



Notice of Request for Proposal

SOLICITATION # YH21-0007

Medicaid School Based Claiming

AHCCCS Procurement Officer:

Cynthia Smolens
 Senior Procurement Specialist
 E-Mail: procurement@azahcccs.gov

Issue Date: Thursday, July 15, 2021

RFP DESCRIPTION:	Medicaid School-Based Claiming
PROPOSAL DUE DATE: 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.	Wednesday, September 1, 2021 At 3:00 PM ARIZONA TIME
Pre-Proposal Conference:	A Pre-Proposal Conference has <u>NOT</u> been scheduled.
Questions concerning this solicitation shall be submitted to the Procurement Officer named above in writing, on the Q&A form provided with this RFP. Answers will be posted on the AHCCCS website in the form of a Solicitation Amendment for the benefit of all Potential Offerors.	Questions: Thursday, July 29, 2021, 5:00 PM Arizona Time
Request Access to the SFTP Server	No Later than Wednesday, August 18, 2021 5:00 PM Arizona Time

Late proposals shall not be considered.
OFFERORS ARE STRONGLY ENCOURAGED TO CAREFULLY READ THE ENTIRE SOLICITATION.

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

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

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

Attachment A – Boycott of Israel
Attachment B – Designated Contact Person
Attachment C – Price Proposal
Exhibit A – Proposal Submission Instructions
Exhibit B – Quarterly Certification of State (Non-Federal) Matching Funds
Exhibit C – Sample Claim Cover Letter
Questions and Answers Form

Other Reference Materials and Templates are located in the Bidders' Library and can be found here:

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

OFFER AND ACCEPTANCE

OFFER

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

Arizona Transaction (Sales) Privilege Tax License No.:

For clarification of this offer, contact:

Name: _____

Federal Employer Identification No.:

Title: _____

E-Mail Address: _____

Phone: _____

Company Name

Signature of Person Authorized to Sign Offer

Address

Printed Name

City State Zip

Title

CERTIFICATION

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

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

ACCEPTANCE OF OFFER (to be completed by AHCCCS)

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

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

This contract shall henceforth be referred to as

Contract No. _____.

CONTRACT SERVICE START DATE: _____.

AWARD DATE: _____.

MEGGAN LAPORTE, CPPO, MSW, AHCCCS Chief Procurement Officer

SCOPE OF WORK

1. **AHCCCS OVERVIEW (as of 2021)**

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 (DHHS). As of June, 2021, AHCCCS provides coverage to over 2.2 million members in Arizona. AHCCCS also administers several Non-Title XIX programs funded by State only appropriations and Federal grants received from the Substance Abuse and Mental Health Services Administration (SAMHSA) under DHHS. The majority of AHCCCS programmatic expenditures are administered through Managed Care programs. For more information on AHCCCS please visit: <https://www.azahcccs.gov/AHCCCS/AboutUs/>.

AHCCCS contracts with Managed Care Organizations (MCOs) including, but not limited to, Regional Behavioral Health Authorities (RBHAs), AHCCCS Complete Care (ACCs), and Arizona Long Term Care System (ALTCS) plans that are responsible for providing acute and behavioral health services. For more information on AHCCCS' programs and covered services please visit: <https://www.azahcccs.gov/AHCCCS/AboutUs/programdescription.html>. A list of AHCCCS' contracted plans can be found here: <https://azweb.statemedicaid.us/HealthPlanLinksNet/HPLinks.aspx>.

AHCCCS has a total fund budget for State Fiscal Year (SFY) 2021 of approximately \$17.1 billion. AHCCCS has over 106,000 active providers in Arizona, such as individual medical and behavioral health practitioners, therapy disciplines, institutions, durable medical equipment companies, and transportation entities. Additional information may be found on the AHCCCS website reporting page: <https://www.azahcccs.gov/Resources/Reports/federal.html>.

2. **PROJECT OR SERVICE OVERVIEW/BACKGROUND**

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.

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) 2021, LEAs statewide claimed approximately \$13.2 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.

Arizona's MSBC program reimburses schools 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

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established. Assessment, diagnostic, and evaluation services are covered under the DSC Program only when one or more DSC covered services are prescribed in the member's IEP, IFSP, 504 Plan, other individualized health or behavioral health plan, or where medical necessity has been otherwise established. Currently, the schools can receive reimbursement for medically necessary physical therapy, occupational therapy, speech therapy, audiology services, nursing services, health aides, certain transportation, and behavioral health services. These activities are considered "direct medical services." In SFY 2020, 43,000 students received Medicaid eligible services as prescribed in their IEPs. The average Medicaid Eligibility Rate (MER) was 41.65% and included 98 participating LEAs throughout the state.

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 2020 the DSC program received and processed over 1.5 million interim claims and the LEAs received over \$30.5 million statewide.

Pending CMS approval, effective in October 2021, the MSBC program will expand to cover all Medicaid enrolled children recognizing the growing need to provide health services and support to children where they spend the majority of their time in school. In 2014, CMS issued a state Medicaid director letter (SMD# 14-006 located in the Bidders Library) reversing the long standing Free Care policy (for more information about Free Care, please see section 5.2 g). This change allows states more flexibility in their school-based Medicaid programs by allowing school districts to bill Medicaid for health services delivered to all Medicaid-enrolled children, not just those with a special education plan documented by an IEP. Medicaid covered services can be furnished to Medicaid enrolled student beneficiaries that require medical or behavioral health services identified as medically necessary in an IEP, Individualized Family Service Plan (IFSP), 504 Plan, other individualized health or behavioral health plan, or where medical necessity has been otherwise established. AHCCCS predicts a 20% growth in the MSBC program in SFY 2022 with the reversal of the Free Care policy that will cover all Medicaid enrolled children, AHCCCS will call the transformation Open Care.

3. PURPOSE OF THE RFP

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. AHCCCS is seeking to contract with a single entity or organization to act as a third party administrator to:

- 3.1. Assist LEAs to appropriately claim for reimbursement under the MSBC program;
- 3.2. Ensure that the Medicaid program pays only for appropriate school-based claiming activities;
- 3.3. Protect the fiscal integrity of the Medicaid program by providing a clear articulation of the requirements for school-based claiming;
- 3.4. Help ensure consistency in the application of federal school-based claiming requirements;
- 3.5. Assist in the implementation of operational and oversight functions;
- 3.6. Educate all LEAs throughout the state about Medicaid school-based claiming;
- 3.7. Train and provide technical assistance to all participating LEAs;
- 3.8. Perform certain key claims functions related to the submittal and payment of LEA interim claims;
- 3.9. Perform key functions related to development of annual cost based reimbursement;
- 3.10. Perform key functions related to random moment time studies; and
- 3.11. Conduct compliance reviews of all participating LEAs.

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4. **LEGAL AUTHORITY**

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

5. **CONTRACTOR RESPONSIBILITIES - The Contractor shall:**

5.1. **Program Promotion and Contracting Component**

- 5.1.1. 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.
- 5.1.2. 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:
 - 5.1.2.1. Responsibilities and requirements of LEAs that participate in the program;
 - 5.1.2.2. Responsibilities of the Contractor.

5.2. **Education, Training and Technical Assistance Component**

- 5.2.1. 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 at those LEAs that have entered into participation agreements.
- 5.2.2. Submit for prior approval by AHCCCS, all written materials developed by the Contractor (including any materials developed for a website).
- 5.2.3. Ensure that all materials are in compliance with federal and state laws, regulations and policies relevant to the Medicaid School-Based program.
- 5.2.4. Ensure all the materials are in compliance with the following AHCCCS manuals and CMS approved guides for the MSBC program, which for reference are found on the AHCCCS website as indicated below: <http://www.azahcccs.gov/commercial/Purchasing/open.aspx>.
 - a. AHCCCS Medical Policy Manual - Policy 710 revised draft October 1, 2021;
 - b. AHCCCS Fee-for-Service Provider Manual;
 - c. CMS approved "Arizona Medicaid School-Based Claiming Time Study Implementation Guide for Direct Services and Administrative Claiming" effective July 1, 2011, revised April 15, 2020, revised draft October 1, 2021
 - d. CMS approved "Guide to Cost Reporting for the School-Based Services Direct Service Claiming Program" revised draft October 1, 2021;
 - e. Medicaid School-Based Administrative Claiming Guide (May 2003);
 - f. Technical Assistance Guide on Medicaid and School Health (August 1997); and
 - g. SMD# 14-006 Medicaid payment for services provided without charge (Free Care).

5.2.5. **Education to LEAs**

- 5.2.5.1. 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, (2) involve meeting with interested LEAs as well as distributing written educational materials developed by the Contractor.

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- 5.2.5.2. Be responsible for informing the LEAs about any changes to the program, e.g., expansion of covered services, changes in policy, or documentation requirements. At a minimum in order to participate in the program, a LEA must:
 - 5.2.5.2.1. Register as a group billing entity with AHCCCS if claiming for direct medical services as well as obtaining a national provider identifier (NPI) number;
 - 5.2.5.2.2. Register each school-based provider individually;
 - 5.2.5.2.3. 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;
 - 5.2.5.2.4. Ensure that all billed services meet the requirements for qualifying covered services; and
 - 5.2.5.2.5. Certify non-federal public funds expended to provide qualifying Medicaid covered services to Medicaid enrolled students.
- 5.2.6. Training
 - 5.2.6.1. 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).
 - 5.2.6.2. 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:
 - 5.2.6.2.1. Program requirements related to eligible children and qualifying covered services;
 - 5.2.6.2.2. 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;
 - 5.2.6.2.3. Eligibility verification;
 - 5.2.6.2.4. Reimbursement;
 - 5.2.6.2.5. 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;
 - 5.2.6.2.6. Documentation and record keeping;
 - 5.2.6.2.7. 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;
 - 5.2.6.2.8. Confidentiality;
 - 5.2.6.2.9. Grievance and appeals;
 - 5.2.6.2.10. Third party liability;
 - 5.2.6.2.11. Fraud and abuse;
 - 5.2.6.2.12. Submission requirements for annual costs for Cost Based Reimbursement;
 - 5.2.6.2.13. Random Moment Time Study; and
 - 5.2.6.2.14. Quarterly Medicaid Administrative Claiming process.
- 5.2.7. Technical Assistance
 - 5.2.7.1. Provide technical assistance to the participating LEAs as necessary and/or as requested by the LEAs.
 - 5.2.7.2. 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.

5.3 Program Handbook

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- 5.3.1 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:
 - 5.3.1.1 Introduction to the Contractor, explaining the Contractor's organization and administrative structure;
 - 5.3.1.2 LEA responsibilities and the Contractor's expectations of LEAs and their providers;
 - 5.3.1.3 Overview of the Contractor's responsibilities to the LEA and their providers;
 - 5.3.1.4 Overview of the description of program services;
 - 5.3.1.5 Grievance rights of LEAs and their providers;
 - 5.3.1.6 Interim claims submission policies and procedures;
 - 5.3.1.7 Remittance advice overview and explanation;
 - 5.3.1.8 Qualified providers and their role in the DSC program;
 - 5.3.1.9 Documentation requirements;
 - 5.3.1.10 Random Moment Time Study process and requirements;
 - 5.3.1.11 Staff Pool development, time frames and requirements;
 - 5.3.1.12 Information on completing and submitting required financial data; and
 - 5.3.1.13 Information, technical assistance, annual cost reporting, reconciliation, and settlement related to the completion of Cost Based Reimbursement for both the LEAs and AHCCCS; and
 - 5.3.1.14 Information and completing and submitting Quarterly Medicaid Administrative Claims (MAC);
 - 5.3.1.15 Program compliance;

5.4 Claim Disputes

- 5.4.1 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.

5.5 Compliance Review

- 5.5.1 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:
 - 5.5.1.1 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 otherwise 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, etc.;
 - 5.5.1.2 Individual provider files including licenses/certifications of providers, provider contracts, etc.;
 - 5.5.1.3 Student/individual provider attendance records;
 - 5.5.1.4 Provider documentation showing that covered services were rendered;
 - 5.5.1.5 LEA related documentation including group biller registration, individual provider registration, copies of claims submitted, and financial documents necessary to verify the certification of public expenditures by the LEA to provide covered services to members;

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5.5.1.6 LEA related documentation to support reported cost for both the quarterly administrative claims and the annual Cost Based Reimbursement.

5.5.2 Develop an initial comprehensive compliance review plan including all program components that 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.

5.5.3 Submit quarterly to AHCCCS a summary report 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 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. AHCCCS will 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.

5.6 Pre-payment Review Process

5.6.1 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 health aide prepayment review requests and upload all required documentation for each health aide prescription that exceeds 150 minutes per day.

5.7 Qualified Staff

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

6 COST BASED REIMBURSEMENT METHODOLOGY – The Contractor shall:

- 6.1 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:
- 6.1.1 The Random Moment Time Study (RMTS) process (includes but is not limited to maintenance of online time study system, development of and provision of training, monitoring response rate, central coding of responses and summarization of results);
 - 6.1.2 Management and payment of claims for direct medical services (receipt of claims which validate services provided, monitor eligibility of member, provide audit trail);
 - 6.1.3 Cost reporting (financial reports, both quarterly and annual) includes but is not limited to collection of quarterly expenditure data, calculation of administrative claims, collection of annual expenditure data for calculation of Cost Based Reimbursement; and
 - 6.1.4 Cost reconciliation and cost settlement to include but not limited to:
 - 6.1.4.1 Calculation of total interim payments by LEA;
 - 6.1.4.2 Collection of all necessary expenditure data by LEA;
 - 6.1.4.3 In-depth prepayment review of all expenditure data to determine and validate the appropriateness of cost data;
 - 6.1.4.4 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);
 - 6.1.4.5 Distribution of annual reconciliation payments or collection of reconciliation recoupment by LEA; and

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

7 QUARTERLY CLAIMING FOR ADMINISTRATIVE SCHOOL-BASED SERVICES – The Contractor shall:

7.1 Claiming Methodology for Administrative Services

- 7.1.1 Comply with the procedures contained within the most current CMS Medicaid School-based Administrative Claiming Guide.
- 7.1.2 Review and comply with the AHCCCS Administrative Claiming Methodology prior to the beginning of the contract.
- 7.1.3 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 quarterly MAC claim. Any subsequent updates to the methodology must be approved by AHCCCS prior to implementation.
- 7.1.4 Provide to all participating LEAs information on the specific reporting requirement for the quarterly administrative claim.

7.2 Administrative Claiming Submittal Process

- 7.2.1 Submit quarterly claims to AHCCCS no later than 115 days after the end of each calendar quarter for all quarter's reimbursement except July - September claim which shall be submitted no later than 175 days after the end of the quarter's calendar. Claims shall be submitted in the format described in the Agency methodology and 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 quarterly administrative claim (See Exhibit C for sample) as well as providing the supporting documentation.
- 7.2.2 Any adjustments to previous Quarter claims must be submitted with the next quarterly claim following the overpayment determination.
- 7.2.3 AHCCCS shall provide Federal Financial Participation (FFP) to the Contractor within one hundred fifty (150) days after the approved quarterly claim submission.

7.3 Administrative Claiming Payment Process

- 7.3.1 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.
- 7.3.2 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.
- 7.3.3 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.
- 7.3.4 Be reimbursed no more than the federal rate of reimbursement for Title XIX allowable administrative activities provided, as based upon a time accounting system which is in accordance with the provisions of 2 CFR Part 200, 45 CFR Parts 74 and 95, the CMS Medicaid School-based Administrative Claiming Guide, and this Contract.

7.4 Denied Claims

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AHCCCS will inform the Contractor of any 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. Any reimbursed claim amounts including Contractors administrative fees subsequently determined to be unallowable by CMS and/or AHCCCS shall be refunded to AHCCCS upon demand.

8 INTERIM CLAIMS FOR DIRECT MEDICAL SERVICES – The Contractor shall:

Be required to 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 set forth in the AHCCCS Fee-For-Service Provider Manual.

8.1 Direct Medical Covered Services and Eligible Child

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:

- 8.1.1 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 otherwise established and meets plan requirements for the date of service.
- 8.1.2 Provided by qualified registered AHCCCS providers who are employed by or subcontracted with the LEAs or their individual schools;
- 8.1.3 Provided on school grounds unless the IEP, IFSP, 504 plan, other individualized health or behavioral health plan, or where medical necessity has been otherwise 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;
- 8.1.4 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;
- 8.1.5 Prescribed and provided in accordance with the AHCCCS Medical Policy Manual; and
- 8.1.6 Considered medically necessary services as set forth in A.A.C. R9-22-101.

8.2 Direct Medical Service Interim Claims Submittal Process

The claims submittal process for the Direct Medical Services shall include the following basic components:

- 8.2.1 The Contractor shall require the LEAs to submit to the Contractor within six (6) months from the date of service, CMS 1500 claim (update to imply electronic claims format) 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.
- 8.2.2 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. Failure

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on the part of the LEAs or their contracted providers to pursue third party liability as required by Federal law shall result in the denial of the claim. Even if payment from the other insurer has not been received, the Contractor must receive the initial claim within six (6) months from the date of service.

The Contractor shall 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:

- 8.2.2.1 Required claim fields are completed and contain correct values;
 - 8.2.2.2 Service provided meets the definition of an eligible covered service;
 - 8.2.2.3 The student to whom the service was provided meets the definition of an enrolled student on the claim service date;
 - 8.2.2.4 Any available third party liability carrier was billed first;
 - 8.2.2.5 No duplication of services;
 - 8.2.2.6 Service provided by an eligible provider who is enrolled with AHCCCS on the claim service date;
 - 8.2.2.7 Initial claim is received within six (6) months of the Date of service or eligibility posting date, whichever is greater;
 - 8.2.2.8 No duplication of payments, e.g., reimbursement for the service has not been previously paid;
 - 8.2.2.9 The service begin date is on or after July 1, 2022, and is a valid date;
 - 8.2.2.10 In the case of transportation claims, that another eligible service was provided on the same day;
 - 8.2.2.11 The minimum service limits for codes are based on a normal school day. Time based services not to exceed twenty-four (24) units per student per day;
 - 8.2.2.12 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.
 - 8.2.2.13 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.
- 8.2.3 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.
- 8.2.4 The Contractor shall 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: 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.

8.3 Direct Medical Services Interim Claim Payment

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AHCCCS will 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. AHCCCS will 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 File transfer Protocol (FTP) 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. Additionally, AHCCCS will also withhold amounts from these payments to LEAs to pay for any payment recoupments (see section 8.4.2).

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. The Contractor shall 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.

The Contractor shall accept electronic payment from AHCCCS and issue electronic payments to LEAs.

8.4 **Claims Denial for Direct Medical Services**

8.4.1 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 is greater. The Contractor shall assist the LEA in resubmitting denied claims and provide technical assistance to LEAs that have a high claims denial rate. The contractor is responsible for development of a corrective action plan as deemed necessary.

8.4.2 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:

8.4.2.1 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;

8.4.2.2 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

8.4.2.3 Determined by the federal government and/or by AHCCCS to be unallowable, deferred or disallowed for any reason.

8.5 **Duplicate Claims Payment**

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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.

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

- 9.1 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. AHCCCS will notify the Contractor of changes in the state match percentage as soon as AHCCCS has knowledge of such changes.
- 9.2 Immediately communicate any changes in the state match percentage to the participating LEAs upon being informed by AHCCCS of such changes.
- 9.3 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.
- 9.4 Immediately notify AHCCCS if such matching funds become limited or unavailable to any participating LEA and AHCCCS will limit or deny reimbursement of Federal funds until such time as the appropriate matching funds are available.
- 9.5 Audit the LEAs methodology for identifying the LEA State Matching Funds.

10 OPERATIONAL READINESS REVIEWS

AHCCCS may 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.

11 AHCCCS OPERATIONAL REVIEWS – The Contractor shall:

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. Any requested records shall be made available within a reasonable period of time at the Contractor's offices or at AHCCCS or any other office designated by AHCCCS. 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.

12 FINANCIAL AUDIT – The Contractor shall:

- 12.1 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. The annual audit shall include operations related to this contract. 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 under this contract until such time the Contractor is deemed to be in compliance with this requirement.

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- 12.2 Maintain an accounting system with supporting fiscal records adequate to assure that claims for Federal funds are in accordance with this Agreement and any applicable laws, regulations and policies.

13 RECORDS RETENTION AND DESTRUCTION – The Contractor shall:

- 13.1 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.
- 13.2 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. 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 employees and conduct on-site reviews of all matters relating to service delivery as specified in this Agreement. 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.
- 13.3 Give AHCCCS reasonable notice prior to changes to the Contractor's retention policies and practices.
- 13.4 Require the same records retention requirement of their subcontractors.

14 CONTRACTOR'S PROGRAM COORDINATION RESPONSIBILITIES

14.1 Designated Contact Person

Upon contract award, the Contractor shall 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 under this contract and who is primarily responsible for its success. This person shall ensure that all services performed and materials used under this contract shall be accomplished in consultation with, and under the supervision of AHCCCS.

14.2 Coordination of Services

As deemed necessary, the Contractor shall 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.*

14.3 Information Systems

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. Specific format information 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.

- 14.3.1 The Contractor must have the ability to place and retrieve electronic data from the AHCCCS FTP server. Information includes, but is not limited to:
- 14.3.1.1 Third Party Liability
 - 14.3.1.2 Member Enrollment File
 - 14.3.1.3 Registered Provider File
 - 14.3.1.4 Submit HIPAA compliant electronic claim transaction in the 837P 005010X222A1 Health Care Claim: Professional format.

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- 14.3.1.5 Accept HIPAA compliant electronic remittance in the 835 005010X221A1 Health Care Claim Payment/Advice format.
- 14.3.2 The Contractor shall be compliant with the adoption of ICD 10CM coding standards. The information so 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 of aforementioned is hereinafter changed, both parties agree to conform to these changes following appropriate notification by AHCCCS.
- 14.3.3 The Contractor is responsible for:
 - 14.3.3.1 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.
 - 14.3.3.2 Identifying any inconsistencies immediately upon receipt of data from AHCCCS.
 - 14.3.3.3 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 PMMIS system contact will be assigned after contract award.
 - 14.3.3.4 Complying with all administrative simplification provisions resulting from the Health Insurance Portability and Accountability Act (HIPAA).

14.4 Contractor Reports

The Contractor shall submit to AHCCCS the reports and deliverables outlined in Section 20. 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:

- 14.4.1 **Timeliness:** Reports or other required data shall be received on or before scheduled due dates.
- 14.4.2 **Accuracy:** Reports or other required data shall be prepared in strict conformity with appropriate authoritative sources and/or AHCCCS defined standards.
- 14.4.3 **Completeness:** All required information shall be fully disclosed in a manner that is both responsive and pertinent to report intent with no material omissions.

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. The Contractor shall comply with all changes specified by AHCCCS.

15 AHCCCS OVERSIGHT FUNCTION

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AHCCCS will retain 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.

16 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 and accurate and complete and that the Subcontractor(s) or LEAs shall not submit for payment purposes those 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.

17 PERFORMANCE and FIDELITY BONDS

Within ten (10) business days after contract effective date, and annually thereafter by no later than June 1, the Contractor shall submit to AHCCCS (Contracts and Purchasing) a performance bond of standard commercial scope issued by a surety company doing business in this State. 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 \$3,000,000.00 based on data from SFY 2021). In the event of a default by the Contractor, AHCCCS shall, in addition to any other remedies it may have under this contract, obtain payment under the performance bond or substitute security for the purposes of any of the following:

- 17.1 Paying any damages sustained by reason of non-performance or other breach of Contractor's obligations under this contract;
- 17.2 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;
- 17.3 Covering a transition period, if any, where the Contractor does not cooperate fully with AHCCCS or a successor Contractor; and
- 17.4 Use by AHCCCS in the event the Contractor becomes insolvent.

Personnel Bonding Requirements: The Contractor shall 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, agent, subcontractor, or employee of the Contractor.

18 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.

19 COMPENSATION – Reference Attachment C – Price Proposal

- 19.1 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.

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19.2 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.

20 DELIVERABLES CHART

REPORT/DELIVERABLE	DATE DUE
Annual Reports	
Model LEA Participating Agreement that identifies the DSC and MAC program	Initial - March 15, 2022 Ongoing – As amended
Annual Compliance Review Plan- Outline plan for completion of compliance review for the upcoming contract year.	Initial – 60 days of contract award Ongoing - July 1 st and as amended
LEA Handbooks for the MSBC program	Initial - March 15, 2022 Ongoing – As amended
Annual report summary of prior year training, technical assistance, and compliance review. Describe issues and resolutions.	Initial - Sept 1, 2023 then yearly by September 1 st .
Summary of School Participation Agreements	Initial – 60 days after contract award Ongoing – Yearly due July 1 st .
Annual Financial Audit	Within 10 months of Contractor’s fiscal year end
Provider Type Summary	Due July 1 st
System Review for Record Retention and Destruction Policy	Initial – March 15, 2022 Ongoing – July 1 st .
Performance and Fidelity Bonds	Initial - July 12, 2022 Ongoing – June 1 st
Business Continuity Plan	Initial – March 15, 2022 Ongoing – July 1 st .
Background Checks Documentation	Initial – March 15, 2022 Ongoing – July 1 st .
Bi-Annual Reports	
NONE	
Quarterly Reports	

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Detailed Report of Compliance Review Results	45 days following the end of each quarter
Quarterly Grievance Report	45 days after the end of each quarter
Quarterly Status of Quarterly Certification of State (Non-Federal) Matching Funds	Submitted with Quarterly Claim.
RMTS Compliance Reports	Due 45 days following the end of each quarter.
CMS Quarterly RMTS Report	Due 45 days after the end of the Quarter.
Monthly Reports	
Claims Aging Summary for DSC program	By 15 th of each month for prior month information.
Claims Denial Report for DSC program	By 15 th of each month for prior month information.
Claims Denial Summary by LEA for DSC program	By 15 th of each month for prior month information.
DSC Program Reports Narrative/Summary	By 15 th of each month for prior month information.

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

- 21.1 Notify LEA's and cooperate with AHCCCS to coordinate transition of services
- 21.2 Continue processing all outstanding DSC and MAC claims rendered prior to contract termination or expiration
- 21.3 Provide Monthly, Quarterly and Annual Deliverables for the contracted time period
- 21.4 Cooperate with AHCCCS to complete and finalize any open reconciliations, until release has been granted by AHCCCS. AHCCCS will work to complete any pending reconciliations as timely as can be completed, allowing for appropriate lag time for claims run-out and/or changes to be entered into the system,
- 21.5 Cost Based Reimbursement Requirements:
 - 21.5.1 Complete cost-based reconciliation activities on prior Contract Years
 - 21.5.2 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.
 - 21.5.3 Retaining, preserving, and making available records, within the timeframes required by state and federal law, including but 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

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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.

22 PENDING LEGISLATION

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.

DEFINITIONS

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

1. **AAC:** 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 Medicaid School-Based Administrative Claiming Guide (May 2003).
3. **ADOE:** Arizona Department of Education.
4. **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.
5. **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.
6. **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.
7. **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 Medicaid School-Based Administrative Claiming Guide (May 2003).
8. **ATTACHMENT:** Any item the Solicitation that requires an Offeror to submit as part of the Offer.
9. **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.
10. **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.
11. **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.
12. **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.
13. **CMS MEDICAID SCHOOL-BASED CLAIMING ADMINISTRATIVE CLAIMING GUIDE:** This document, issued May 2003 by CMS, describes the processes through which school-based 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.

DEFINITIONS

14. **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.
15. **CONTRACT AMENDMENT:** A written document signed by the Procurement officer that is issued for the purpose of making changes in the contract.
16. **CONTRACTOR:** A person who has a contract with AHCCCS.
17. **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.
18. **DELIVERABLES:** All items that the Contractor is required to deliver under this Contract
19. **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.
20. **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.
21. **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.
22. **EPSDT:** The Title XIX Early and Periodic Screening, Diagnostic and Treatment Program.
23. **EXHIBIT:** Any item labeled as an Exhibit in the Solicitation or placed in the Exhibits section of the Solicitation.
24. **FFP (FEDERAL FINANCIAL PARTICIPATION):** The Federal share of reimbursement for services provided in accordance with Federal requirements for school-based Medicaid services.
25. **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.
26. **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.
27. **GRIEVANCE SYSTEM:** A system that includes a process for enrollee grievances, enrollee appeals, provider claim disputes, and access to the state fair hearing system.

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28. **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.
29. **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.
30. **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).
31. **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.
32. **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.
33. **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.
34. **MAY:** Indicates something that is not mandatory but permissible.
35. **MEDICAID:** A Federal/State program authorized by Title XIX of the Social Security Act, as amended.
36. **MEDICAID ADMINISTRATIVE CLAIMING (MAC) PROGRAM:** Quarterly 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.
37. **MEDICAID SCHOOL-BASED CLAIMING (MSBC) PROGRAM:** The program that encompasses both DSC and MAC.
38. **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).
39. **OFFER:** A response to a solicitation.
40. **OFFEROR:** A vendor or person who responds to a Solicitation.
41. **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.
42. **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.
43. **PERSON:** Any corporation, business, individual, union, committee, club or other organization or group of individuals.

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44. **PMMIS:** Prepaid Medical Management Information System, the management information system used by AHCCCS.
45. **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.
46. **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.
47. **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.
48. **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.
49. **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.
50. **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.
51. **RFP:** Request For Proposal; document prepared by AHCCCS which describes the services required and which instructs a prospective Offeror how to prepare a response (proposal).
52. **SCOPE OF WORK:** Those provisions of this solicitation which specify the work and/or results to be achieved by the Contractor.
53. **SERVICES:** Means all effort to be expended by the Contractor under the Contract, including advice and expertise, and development and delivery of deliverables.
54. **SHALL, MUST:** Indicates a mandatory requirement. Failure to meet these mandatory requirements may result in the rejection of a proposal as non-responsive.
55. **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.

DEFINITIONS

56. **SOLICITATION:** An Invitation for Bids (“IFB”), a Request for Proposals (“RFP”), or a Request for Quotations (“RFQ”).
57. **SOLICITATION AMENDMENT:** A document that is authorized by the Procurement officer and issued for the purpose of making changes to the Solicitation.
58. **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.
59. **STATE:** The State of Arizona and Department or Agency of the State that executes the Contract.
60. **STATE FISCAL YEAR:** The period beginning with July 1 and ending June 30.
61. **STATE MATCHING FUNDS:** Non-federal funds, as specified in the Arizona Medicaid State Plan that serves as the Title XIX state match for qualifying covered services provided by the LEAs. This rate is determined annually by the Federal Medical Assistance Percentage and is subject to change.
62. **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.
63. **TECHNICAL ASSISTANCE GUIDE ON MEDICAID AND SCHOOL HEALTH:** This document, issued August 1997 by CMS, describes the processes through which school-based programs must administer and file claims with the federal government for the direct medical services they provide. The guide is available on the AHCCCS website in the Bidder’s Library of this RFP.
64. **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.
65. **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.
66. **TITLE XIX:** Title XIX of the Social Security Act means Medicaid as defined in 42 U.S.C. 7.19.
67. **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)

UNIFORM INSTRUCTIONS TO OFFERORS

1 Definitions – All definitions listed in the definition of terms.

2 Inquiries

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

3 Offer Preparation

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

UNIFORM INSTRUCTIONS TO OFFERORS

Acrobat). Offerors wishing to submit files in any other format shall submit an inquiry to the Procurement Officer.

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

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shall include a letter with its Offer setting forth the name and address of the governmental unit, the effective date of this suspension or debarment, the duration of the suspension or debarment, and the relevant circumstances relating to the suspension or debarment. If suspension or debarment is currently pending, a detailed description of all relevant circumstances including the details enumerated above shall be provided.

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

4 Submission of Offer

- 4.1 Offer and Acceptance: Offers shall include a signed Offer and Acceptance form. The Offer and Acceptance form shall be signed with a signature by the person authorized to sign the Offer, and shall be submitted no later than the Solicitation due date and time. Failure to return an Offer and Acceptance form may result in rejection of the Offer.
- 4.2 Solicitation Amendments: Each Solicitation Amendment shall be signed by the person signing the Offer, and shall be submitted no later than the Offer due date and time. Failure to return a signed copy of a material Solicitation Amendment may result in rejection of the Offer.
- 4.3 Offer Amendment or Withdrawal: An Offer may not be amended or withdrawn after the Offer due date and time except as otherwise provided under applicable law.
- 4.4 Public Record: All Offers submitted and opened are public records and must be retained by the State for a period of time in accordance with the law. Offers shall be open and available to public inspection after Contract award, except for such portions deemed to be confidential in accordance with the procurement.
- 4.5 Non-collusion, Employment, and Services: By signing the Offer and Acceptance Form or other official contract form, the Offeror certifies that:
- 4.5.1 The Offeror did not engage in collusion or other anti-competitive practices in connection with the preparation or submission of its Offer; and

UNIFORM INSTRUCTIONS TO OFFERORS

- 4.5.2 The Offeror does not discriminate against any employee or applicant for employment or person to whom it provides services because of race, color, religion, sex, national origin, or disability, and that it complies with all applicable Federal, State, and local laws and executive orders regarding employment.

5 Evaluation

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

6 Award

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

- 6.1 Number or Types of Awards: AHCCCS reserves the right to make multiple awards or to award a Contract by individual line items or alternatives, by group of line items or alternatives, or to make an aggregate award, or regional awards, whichever is deemed most advantageous to AHCCCS and to the State.
- 6.2 Contract Inception: An Offer does not constitute a Contract nor does it confer any rights on the Offeror to the award of a Contract. A Contract is not created until the Offer is accepted in writing by the Procurement Officer's signature on the Offer and Acceptance Form. A notice of award or of the intent to award shall not constitute acceptance of the Offer.
- 6.3 Effective Date: The effective date of this Contract shall be the date that the Procurement Officer signs the Offer and Acceptance Form or other official contract form unless another date is specifically stated in the Contract.
- 6.4 A response to this Request for Proposal is an offer to contract with AHCCCS based upon the terms, conditions, scope of work and specifications of the RFP. All of the terms and conditions of the Contract

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are contained in this Solicitation, Solicitation amendments, and subsequent Contract amendments, if any, signed by the AHCCCS Chief Procurement Officer. Proposals do not become Contracts unless and until they are accepted by the AHCCCS Chief Procurement Officer. The Proposal submitted by the Offeror will become part of the Contract with AHCCCS. A Contract is formed when the AHCCCS Chief Procurement Officer signs the award page and provides written notice of the award(s) to the Successful Offeror(s), and the Offeror accepts any special provisions to the Contract and the final rates awarded. All Offerors will be promptly notified of Contract award.

- 6.5 The Offeror should note that, if awarded a Contract, the Offeror must meet all AHCCCS requirements, irrespective of what is requested and evaluated through this Solicitation. The Proposal submitted by the Offeror will become part of the Contract with AHCCCS and the Offeror shall comply with all commitments and statements included in its RFP submission.

7 Protests

Any protest shall comply with and be resolved according to A.R.S. § 36-2906 and rules adopted thereunder. Protests shall be submitted via email to the AHCCCS Procurement officer.

SPECIAL INSTRUCTIONS TO OFFERORS

1. Anticipated Procurement Schedule

All dates here are subject to change at any time.

Activity	Date
RFP Release	July 15, 2021
Pre-Proposal Conference	N/A
Offeror Questions Due	July 29, 2021
Deadline to request access to SFTP server	August 18, 2021
Offeror's Proposals Due	September 1, 2021
Final RFP Award (Subject to change)	December 15, 2021
Services Start Date	July 1, 2022

*Unless otherwise changed in writing by AHCCCS

2. Questions:

All questions concerning this solicitation shall be submitted **via email using the AHCCCS Q&A form found on the AHCCCS website, with the solicitation document**, to the Procurement Officer identified on the first page of this solicitation document. Offerors may not contact other AHCCCS employees concerning this solicitation.

3. Evaluation Criteria and Selection Process:

In accordance with the A.R.S. 36-2903 et seq., awards shall be made to the responsible Offeror(s) whose proposal is determined in writing to be the most advantageous to the State based upon the evaluation criteria.

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

- 3.1 Method of Approach
- 3.2 Experience and Expertise
- 3.3 Pricing Proposal

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

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

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

It is the responsibility of the Offeror to examine the entire RFP, timely seek clarification of any requirement that may not be clear, and review all responses for accuracy before submitting its Proposal. The Proposal becomes a part of the Contract. Therefore, whatever information is stated in the Proposal may be evaluated either during the Proposal evaluation process or subsequently during other reviews. If any information contained inside an

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Offeror's proposal contradicts or does not comply with the solicitation requirements, the solicitation requirements prevail, unless otherwise accepted by AHCCCS in writing.

4. **Bidders' Library**

The Bidders' Library may contain critical reference material and performance requirements to assist the Offeror to prepare a response to this Solicitation. References are made throughout this Solicitation to materials in the Bidders' Library, and Offerors are responsible for reviewing the contents of the Bidders' Library materials as if the materials were printed in full herein. Because AHCCCS may continue to update the Bidders' Library after this Solicitation is released, the Offeror is responsible for monitoring updates to the Bidders' Library. The Bidders' Library is located on the AHCCCS website at:

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

5. **Submission of Proposal**

The Offeror shall submit its proposal to the AHCCCS SFTP server in accordance with Exhibit A "PROPOSAL SUBMISSION INSTRUCTIONS." Failure to follow the prescribed format for submission may result in AHCCCS determining that the submission is non-responsive. The deadline to request access to the AHCCCS SFTP server is: Wednesday, August 18, 2021. **SEE Exhibit A - Proposal Submission Instructions.**

6. **Contents of Proposal:**

The Offeror's Proposal shall contain the following and be organized as follows (see Exhibit A Proposal Submission Instructions). Failure to follow the prescribed format for submission may result in AHCCCS determining that the submission is non-responsive. The deadline to request access to the AHCCCS SFTP server: August 18, 2021 no later than 5 pm Arizona time.

SEE Exhibit A Proposal Submission Instructions. Offerors must request access to the SFTP server by the due date in order to submit a proposal.

PART A

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

PART B

- B1 Narrative Proposal Method of Approach (page limited to 40)
- B2 Narrative Proposal Experience and Expertise (page limited to 20)
- B3 Attachment C - Cost Proposal

PART C

- C1 Intent to provide insurance
- C2 Separate, signed, legal Analysis for Confidential /Proprietary Determination (if any)
- C3 Attachment A - Boycott of Israel
- C4 Attachment B – Designated Contact Person
- C5 Exceptions to any part of solicitation

NOTE: Cover Pages and Tables of Contents do not count against page limits.

6.1 **Transmittal Letter:**

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

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

In addition to the required detailed legal analysis, the Offeror shall summarize in their Submittal Letter the list of distinct portions, including exact page numbers, of their document is requested to be kept confidential. See paragraph 12 of this section (below).

6.2 **Proposed Method of Approach:** (Limit to 40 pages)

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

- 6.2.1 Describe your proposed operational transition plan if you are awarded the contract.
- 6.2.2 Describe how you propose to assist the LEAs to appropriately claim for reimbursement.
- 6.2.3 Describe how you will ensure claims submitted will only be for MSBC activities.
- 6.2.4 Describe your plan to protect the fiscal integrity of the Medicaid program.
- 6.2.5 Describe the elements of your MSBC compliance plan including the review process of all participating LEAs.
- 6.2.6 Describe how you propose to implement education, training, and technical assistance to the LEAs.
- 6.2.7 Describe your proposed methodology for development of annual cost-based reimbursement.
- 6.2.8 Describe your proposed methodology for development of a Random Moment Time Study.
- 6.2.9 Describe your proposed methodology for development of Medicaid Administrative Claiming.

6.3 **Experience and Expertise of the Firm and Key Personnel:** (Limit to 20 pages)

Offeror shall submit information documenting successful and reliable experience in past performances as related to the services in this RFP. The Offeror's experience and past performance will be evaluated on the extent of its success in managing and integrating

SPECIAL INSTRUCTIONS TO OFFERORS

work relevant to that defined in the Scope of Work. A response to the following requested information shall be included in the Offeror's proposal.

- 6.3.1 Describe your experience conducting education, training and technical assistance in a virtual environment.
- 6.3.2 Describe your experience conducting Random Moment Time Studies.
- 6.3.3 Describe your experience with the Medicaid Administrative Claiming (MAC) Payment process.
- 6.3.4 Describe your experience with Direct Service Claiming, including CMS 1500 coding, prepayment reviews, electronic claim transactions in the 837 5010a format, electronic remittance in the 835 5010a format, direct payment to LEA's.
- 6.3.5 Describe your experience with implementing Open Care programs, including documentation requirements for 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.
- 6.3.6 Describe your experience with a cost-based reconciliation methodology.
- 6.3.7 Describe your experience acting as a Third-Party Administrator for the Medicaid School Based Claiming Program.

6.4 **Cost:**

The evaluation of the category of Cost shall be based on the prices, as indicated on Attachment C: Price Proposal submitted with Offeror's proposal.

- 6.4.1 The proposed price shall be inclusive of all costs associated with the delivery of the service and includes staff time, mileage, insurance, and administrative cost. No additional fees will be paid by AHCCCS.
- 6.4.2 At any time in the evaluation process, pricing proposals may be reviewed, apart from the cost scoring process, for realistic and competitive pricing. Outside information may be utilized as deemed appropriate by the Procurement Officer including but not limited to:
 - 6.4.2.1 Other pricing proposals submitted for this RFP.
 - 6.4.2.2 Expenditures and pricing of any current or expired contract if the solicitation is a re-bid of a current service.
 - 6.4.2.3 Public or Independently obtained information based upon market research.
 - 6.4.2.4 Cost bids submitted by the Offeror in relation to any closely related procurement.
 - 6.4.2.5 Awarded Pricing obtained from other contracts held by the Offeror.
 - 6.4.2.6 Pricing obtained from other contracts for the same or similar service awarded by a public entity.
 - 6.4.2.7 Other information as deemed appropriate by the Procurement Officer.
- 6.4.3 At any time during the evaluation, but before award, AHCCCS may reject a proposal in part or in whole based upon unrealistically high or low pricing.

6.5 **Intent to Provide Certificate of Insurance:** The Offeror shall provide a brief statement that, if notified of contract award, the Offeror will submit to AHCCCS for review and acceptance, the applicable certificate/s of insurance as required within this RFP document, within five (5) business days of such notification.

6.6 **Additional Information (OPTIONAL):** The Offeror may, at its option, submit any other pertinent information which would substantiate the Offeror has the experience, expertise and capability to provide the required services. The intent is to allow flexibility to an Offeror who may have desire to

SPECIAL INSTRUCTIONS TO OFFERORS

submit information that is not specifically requested by AHCCCS in the Special Instructions to Offerors as part of its Experience and Expertise submission and is NOT intended to allow any Offeror to circumvent the page limits of any requirement. Any additional information that is received pursuant to this section must be contained exclusively in the Experience and Expertise section, and the submission MUST adhere to any prescribed page limits. Any pages submitted beyond the page limits for any submission requirement will not be reviewed by evaluators nor will it be included in the scored portion of the Offeror's proposal.

7. **Presentations and Demonstrations:** AHCCCS may request Offerors who are determined to be reasonably susceptible for award to give a presentation or show a demonstration of the product or service to the evaluation committee.
8. **Financial Stability:** The Offeror must be financially stable and, if requested, shall be able to substantiate the financial stability of its company. Upon written request from AHCCCS, the Offeror shall submit an annual financial statement for itself, and parent company (if applicable) within five (5) business days of request. The State reserves the right to request additional documentation from the Offeror and to request reports on financial stability from independent financial rating services. The State reserves the right to reject any Offeror who does not demonstrate financial stability sufficient for the scope of this contract award.
9. **Clarification of Offers:** AHCCCS may request clarification of an offer any time after receipt. Clarifications may be requested orally or in writing. If clarifications are requested orally, the Offeror shall confirm the request in writing. A request for clarifications shall not be considered a determination that the Offeror is susceptible for award.
10. **Negotiations:** Negotiations may be conducted orally or in writing at the discretion of AHCCCS. Negotiations may be conducted in order to improve offers in such areas of cost, price, specifications performance, or terms, to achieve best value for the State. Negotiations may include demonstrations (oral presentations). Award(s) may be made without negotiations; therefore, offers should be submitted on most favorable terms.
11. **Final Proposal Revisions /Best and Final Offers:** Written Final Proposal Revisions, or Best and Final Offers, will be requested from any Offeror with whom negotiations have been conducted, unless the Offeror has been determined not within the competitive range, not susceptible for award or non-responsible.
12. **Request for Confidential/Proprietary Determination:**
 - 12.1 If an Offeror believes that a specific portion of its bid, proposal, offer, specification, or protest contains information that should be withheld from public inspection due to confidentiality, the Offeror shall submit to the Procurement Officer a detailed legal analysis, prepared by legal counsel, which sets forth the bases for the requested non-disclosure and the specific harm or prejudice which may arise if disclosed. The analysis shall be presented to the Procurement Officer at the same time as the bid, proposal, offer, specification, or protest.
 - 12.2 An entire bid, proposal, offer, specification, or protest shall not be identified as confidential; only those very limited and distinct portions which are considered by the Offeror as confidential may be identified as such. **Pricing shall not be considered as confidential.**
 - 12.3 In the event that AHCCCS receives a request for disclosure of the information, AHCCCS will disclose the information in accordance with law. Prior to disclosure, AHCCCS will inform the Offeror of such request and provide the Offeror a period of time to take action it deems

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appropriate to support non-disclosure. The Offeror shall be responsible for any and all costs associated with the nondisclosure of the information.

- 12.4 In addition to the required detailed legal analysis, the Offeror shall summarize in their Submittal Letter the distinct portions, including exact page numbers, of their document is requested to be kept confidential.
- 12.5 If any pieces of your proposal are being requested to be kept confidential, and withheld from public viewing, please submit an additional redacted copy of the proposal to the SFTP server labeled in accordance with the prescribed naming convention with the word REDACTED on the end of the file name. This will ensure that our office is crystal clear on which version of your proposal is acceptable for public viewing.
- 12.6 Regardless of a determination issued by the procurement officer, all portions of the Offeror's proposal, even pages that are proprietary, may be provided to CMS or other state or federal oversight agencies, if necessary.

13. REJECTION of a PROPOSAL - Responsibility, Responsiveness, Susceptibility, and Best Interest:

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

- 13.1 Whether the Offeror has had a contract within the last five (5) years that was terminated for cause due to breach or similar failure to comply with the terms of the contract;
- 13.2 Whether the Offeror has had a Contract that was terminated by AHCCCS for any reason;
- 13.3 Whether the Offeror's record of performance includes factual evidence of failure to satisfy the terms of the Offeror's agreements with any party to a contract. Factual evidence may consist of documented vendor performance reports, customer complaints, and/or negative references;
- 13.4 Whether the Offeror is legally qualified to contract with the State and the Offeror's financial, business, personnel, or other resources, including sub-Contractors;
 - 13.4.1 Legally qualified includes if the vendor or if key personnel have been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to being disapproved as a sub-Contractor of any public procurement unit or other governmental body.
- 13.5 Whether the Offeror promptly supplied all requested information concerning its responsibility;
- 13.6 Whether the Offer was sufficient to permit evaluation by the State, in accordance with the evaluation criteria identified in this Solicitation or other necessary offer components. Necessary offer components include: attachments, documents or forms to be submitted with the Offer, an indication of the intent to be bound, reasonable or acceptable approach to perform the Scope of Work, acknowledged Solicitation Amendments, references to include experience verification, adequacy of financial/business/personal or other resources to include a performance bond and stability including subcontractors and any other data specifically requested in the Solicitation;
- 13.7 Whether the Offer was in conformance with the requirements contained in the Scope of Work, Terms and Conditions, and Instructions for the Solicitation including its Amendments and all documents incorporated by reference;

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- 13.8 Whether the Offer limits the rights of the State;
- 13.9 Whether the Offer includes, or is subject to unreasonable conditions, to include conditions upon the State necessary for successful Contract performance. The State shall be the sole determiner as to the reasonableness of a condition;
- 13.10 Whether the Offer materially changes the contents set forth in the Solicitation, which includes the Scope of Work, Terms and Conditions, or Instructions;
- 13.11 Whether the Offeror provides misleading or inaccurate information;
- 13.12 Whether the Offer fails to meet the minimum mandatory requirements of the RFP;
- 13.13 Whether the Offer satisfies the requirements of the RFP in a cost-effective manner, as determined by AHCCCS;
- 13.14 Whether the Offeror's pricing is unrealistic or unreasonably high; or
- 13.15 Any other criteria deemed appropriate by AHCCCS to determine if the Offer is in the best interest of the State.

UNIFORM TERMS AND CONDITIONS

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

2. **Contract Interpretation**

- 2.1 Arizona Law. The Arizona law applies to this Contract including, A.R.S. § 36-2906 and its implementing rules.
- 2.2 Implied Contract Terms. Each provision of law and any terms required by law to be in this Contract are a part of this Contract as if fully stated in it.
- 2.3 Contract Order of Precedence. In the event of a discrepancy between the provisions of the Contract, as accepted by the State and as they may be amended, the following shall prevail in the order set forth below:
- 2.3.1 HIPAA Business Associates Agreement or Addendum
 - 2.3.2 Special Terms and Conditions
 - 2.3.3 Uniform Terms and Conditions
 - 2.3.4 Statement or Scope of Work
 - 2.3.5 Specifications
 - 2.3.6 Attachments
 - 2.3.7 Exhibits
 - 2.3.8 Documents referenced or included in the Solicitation
- 2.4 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.
- 2.5 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.
- 2.6 No Parole Evidence. This Contract is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms used in this document and no other understanding either oral or in writing shall be binding.
- 2.7 No Waiver. Either party's failure to insist on strict performance of any term or condition of the Contract shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.

3. **Contract Administration and Operation**

- 3.1 Records. Under A.R.S. § 35-214 and § 35-215, the Contractor shall retain and shall contractually require each subcontractor to retain all data and other "records" relating to the acquisition and performance of the Contract for a period of five years after the completion of the Contract. All records shall be subject to inspection and audit by the State at reasonable times. Upon request, the Contractor shall produce a legible copy of any or all such records.
- 3.2 Non-Discrimination. The Contractor shall comply with State Executive Order No. 2009-09 and all other applicable Federal and State laws, rules and regulations, including the Americans with Disabilities Act.

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- 3.3** Audit. Pursuant to ARS § 35-214, at any time during the term of this Contract and five (5) years thereafter, the Contractor's or any subcontractor's books and records shall be subject to audit by the State and, where applicable, the Federal Government, to the extent that the books and records relate to the performance of the Contract or Subcontract.
- 3.4** Facilities Inspection and Materials Testing. The Contractor agrees to permit access to its facilities, subcontractor facilities and the Contractor's processes or services, at reasonable times for inspection of the facilities or materials covered under this Contract.
- The State shall also have the right to test, at its own cost, the materials to be supplied under this Contract. Neither inspection of the Contractor's facilities nor materials testing shall constitute final acceptance of the materials or services. If the State determines noncompliance of the materials, the Contractor shall be responsible for the payment of all costs incurred by the State for testing and inspection.
- 3.5** Notices. Notices to the Contractor required by this Contract shall be made by the State to the person indicated on the Offer and Acceptance form submitted by the Contractor unless otherwise stated in the Contract. Notices to the State required by the Contract shall be made by the Contractor to the Solicitation Contact Person indicated on the Solicitation cover sheet, unless otherwise stated in the Contract. An authorized Procurement Officer and an authorized Contractor representative may change their respective person to whom notice shall be given by written notice to the other and an amendment to the Contract shall not be necessary.
- 3.6** Advertising, Publishing and Promotion of Contract. The Contractor shall not use, advertise, or promote information for commercial benefit concerning this Contract without the prior written approval of the Procurement Officer.
- 3.7** Property of the State. Any materials, including reports, computer programs and other deliverables, created under this Contract are the sole property of the State. The Contractor is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. The Contractor shall not use or release these materials without the prior written consent of the State.
- 3.8** Ownership of Intellectual Property. Any and all intellectual property, including but not limited to copyright, invention, trademark, trade name, service mark, and/or trade secrets created or conceived pursuant to or as a result of this contract and any related subcontract ("Intellectual Property"), shall be work made for hire and the State shall be considered the creator of such Intellectual Property. The agency, department, division, board, or commission of the State of Arizona requesting the issuance of this contract shall own (for and on behalf of the State) the entire right, title and interest to the Intellectual Property throughout the world. Contractor shall notify the State, within thirty (30) days, of the creation of any Intellectual Property by it or its subcontractor(s). Contractor, on behalf of itself and any subcontractor(s), agrees to execute any and all document(s) necessary to assure ownership of the Intellectual Property vests in the State and shall take no affirmative actions that might have the effect of vesting all or part of the Intellectual Property in any entity other than the State. The Intellectual Property shall not be disclosed by Contractor or its subcontractor(s) to any entity not the State without the express written authorization of the agency, department, division, board, or commission of the State of Arizona requesting the issuance of this contract.

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- 3.9** Federal Immigration and Nationality Act. The Contractor shall comply with all Federal, State, and local immigration laws and regulations relating to the immigration status of their employees during the term of the contract. Further, the Contractor shall flow down this requirement to all subcontractors utilized during the term of the contract. The State shall retain the right to perform random audits of Contractor and subcontractor records or to inspect papers of any employee thereof to ensure compliance. Should the State determine that the Contractor and/or any subcontractors be found noncompliant, the State may pursue all remedies allowed by law, including, but not limited to; suspension of work, termination of the contract for default and suspension and/or debarment of the Contractor.
- 3.10** E-Verify Requirements. In accordance with A.R.S. § 41-4401, Contractor warrants compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with A.R.S. § 23-214, Subsection A.
- 3.11** Offshore Performance of Work Prohibited. Any services that are described in the specifications or scope of work that directly serve the State of Arizona or its clients and involve access to secure or sensitive data or personal client data shall be performed within the defined territories of the United States. Unless specifically stated otherwise in the specifications, this paragraph does not apply to indirect or 'overhead' services, redundant back-up services or services that are incidental to the performance of the contract. This provision applies to work performed by subcontractors at all tiers.

4. Costs and Payments

- 4.1** Payments. Payments shall comply with the requirements of A.R.S. Titles 35 and 41, Net 30 days. Upon receipt and acceptance of goods or services, the Contractor shall submit a complete and accurate invoice for payment from the State within thirty (30) days.
- 4.2** Delivery. Unless stated otherwise in the Contract, all prices shall be F.O.B. Destination and shall include all freight delivery and unloading at the destination.
- 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.

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

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

4.5.1 Accept a decrease in price offered by the Contractor;

4.5.2 Cancel the Contract; or

4.5.3 Cancel the contract and re-solicit the requirements.

5. Contract Changes

5.1 Amendments. This Contract is issued under the authority of the Procurement Officer who signed this Contract. The Contract may be modified only through a Contract Amendment within the scope of the Contract. Changes to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by a person who is not specifically authorized by the procurement officer in writing or made unilaterally by the Contractor are violations of the Contract and of applicable law. Such changes, including unauthorized written Contract Amendments shall be void and without effect, and the Contractor shall not be entitled to any claim under this Contract based on those changes.

5.2 Subcontracts. The Contractor shall not enter into any Subcontract under this Contract for the performance of this contract without the advance written approval of the Procurement Officer. The Contractor shall clearly list any proposed subcontractors and the subcontractor's proposed responsibilities. The Subcontract shall incorporate by reference the terms and conditions of this Contract.

5.3 Assignment and Delegation. The Contractor shall not assign any right nor delegate any duty under this Contract without the prior written approval of the Procurement Officer. The State shall not unreasonably withhold approval.

6. Risk and Liability

6.1 Risk of Loss. The Contractor shall bear all loss of conforming material covered under this Contract until received by authorized personnel at the location designated in the purchase order or Contract. Mere receipt does not constitute final acceptance. The risk of loss for nonconforming materials shall remain with the Contractor regardless of receipt.

6.2 Indemnification.

6.2.1 Contractor/Vendor Indemnification. The parties to this contract agree that the State of Arizona, its departments, agencies, boards and commissions shall be indemnified and held harmless by the Contractor for the vicarious liability of the State as a result of entering into this contract. However, the parties further agree that the State of Arizona, its departments, agencies, boards, and commissions shall be responsible for its own negligence. Each party to this contract is responsible for its own negligence.

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6.3 Indemnification - Patent and Copyright. The Contractor shall indemnify and hold harmless the State against any liability, including costs and expenses, for infringement of any patent, trademark or copyright arising out of Contract performance or use by the State of materials furnished or work performed under this Contract. The State shall reasonably notify the Contractor of any claim for which it may be liable under this paragraph. If the Contractor is insured pursuant to A.R.S. § 41-621 and § 35-154, this section shall not apply.

6.4 Force Majeure.

6.4.1 Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of force majeure. The term "*force majeure*" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes acts of God; acts of the public enemy; war; riots; strikes; mobilization; labor disputes; civil disorders; fire; flood; lockouts; injunctions-intervention-acts; or failures or refusals to act by government authority; and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence.

6.4.2 Force Majeure shall not include the following occurrences:

- 6.4.2.1 Late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, or an oversold condition of the market;
- 6.4.2.2 Late performance by a subcontractor unless the delay arises out of a force majeure occurrence in accordance with this force majeure term and condition; or
- 6.4.2.3 Inability of either the Contractor or any subcontractor to acquire or maintain any required insurance, bonds, licenses or permits.

6.4.3 If either party is delayed at any time in the progress of the work by force majeure, the delayed party shall notify the other party in writing of such delay, as soon as is practicable and no later than the following working day, of the commencement thereof and shall specify the causes of such delay in such notice. Such notice shall be delivered or mailed certified-return receipt and shall make a specific reference to this article, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by Contract Amendment for a period of time equal to the time that results or effects of such delay prevent the delayed party from performing in accordance with this Contract.

6.4.4 Any delay or failure in performance by either party hereto shall not constitute default hereunder or give rise to any claim for damages or loss of anticipated profits if, and to the extent that such delay or failure is caused by force majeure.

6.5 Third Party Antitrust Violations. The Contractor assigns to the State any claim for overcharges resulting from antitrust violations to the extent that those violations concern materials or services supplied by third parties to the Contractor, toward fulfillment of this Contract.

7. Warranties

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- 7.1** Liens. The Contractor warrants that the materials supplied under this Contract are free of liens and shall remain free of liens.
- 7.2** Quality. Unless otherwise modified elsewhere in these terms and conditions, the Contractor warrants that, for one year after acceptance by the State of the materials, they shall be:
- 7.2.1** Of a quality to pass without objection in the trade under the Contract description;
 - 7.2.2** Fit for the intended purposes for which the materials are used;
 - 7.2.3** Within the variations permitted by the Contract and are of even kind, quantity, and quality within each unit and among all units;
 - 7.2.4** Adequately contained, packaged, and marked as the Contract may require; and
 - 7.2.5** Conform to the written promises or affirmations of fact made by the Contractor.
- 7.3** Fitness. The Contractor warrants that any material supplied to the State shall fully conform to all requirements of the Contract and all representations of the Contractor, and shall be fit for all purposes and uses required by the Contract.
- 7.4** Inspection/Testing. The warranties set forth in subparagraphs 7.1 through 7.3 of this paragraph are not affected by inspection or testing of or payment for the materials by the State.
- 7.5** Compliance with Applicable Laws. The materials and services supplied under this Contract shall comply with all applicable Federal, State, and local laws, and the Contractor shall maintain all applicable licenses and permit requirements.
- 7.6** Survival of Rights and Obligations after Contract Expiration or Termination.
- 7.6.1** Contractor's Representations and Warranties. All representations and warranties made by the Contractor under this Contract shall survive the expiration or termination hereof. In addition, the parties hereto acknowledge that pursuant to A.R.S. § 12-510, except as provided in A.R.S. § 12-529, the State is not subject to or barred by any limitations of actions prescribed in A.R.S., Title 12, Chapter 5.
 - 7.6.2** Purchase Orders. The Contractor shall, in accordance with all terms and conditions of the Contract, fully perform and shall be obligated to comply with all purchase orders received by the Contractor prior to the expiration or termination hereof, unless otherwise directed in writing by the Procurement Officer, including, without limitation, all purchase orders received prior to but not fully performed and satisfied at the expiration or termination of this Contract.

8. State's Contractual Remedies

- 8.1** Right to Assurance. If the State in good faith has reason to believe that the Contractor does not intend to, or is unable to perform or continue performing under this Contract, the Procurement Officer may demand in writing that the Contractor give a written assurance of intent to perform. Failure by the Contractor to provide written assurance within the number of Days specified in the demand may, at the State's option, be the basis for terminating the Contract under the Uniform Terms and Conditions or other rights and remedies available by law or provided by the contract.
- 8.2** Stop Work Order.

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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 significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of the State is or becomes at any time while the Contract or an extension of the Contract is in effect an employee of or a consultant to any other party to this Contract with respect to the subject matter of the Contract. The cancellation shall be effective when the Contractor receives written notice of the cancellation unless the notice specifies a later time. If the Contractor is a political subdivision of the State, it may also cancel this Contract as provided in A.R.S. § 38-511.

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

9.3 Suspension or Debarment. The State may, by written notice to the Contractor, immediately terminate this Contract if the State determines that the Contractor has been debarred, suspended, or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body.

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Submittal of an offer or execution of a contract shall attest that the Contractor is not currently suspended or debarred. If the Contractor becomes suspended or debarred, the Contractor shall immediately notify the State.

9.4 Termination for Convenience. The State reserves the right to terminate the Contract, in whole or in part at any time when in the best interest of the State, without penalty or recourse. Upon receipt of the written notice, the Contractor shall stop all work, as directed in the notice, notify all subcontractors of the effective date of the termination, and minimize all further costs to the State. In the event of termination under this paragraph, all documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the State upon demand. The Contractor shall be entitled to receive just and equitable compensation for work in progress, work completed and materials accepted before the effective date of the termination. The cost principles and procedures provided in A.A.C. R2-7-701 shall apply.

9.5 Termination for Default.

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

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

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

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

10. Arbitration

The parties to this Contract agree to resolve all disputes arising out of or relating to this contract through arbitration, after exhausting applicable administrative review, to the extent required by A.R.S. § 12-1518, except as may be required by other applicable statutes (Title 41).

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

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- 5.3 The Contractor fails to complete the work required or furnish the materials required within the time stipulated by the contract;
 - 5.4 The Contractor fails to make progress in the performance of the contract and/or gives the Procurement officer reason to believe that the Contractor will not or cannot perform to the requirements of the contract;
 - 5.5 Upon receipt of the written notice of concern, the Contractor shall have a minimum of ten (10) days (Procurement officer may determine a longer period) to provide a satisfactory response to the Procurement officer. Failure on the part of the Contractor to adequately address all issues of concern may result in the Procurement officer resorting to any single or combinations of the following remedies.
 - 5.5.1 Cancel any contract;
 - 5.5.2 Reserve all rights or claims to damage for breach of any covenant of the contract;
 - 5.5.3 Perform any test or analysis on materials for compliance with the specifications of the contract. If the result of any test confirms a material no-compliance with the specifications, any reasonable expense of testing shall be borne by the Contractor;
 - 5.5.4 In case of default, the Procurement officer reserves the right to purchase materials, or to complete the required work in accordance with the Arizona Procurement Code. The Procurement officer may recover reasonable excess costs from the Contractor by:
 - 5.5.4.1 Deduction from an unpaid balance;
 - 5.5.4.2 Collection against the bid and/or performance bond; or
 - 5.5.4.3 Any combination of the above or any other remedies as provided by law.
6. **Contract Disputes:** Contract claims and disputes shall be adjudicated in accordance with State Law, AHCCCS Rules and this contract. Except as provided by 9 A.A.C. Chapter 22, Article 6, the exclusive manner for the Contractor to assert any dispute against AHCCCS shall be in accordance with the process outlined in 9 A.A.C. Chapter 34 and A.R.S. §36-2932.
- 6.1 All disputes except as provided under 9 A.A.C. Chapter 22, Article 6 shall be filed in writing and be received by AHCCCS no later than 60 days from the date of the disputed notice. All disputes shall state the factual and legal basis for the dispute.
 - 6.2 Pending the final resolution of any dispute involving this contract, the Contractor shall proceed with performance of this Contract in accordance with AHCCCS' instructions, unless AHCCCS specifically, in writing, requests termination or a temporary suspension of performance.
7. **Cooperation with other Contractors:** AHCCCS may award other contracts for additional or related work and the Contractor shall fully cooperate with such other Contractors and AHCCCS employees or designated agents, and carefully fit its own work to such other Contractors' work. Contractor shall not commit or permit any act which will interfere with the performance of work by any other Contractor or by AHCCCS employees. AHCCCS shall equitably enforce this section to all contractors to prevent the imposition of unreasonable burdens on any contractor.
8. **Confidentiality of Records and Disclosure of Confidential Information:**
- 8.1 The Contractor shall not, without prior written approval from AHCCCS, either during or after the performance of the services required by this Contract, use, other than for such performance, or disclose to any person other than AHCCCS personnel with a need to know, any information, data, material, or exhibits created, developed, produced, or otherwise obtained during the course of the work required by this Contract. This nondisclosure requirement shall also pertain to any information contained in reports, documents, or other records furnished to the Contractor by AHCCCS.

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- 8.2 The Contractor shall establish and maintain written policies procedures and controls, approved by AHCCCS, governing access to, duplication of, and dissemination of all such information for the purpose of assuring that no information contained in its records or obtained from AHCCCS or others carrying out its functions under the contract, is used or disclosed by it, its agents, officers, or employees, except as required to efficiently perform duties under the contract. Persons requesting such information shall be referred to AHCCCS. The Contractor's data safeguard program shall further conform to the data confidentiality and security requirements of AHCCCS policy and procedures, and all-relevant State and Federal requirements, including HIPAA standards.
- 8.3 The disclosure of information in summary, statistical, or other form that does not identify particular individuals is permitted only with prior AHCCCS approval. The use or disclosure of information concerning Members will be limited to purposes directly connected with the scope of this Contract.
- 8.4 The Contractor shall advise its employees, agents and subcontractors, if any, that they are subject to these confidentiality requirements. A signed confidentiality statement containing language approved by AHCCCS will be obtained from all employees, agents and subcontractors, if any, and maintained in the individual's personnel file with a copy sent to AHCCCS upon request.
9. **Covenant Against Contingent Fees:** The Contractor warrants that no person or agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee. For violation of this warranty, the Procurement officer shall have the right to annul this contract without liability.
10. **Contract:**
- 10.1 The contract between AHCCCS and the Contractor shall consist of (1) the Request for Proposal (RFP) including AHCCCS policies and procedures incorporated by reference as part of the RFP and (2) the proposal submitted by the Contractor in response to the RFP including any Best and Final Offers. 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), the provisions and requirements set forth and/or referenced in the RFP (including AHCCCS policies and procedures incorporated by reference) shall govern.
- 10.2 The contract shall be construed according to the laws of the State of Arizona. The State of Arizona is not obligated for the expenditures under the contract until funds have been encumbered.
11. **Fraud and Abuse:**
- 11.1 It shall be the responsibility of the Contractor to report all cases of suspected fraud and abuse by subcontractors, Members, or employees. The Contractor shall provide written notification of all such incidents to the Procurement officer.
- 11.2 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.
- 11.3 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.
12. **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

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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.

13. **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.
14. **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.
15. **No Guaranteed Quantities:** AHCCCS does not guarantee the Contractor any minimum or maximum quantity of services or goods to be provided under this Contract.
16. **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.
17. **Ownership of Information and Data:**
 - 17.1 Any data or information system, including all software, documentation, and manuals, developed by Contractor pursuant to this contract, shall be deemed to be owned by AHCCCS. The Federal government reserves a royalty free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use and to authorize others to use for Federal government purposes, such data or information system, software, documentation, and manuals. Proprietary software which is provided at established catalog or market prices and sold or leased to the general public shall not be subject to the ownership or licensing provisions of this section.
 - 17.2 Data, information, and reports collected or prepared by Contractor in the course of performing its duties and obligations under this contract shall be deemed to be owned by AHCCCS. The ownership provision is in consideration of Contractor's use of public funds in collecting or preparing such data, information, and reports. These items shall not be used by Contractor for any independent project of Contractor or publicized by Contractor without the prior written permission of the Procurement officer. Subject to applicable State and Federal laws and regulations, AHCCCS shall have full and complete rights to reproduce, duplicate, disclose, and otherwise use all such information. At the termination of the contract, Contractor shall make available all such data to the Procurement officer within thirty (30) days following termination of the contract or such longer period as approved by the Procurement officer. For purposes of this subsection, the term "data" shall not include Member medical records.

SPECIAL TERMS AND CONDITIONS

17.3 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.

18. **Records:**

18.1 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.

18.2 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.

18.3 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:

18.3.1 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.

18.3.2 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.

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

19. **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.

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

20.1 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.

20.2 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

SPECIAL TERMS AND CONDITIONS

sign the extension amendment. If the Contractor provides such notification, the Procurement officer will initiate contract termination proceedings.

20.3 If the Contractor chooses not to renew this contract, the Contractor may be liable for certain costs associated with the transition of its Members to a different Contractor. If the Contractor provides the Procurement Officer written notice of its intent not to renew this contract at least 180 days before its expiration, this liability for transition costs may be waived by the Procurement Officer.

21. **Warranty of Services:** The Contractor warrants that all services provided under this contract will conform to the requirements stated herein. AHCCCS' acceptance of services provided by the Contractor shall not relieve the Contractor from its obligations under this warranty. In addition to its other remedies, the Procurement officer may, at the Contractor's expense, require prompt correction of any services failing to meet the Contractor's warranty herein. Services corrected by the Contractor shall be subject to all of the provisions of this contract in the manner and to the same extent as the services originally furnished.

INSURANCE REQUIREMENTS

1. Indemnification Clause

To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees (hereinafter referred to as "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 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 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 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.

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

INSURANCE REQUIREMENTS

- 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 Business Automobile Liability

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

- Combined Single Limit (CSL) \$1,000,000
- a. Policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by, or on behalf of, the Contractor involving automobiles owned, hired and/or non-owned by the Contractor.
- b. Policy shall contain a waiver of subrogation endorsement as required by this written agreement in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

2.3.3 Workers' Compensation and Employers' Liability

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

2.3.4 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

INSURANCE REQUIREMENTS

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.

2.3.5 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 agencies, boards, commissions, universities, officers, officials, agents, and employees

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

INSURANCE REQUIREMENTS

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 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

INSURANCE REQUIREMENTS

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 apply.

HIPAA Business Associates Addendum

Updated April 2020

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

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

1. DEFINITIONS

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

2. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

Business Associate agrees to:

- 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:
 - A. A description of the nature of the unauthorized use or disclosure, including the number of individuals affected by the unauthorized use or disclosure;
 - B. A description of the PHI used or disclosed;
 - C. The date(s) on which the unauthorized use or disclosure occurred;
 - D. The date(s) on which the unauthorized use or disclosure was discovered;
 - E. Identify the person(s) who used or disclosed the PHI in an unauthorized manner;
 - F. Identify the person(s) who received PHI disclosed in an unauthorized manner;
 - G. A description of actions, efforts, or plans undertaken by the Business associate to mitigate the harm of the unauthorized disclosure;
 - H. A description of corrective actions undertaken or planned to prevent future similar unauthorized use or disclosure;
 - I. An assessment of whether a breach, as defined in 45 CFR 164.402, including, if necessary, an assessment of the probability of harm, and

HIPAA Business Associates Addendum

J. Such other information, as may be reasonably requested by the AHCCCS Privacy Official.

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

2.3.2. Mitigation. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of the Contract.

2.3.3. Sanctions. Business Associate shall have and apply appropriate sanctions against any employee, subcontractor or agent who uses or discloses AHCCCS PHI in violation of this Addendum or applicable law.

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 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

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).

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

HIPAA Business Associates Addendum

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

6. INDEMNIFICATION AND MISCELLANEOUS

HIPAA Business Associates Addendum

- 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.

END OF SOLICITATION