or written requests for information within the reasonable timeframe specified by AHCCCS-OIG and/or AHCCCS-DFSM.

15.4.2.4. Inspections: Should it be necessary for AHCCCS personnel to conduct an onsite review of the Tribe and/or any of its subcontractors, the Tribe will cooperate with AHCCCS to obtain a right of entry from the tribal government.

- a) If the Tribe notifies AHCCCS that it has permission to enter tribal lands, AHCCCS will rely on that notification as permission to enter tribal lands.
- b) If the Tribe cannot obtain a right of entry for AHCCCS from the tribal government within a reasonable timeframe requested by AHCCCS, such failure will constitute a material breach of the Agreement and AHCCCS may terminate the Agreement.

15.5. Compliance with Laws, Regulations, and Policies

15.5.1. AHCCCS and the Tribe will comply with all applicable Federal and State laws, regulations, standards, and Executive Orders without limitation to those specifically designated herein.

15.5.2. All AHCCCS guidelines, policies and manuals, including but not limited to the following: AHCCCS Medical Policy Manual, AHCCCS Covered Behavioral Health Services Guide, AHCCCS Fee-For-Service Manual, AHCCCS Claims Clues, Tribal ALTCS Digital Toolbox, and Reporting Guides are hereby incorporated by reference into this Agreement. Guidelines, policies and manuals are available on the AHCCCS website.

16. Risk and Liability

16.1. Indemnification. Each party (as "Indemnitor") agrees to defend, indemnify, 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. The State of Arizona, AHCCCS, is self-insured per A.R.S. 41-621. The indemnification in this paragraph is provided to the extent of the Navajo Nation Sovereign Immunity Act, 1 N.N.C. § 551 *et. seq.*

16.2. Should the Tribe utilize a contractor(s) or subcontractor(s) to fulfill the terms of this Agreement, the indemnification clause between the Tribe and its contractor(s) and subcontractor(s) will include the following:

To the fullest extent permitted by law, Tribe will defend, indemnify, and hold harmless the Navajo Nation and the State of Arizona, and any jurisdiction or agency issuing any permits for any work arising out of this Agreement, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of the contractor or any of the directors, officers, agents, or employees or subcontractors of such contractor. 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 Indemnitee will, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by such contractor from and against any and all claims. It is agreed that such contractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. Additionally on all applicable insurance policies, contractor and its subcontractors will name the Indemnitee as an additional insured and also include a waiver of subrogation in favor of the Indemnitee.

- 16.3. The Tribe will add to its contract(s) with any non-governmental contractor(s) or subcontractor(s) performing services in performance of this Agreement that the contractor(s) or subcontractor(s) will comply with the Minimum Subcontract Provisions found on AHCCCS' website. The Tribe has the discretion, based on the work performed by the Tribe's contractor(s) or subcontractor(s), to determine which of the insurance provisions in the Minimum Subcontract Provisions apply to each of the Tribe's contractor(s) or subcontractor(s).
- 16.4. Responsibility for Payments: The Tribe will be responsible for issuing payment for services performed by the Tribe's employees and will be responsible for and hold AHCCCS harmless for all claims whatsoever growing out of the lawful demands of employees, contractors, subcontractors, suppliers, or any other third party incurred in the furtherance of the performance of the Agreement. The Tribe will, at AHCCCS' request, furnish satisfactory evidence that all obligations described under this subsection have been paid, discharged or waived.
- 16.5. Force Majeure.
- 16.5.1. Except for payment of sums due, neither Party will be liable to the other nor deemed in default under this Agreement if and to the extent that such Party's performance of this Agreement is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the Party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes acts of God; acts of the public enemy; war; riots; strikes; mobilization; labor disputes; civil disorders; fire; flood; lockouts; injunctions-intervention-acts; or failures or refusals to act by government authority; and other similar occurrences beyond the control of the Party declaring force majeure which such Party is unable to prevent by exercising reasonable diligence.
- 16.5.2. Force Majeure will not include the following occurrences:
- 16.5.2.1. Late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, or an oversold condition of the market;
- 16.5.2.2. 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
- 16.5.2.3. Inability of either the Tribe or any subcontractor to acquire or maintain any required insurance, bonds, licenses or permits.
- 16.5.3. If either Party is delayed at any time in the progress of the work by force majeure, the delayed Party will 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 will specify the causes of such delay in such notice. Such notice will be delivered or mailed certified-return receipt and will make a specific reference to this article, thereby invoking its provisions. The delayed Party will cause such delay to cease as soon as practicable and will notify the other party in writing when it has done so. The time of completion will be extended by 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 Agreement.
- 16.5.4. Any delay or failure in performance by either party hereto will 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.

## **ADDENDUM 1: BUSINESS ASSOCIATE AGREEMENT**

Updated April 2020

This Addendum is made part of this Contract between the Arizona Health Care Cost Containment System ("AHCCCS") and the Tribe, 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:

- a. Not use or disclose protected health information ("PHI") other than as permitted or required by this Addendum or as required by law;
- b. 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;
- c. 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;
  - i. 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:
    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. A description of the PHI used or disclosed;
    3. The date(s) on which the unauthorized use or disclosure occurred;
    4. The date(s) on which the unauthorized use or disclosure was discovered;
    5. Identify the person(s) who used or disclosed the PHI in an unauthorized manner;
    6. Identify the person(s) who received PHI disclosed in an unauthorized manner;
    7. A description of actions, efforts, or plans undertaken by the Business associate to mitigated the harm of the unauthorized disclosure;
    8. A description of corrective actions undertaken or planned to prevent future similar unauthorized use or disclosure;
    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
  10. Such other information, as may be reasonably requested by the AHCCCS Privacy Official.

- ii. 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.
  - iii. 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.
  - iv. 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.
- d. 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;
  - e. Make available PHI in a designated record set to AHCCCS as necessary to satisfy AHCCCS' obligations under 45 CFR §164.524;
  - f. 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;
  - g. 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;
  - h. To the extent Business Associate is to carry out one of more of AHCCCS' obligations under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to AHCCCS in the performance of such obligation(s); and
  - i. 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 DISLOSURES BY BUSINESS ASSOCIATE**

- a. Business Associate may only use or disclosure PHI as necessary to perform the services and obligations set forth in the underlying Contract;
- b. Business Associate may use or disclose protected health information as required by law;
- c. 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).
- d. 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);
- e. 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
- f. 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**

- a. AHCCCS shall notify Business Associate of any limitation(s) in the AHCCCS Notice of Privacy Practices (found at [www.azahcccs.gov](http://www.azahcccs.gov)) under 45 CFR §164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI;
- b. 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



- c. 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**

- a. 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.
- b. 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.
- c. 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:
  - i. Retain only that PHI which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities;
  - ii. Destroy or return to AHCCCS all remaining PHI that the Business Associate still maintains in any form;
  - iii. 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;
  - iv. 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
  - v. 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.
- d. Survival: The obligations of Business Associate under this Section shall survive the termination of the Contract.

#### **6. INDEMNIFICATION AND MISCELLANEOUS**

- a. 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 to the extent of the Navajo Nation Sovereign Immunity Act, 1 N.N.C. § 551 *et. seq.*
- b. Regulatory References: A reference in this Addendum to a section in the HIPAA rules means the section as in effect or as amended.
- c. 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.
- d. Interpretation: Any ambiguity in this Addendum shall be interpreted to permit compliance with the HIPAA rules.