

	Notice of Request for Proposal
	SOLICITATION #YH25-0023
	FEDERAL & SUPPLEMENTAL DRUG REBATES, PHARMACY & THERAPEUTICS COMMITTEE, AND VALUE BASED CONTRACTING & OUTCOMES MANAGEMENT PROGRAM SERVICES

AHCCCS Procurement Officer:

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Issue Date: 08/30/2024

RFP DESCRIPTION:	Federal & Supplemental Drug Rebates, Pharmacy & Therapeutics Committee, and Value Based Contracting & Outcomes Management Program Services
Pre-Proposal Conference:	A Pre-Proposal Conference has NOT been scheduled.
<p style="text-align: center;">Questions Due:</p> <p style="text-align: center;"><i>Questions shall be submitted to the procurement on the Q&A form provided with this RFP. Answers will be posted publicly on the AHCCCS website in the form of a Solicitation Amendment for the benefit of all Potential Offerors.</i></p>	<p>09/12/2024 by 5:00 PM Arizona Time</p>
<p style="text-align: center;">ALL OFFERORS MUST REQUEST ACCESS TO AHCCCS Arizona Secure File Share (ASFS) <i>See Proposal Submission Instructions for details.</i></p>	<p>10/03/224 by 5:00 PM Arizona Time</p>
<p style="text-align: center;">PROPOSAL DUE DATE:</p> <p style="text-align: center;"><i>Proposals shall be submitted in accordance with this solicitation proposal instructions prior to the time and date indicated here, or as may be amended through a solicitation amendment.</i></p>	<p>October17, 2024 by 3:00 PM ARIZONA TIME</p>

Late proposals shall not be considered.

OFFERORS ARE STRONGLY ENCOURAGED TO CAREFULLY READ THE ENTIRE SOLICITATION.

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

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

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

- Attachment 1 – Intent to Bid
- Attachment 2 – Offer and Acceptance
- Attachment 3 – Pricing Schedule
- Attachment 4 – Boycott of Israel
- Attachment 5 – Forced Labor Attestation
- Attachment 6 – Quarterly 304B Drug Unit Price Report
- Exhibit A –Solicitation Instruction to Offerors
- Exhibit B - 340B Annual Report_2 Tabs
- Exhibit C - Quarterly AHCCCS P&T Accepted Recommendations Report
- Exhibit D – Weekly NDC File Reports_4 Tabs
- 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>

SOLICITATION SUMMARY

[Solicitation Summary](#)

1. What is AHCCCS Soliciting?

1.1. The Arizona Health Care Cost Containment System (“AHCCCS”) authorized under A.R.S. § 36-2906, and any rules adopted thereunder, to procure the following services: Federal & Supplemental Drug Rebates, Pharmacy & Therapeutics Committee, and Value Based Contracting & Outcomes Management Program Services.

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

2. Historical Contract Information:

This is a re-solicitation of Contract YH19-0045 which is approaching the end of the Term of Contract.

<https://www.azahcccs.gov/Resources/OversightOfHealthPlans/SolicitationsAndContracts/closed.html#YH190045>

3. Legal Authority

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

SCOPE OF WORK

Scope of Work

1. Purpose and Background

- 1.1. The purpose of this Request for Proposal (RFP) is to solicit proposals and award a contract to a qualified and experienced Contractor to process, invoice, collect, resolve disputes and account for all Medicaid Fee-for-Service and Managed Care Contractors' Drug Rebates and Supplemental Rebates on a quarterly basis according to CMS guidelines and required timelines. The processes completed by the Contractor must be fully transparent to AHCCCS. Contractors must provide information for services relevant to a single state (stand-alone) supplemental rebate process which also includes robust preparation, P&T clinical presentation, including facilitation and support of the AHCCCS Pharmacy & Therapeutics Committee (P&T for both pre and post the meeting). Contractor's services must also include providing AHCCCS with sufficient summary and supporting documentation to file Form CMS-64.9R and CMS-64.21 and any other State and federal documents that may be required. The Arizona Health Care Cost Containment System (AHCCCS) is seeking proposals from qualified Offerors to provide comprehensive services for all deliverables required to administer and obtain rebates under the CMS Medicaid Drug Rebate Program (MDRP) and the Supplemental Rebate Program (Asp) for the State of Arizona, facilitation and support of the AHCCCS Pharmacy & Therapeutics Committee and Value Based Contracting & Outcomes Management Services.
- 1.2. AHCCCS Fee-For-Service (FFS) and Managed Care Contractors (MCOs) are required to submit post-adjudicated medical and prescription claims and encounter data for all services provided to AHCCCS members. AHCCCS follows national industry standards and code sets as published by X12N, NCPDP, and other data standard setting organizations. Arizona maintains EDI environments to exchange claims and encounters, as well as provider and member related information for all members. The environment consists of Foresight Suite, X12 and NCPDP Transactions. More information regarding claims, encounters and data exchanges is available on the AHCCCS website, www.azahcccs.gov

1.1. AHCCCS Overview

AHCCCS is the single state Medicaid agency for the State of Arizona. In that capacity it is responsible for operating the Title XIX and Title XXI programs through the State's 1115 Research and Demonstration Waiver, which was granted by the Centers for Medicare and Medicaid Services (CMS), U.S. Department of Health and Human Services.

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

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

2. Scope of Work:

2.1. General Services

The general service requirements provided by the Contractor shall include, but are not limited to, the following. The Contractor shall:

- 2.1.1. Be responsible for negotiating supplemental rebates on behalf of AHCCCS. The Contractor shall fully disclose all information on all services to AHCCCS. The Contractor shall provide complete transparency of all transactions, negotiations and contracts between the Contractor, AHCCCS and each of the manufacturers, labelers or other non-pharmaceutical contracts. The Contractor must

SCOPE OF WORK

- perform all other requirements as further described in this RFP. AHCCCS shall make the final determination on the acceptance or refusal of each supplemental rebate contract.
- 2.1.2. AHCCCS requires the services of a specialized vendor capable of providing all-inclusive services as required by CMS or AHCCCS for the federal and supplemental rebate programs, P&T Committee and VBP contracts. Offerors shall manage the federal and supplemental rebate processes including but not limited to resolving all disputes as they relate to the Medicaid Drug Rebate Program (MDRP) and the Arizona Supplemental Rebate Program (AzSRP). Offerors shall use the guidance provided by CMS pertaining to Dispute Resolution Program Best Practices regarding the Medicaid Drug Rebate Dispute Resolution Program, and the process must be consistent with the procedures outlined by AHCCCS.
- 2.1.3. All manufacturer/labeler disputes must be timely researched, corrected, reconciled, and resubmitted if required, and the dispute resolution process shall be completed for both the MDRP and the AzSRP. AHCCCS shall be notified of all dispute resolution outcomes monthly. The Offeror shall have the capability and experience to aggressively pursue all outstanding balances, aged/expected receivables and resolve all disputes in order to ensure timely collection of rebates. When the rebate collections are not timely, the Offeror must calculate any interest owed to the state and ensure that payment for the interest has been provided by the manufacturer. The methodology for resolution shall be described within the responses to the RFP.
- 2.1.4. Generate an invoice for each labeler/manufacturer in the required MDRP and the AzSRP format and at a minimum, stating the unit type, quantity of units used, and the expected total rebate amount for each National Drug Code (NDC) of the labeler/manufacturer for the billing quarter for drugs dispensed by providers to eligible AHCCCS / Medicaid members. The Contractor shall comply with all state and federal laws and regulations as well as AHCCCS policies, procedures, and contractual provisions. As manufacturers/labelers make payments to the State, the Contractor shall log, allocate and reconcile these payments against a NDC and individual encounter/claim basis, by health plan contractor and contract type (if requested by AHCCCS). The Contractor shall provide a quarterly report to AHCCCS that details the rebate collections for the MDRP and the AzSRP by FFS and MCO Contractor. The actual fields for this report shall be determined by AHCCCS after the contract has been awarded.
- 2.1.5. Provide an automated system that tracks the invoicing and collection of rebates from the pharmaceutical manufacturers/labelers by National Drug Code (NDC) and on an individual encounter/claim level.
- 2.1.6. Provide application software to be used strictly for the purposes of accounting for pharmaceutical rebates for the MDRP and the AzSRP. The software application shall allow AHCCCS to view the following functions performed by the Contractor:
- 2.1.6.1. Invoices Generated for MCOs encounters and FFS claims.
 - 2.1.6.2. Receipt of Payments Log
 - 2.1.6.3. Payments not received by 38 days after the manufacturer has been invoiced.
 - 2.1.6.4. Allocation of Payments to Invoices defined by AHCCCS.
 - 2.1.6.5. Reconciliation Payments to Invoices
 - 2.1.6.6. Linkage of Prior Period Adjustments (PPAs) to corresponding invoice number(s)
 - 2.1.6.7. Calculations of Outstanding Balances
 - 2.1.6.8. Refund Overpayments of Invoice
 - 2.1.6.9. Manufacturer Dispute Log inclusive of the identification of the MCO Contractor or FFS programs

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- 2.1.6.10. Research Disputes with Manufacturer/labeler.
- 2.1.6.11. Call Tracking of Phone Conversations with Manufacturer/labeler
- 2.1.6.12. Required Data sent to CMS.
- 2.1.6.13. Change processes upon request from or regulatory changes by CMS.
- 2.1.7. Collect and merge the utilization that includes encounter and claims data provided by AHCCCS with the Unit Rebate Amount (URA) provided by CMS.
- 2.1.8. Identify and adjust outlier data.
- 2.1.9. Audit claims/encounters and invoice data.
- 2.1.10. Create rebate invoices in accordance with the CMS required format for the MDRP and as required and/or defined by AHCCCS for the AzSRP.
- 2.1.11. Create cover letters for the appropriate billing period and rebate program.
- 2.1.12. Mail rebate invoices with cover letters to drug manufacturers/labelers adhering to CMS timeline requirements.
- 2.1.13. Maintain copies of generated invoices for the rebate program and by the billing period.
- 2.1.14. Forward payments/deposits received on behalf of AHCCCS to the AHCCCS Division of Business and Finance Department.
- 2.1.15. Provide the invoice/reconciliation supporting documentation with each received payment.
- 2.1.16. Research invoices and link prior quarter adjustment (PQA) payment(s) to the original invoice.
- 2.1.17. Reconcile deposits with accompanying documentation as required by CMS and/or AHCCCS.
- 2.1.18. Track postmarks for:
- 2.1.19. Invoice Mailings- No later than 60 days after the end of the quarter.
 - 2.1.19.1. Rebate payments.
 - 2.1.19.2. CMS Timeline adherence of payments received.
 - 2.1.19.3. Late payments and interest owed and received.
 - 2.1.19.4. Letters, to manufacturers that sent the state a partial rebate payment or no payment, must be sent out within the CMS specified timelines and tracked.
 - 2.1.19.5. If the CMS due date for sending late payment letters falls on a weekend or holiday, the letters must be mailed on the business day prior to the weekend or holiday.
- 2.1.20. Use CMS authorized codes for all invoice adjustments and/or disputes by NDC.
- 2.1.21. Confirm the accuracy of interest payments invoiced and received.
- 2.1.22. Calculate the interest following and adhering to CMS guidance/regulations due on late payments and send communication to the manufacturer /labeler detailing the number of days the rebate payment is late and the amount of interest due to AHCCCS.
- 2.1.23. Contact the manufacturer/labeler to clarify conflicting information and/or request additional information as necessary.
- 2.1.24. Compile quarterly and year-to-date reports for each rebate program and as requested by AHCCCS.
- 2.1.25. Track non-payments until payment is made and send notices of ongoing accrual interest due.
- 2.1.26. Resolve disputes with manufacturer/labeler for NDC-specific disputed amounts.
- 2.1.27. Attend CMS Drug Rebate Dispute Resolution Conferences as needed to resolve rebate disputes.
- 2.1.28. Provide claims detail data as requested by manufacturer/labeler.
- 2.1.29. Upload current invoice data file into a payments database.
- 2.1.30. Enter the payment information for each paid invoice by NDC into the payment's database.
- 2.1.31. Generate data files/reports as defined by CMS and/or AHCCCS.
- 2.1.32. Provide data/generate reports for claiming drug rebate collected by waivers per CMS requirements or other AHCCCS defined category for accurate calculation of federal share.
- 2.1.33. Generate the CMS 64.9R and 64.21 drug rebate reports in the requested format by AHCCCS.
- 2.1.34. Respond and manage all phone calls, emails, letters and other inquiries related to drug rebates.
- 2.1.35. Use the prior quarter Unit Rebate Amount (URA) provided by CMS with each quarterly manufacturers' pricing information tape.

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- 2.1.36. Verify subsequent pricing adjustments provided by CMS and manufacturers/labelers for prior quarters.
 - 2.1.37. Negotiate supplemental rebate and value-based contracts with pharmaceutical manufacturers.
 - 2.1.38. Sixty days post the end of the quarter, report to AHCCCS all drugs that the billed rebate is equal to or greater than 100% of AMP. AHCCCS will provide a template to the Contractor after the award.
- 2.2. Facilitate and manage the AHCCCS P&T Committee. Meeting and supplemental rebate process.
The Contractor shall:
- 2.2.1. Provide a full-time dedicated rebate-financial analyst to this contract for the federal and supplemental rebate parts of this contract.
 - 2.2.2. The analyst shall meet with AHCCCS monthly to report on the federal & supplemental rebate invoicing, collections, late payments and other relevant topics.
 - 2.2.2.1. The analyst must be experienced as a federal/supplemental rebate analyst.
 - 2.2.2.2. This position must have previous experience working as an analyst for the federal/supplemental rebate programs.
 - 2.2.2.3. The analyst shall be responsible for developing the weekly preferred drug list (PDL) files and the PDL file that is prepared within ten calendar days after the P&T meeting.
 - 2.2.3. Provide a full-time dedicated clinical pharmacist to manage the P&T process and all other clinically related issues to this contract.
 - 2.2.3.1. The clinical pharmacist providing oversight for the AHCCCS P&T Committee clinical and cost sheet information shall meet with AHCCCS weekly.
 - 2.2.3.2. The dedicated clinical pharmacist must have previous experience in facilitating and managing the P&T process for Medicaid.
 - 2.2.4. All required experienced and dedicated positions must be approved by AHCCCS.
 - 2.2.5. The financial analyst shall provide a quarterly adherence to the AHCCCS PDL report which details the MCOs adherence rates to specific preferred drugs that are part of the supplemental therapeutic class/market basket.
 - 2.2.5.1. The MCO PDL adherence report shall be completed for other drugs from non-supplemental rebates classes as requested by AHCCCS.
- 2.3. Value-Based Contract and Management of Outcomes Data
The Contractor shall:
- 2.3.1. Include in their proposal submission the process for obtaining, maintaining, and managing the outcome measures of Value Based Purchasing Contracts (VBP) as well as how the Contractor will operationalize the VBP requirements and outcome measures.
 - 2.3.2. Identify and propose new drugs which could benefit from a value-based contract arrangement including but not limited to:
 - 2.3.2.1. gene and cell therapies,
 - 2.3.2.2. drugs with significant current or anticipated spend,
 - 2.3.2.3. high per member per year cost,
 - 2.3.2.4. products with growth in utilization, and
 - 2.3.2.5. products with low federal rebate
 - 2.3.3. Identify and prioritize drugs for value-based purchasing contracting
 - 2.3.4. For each selected drug
 - 2.3.4.1. Evaluate drug utilization

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- 2.3.4.1.1. Evaluate drug utilization and the drug pipeline to predict the potential number of utilizers and the budget impact
- 2.3.4.1.2. Conduct thorough research including a review of clinical studies, evaluations by other organizations (ICER, DERP), alternative treatments and the drug pipeline.
- 2.3.4.1.3. Prepare and discuss with AHCCCS the VBC negotiation strategy on a per product or therapeutic class basis.
- 2.3.4.1.4. Update AHCCCS after manufacturer meetings.
 - 2.3.4.1.4.1. Review the manufacturer counter proposals; and
 - 2.3.4.1.4.2. Obtain AHCCCS input for the response to the manufacturer.
- 2.3.4.2. Propose draft terms of the VBC including the justification, methodology for the data gathering, tracking and obtaining the necessary clinical monitoring requirements and projected clinical and financial outcomes.
- 2.3.4.3. Submit separate pricing for the VBC program.

2.4. System Capability

The Contractor shall:

- 2.4.1. Maintain separate CMS and Supplemental rebate processes including separate invoicing and reconciliation processes as required by CMS and AHCCCS.
 - 2.4.1.1. Provide online access to invoice status and reporting data.
 - 2.4.1.2. Meet the requirements of any new or modified drug rebate legislation including federal and state and/or additional regulations that may be ratified during the term of this contract at no cost to AHCCCS. Contractor's responsibilities shall include modifying its Drug Rebate Operations and processes so that the Contractor conforms to legislation.
 - 2.4.1.3. Documentation of changes and results accomplished must be provided to AHCCCS within required timelines of legislative changes.
- 2.4.2. Utilize the most recent NCPDP Drug Rebate Standard including any versions recommended by CMS for use by state Medicaid programs.
- 2.4.3. Manage Drug Efficacy Standard Indicator (DESI) designations including DESI drugs excluded for coverage under Medicaid.
- 2.4.4. Convert the package size listed by drug in the CMS Drug Rebate File to the actual package size listed for the specific NDC as noted in the drug reference files MediSpan or First DataBank.
 - 2.4.4.1. The quarterly AMP minus URA report must include the CMS package size changes in the file noted above in 5.2.6.
- 2.4.5. Develop and run reports as required by AHCCCS. Currently these include:
 - 2.4.5.1. Quarterly 340B Unit Price Report (see attached Attachment A)
 - 2.4.5.1.1. This report is due 45 days after the close of the calendar year quarters:
 - 2.4.5.1.1.1. February 15th,
 - 2.4.5.1.1.2. May 15th,
 - 2.4.5.1.1.3. August 15th,
 - 2.4.5.1.1.4. November 15th.
 - 2.4.5.2. Annual 340B report (see Attachment B) - This report shall compare non-340B claims data on a unit basis to 340B unit pricing data to determine potential cost savings.
- 2.4.6. The system shall have the capability of providing the data and producing the reports in a reasonable amount of time.

2.5. Invoice Processing and Functionality

The Contractor shall:

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- 2.5.1. Calculate and create federal and supplemental rebate invoices, on both paper and electronic media as requested by the manufacturers/labelers.
- 2.5.2. Create and update invoices according to the CMS established format and NDC sequence as required for federal rebates and supplemental rebates.
- 2.5.3. Exclude invoicing of NDCs from non-participating manufacturers/labelers.
- 2.5.4. Exclude invoicing of 340B entity claims and encounters as defined by AHCCCS and the Office of Pharmacy Affairs 340B Database.
- 2.5.5. Include an approved cover letter with invoices that contain the manufacturer/labeler invoice Contact.
- 2.5.6. Deliver rebate invoices to manufacturers/labelers for both federal and supplemental rebates according to CMS and State required timelines.
 - 2.5.6.1. Invoices and cover letters shall be delivered to the manufacturer/labeler within 60 calendar days from the end of the calendar quarter.
- 2.5.7. Notify AHCCCS at the time and date invoices and cover letters were sent by the Contractor to the manufacturer/labeler to ensure CMS timelines requirements are met.
- 2.5.8. Maintain original and corrected invoices at the NDC level electronically and in real-time.
- 2.5.9. Have the ability to re-create previously issued invoices upon request in the event that replacement invoices are requested and necessary.
 - 2.5.9.1. Identify incorrect billing units for NDCs submitted based on the available package sizes and CMS specified units prior to invoicing the manufacturer/labeler.
 - 2.5.9.2. Convert the billed units (quantity) to the CMS rebateable units and invoice the manufacturer/labeler with corrections to accurately determine utilization.
 - 2.5.9.3. Calculate the accrued interest on disputes and unpaid balances, according to CMS specifications, beginning on the 38th day after the postmark date of the quarter's invoice, unless otherwise directed in writing by AHCCCS.
 - 2.5.9.4. Account for all calculations at both the OBRA and ACA level.
 - 2.5.9.5. Include a summary page of the invoices and the interest amount due to AHCCCS.
 - 2.5.9.6. Provide the methodology used to calculate, adjust and record prior period adjustment (PPA) payments reported on the CMS tape to the quarter billed.
 - 2.5.9.7. Exclude the prior period adjustment payments from the rebate invoice total amount due and report as informational data to be utilized by the manufacturer/labeler in the calculation of rebate amounts due to AHCCCS.
 - 2.5.9.8. Have a process for reviewing invoices prior to mailing which shall include searching for any NDCs billed with unusually:
 - 2.5.9.8.1. Low and high dollar amounts.
 - 2.5.9.8.2. Zero filled NDCs.
 - 2.5.9.8.3. Claims billed with all 9s as the NDC.
 - 2.5.9.8.4. NDCs that have zero URAs.
 - 2.5.9.9. Process and invoice the paid claims data for any designated State Supplemental Rebates for NDCs of drug manufacturers/labelers for which the State has a signed agreement within 60 days from the end of the quarter, unless otherwise directed in writing by AHCCCS.
 - 2.5.9.10. Provide AHCCCS with access to on-line and real time CMS and State supplemental rebate invoices for each quarter.
 - 2.5.9.11. Provide AHCCCS with an on-line history of manufacturer/labeler detail level account information including invoices, payments, interest, adjustments and disputes.
 - 2.5.9.12. Maintain online: current manufacturer/labeler contact names, addresses for invoice mailing, telephone numbers, fax numbers and e-mail addresses.

2.6. Rebate Activity Accounting

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The Contractor shall:

- 2.6.1. Maintain accurate rebate accounting records using generally accepted accounting principles that.
 - 2.6.1.1. Payments received.
 - 2.6.1.2. Data from Reconciliation of State Invoices (ROSIs).
 - 2.6.1.3. Other adjustments.
 - 2.6.1.4. Updates from prior quarter adjustments.
 - 2.6.1.5. Disputes.
 - 2.6.1.6. Interest.
 - 2.6.1.7. Maintain account balances and payment history conversions when invoices are produced.
 - 2.6.1.8. Produce a monthly report of accounts receivable information by the manufacturer/labeler and invoice for both federal and supplemental rebate programs by the 5th business day of each month. Reports shall be accessible online by AHCCCS no later than the 5th business day of the month and include:
 - 2.6.1.8.1. All past due rebate amounts.
 - 2.6.1.8.2. Number of days rebate amounts are past due.
 - 2.6.1.9. Post quarterly invoices to the accounts receivable subsidiary ledger and update the ledgers with posting of payments, interest and adjustments. Entries are to be reported using the 11-digit NDC code by manufacturer/labeler per quarter and entered within five (5) calendar days of receipt.
 - 2.6.1.10. Post payments received from the 1st through the 20th calendar days of the month by the 28th calendar day of the month.
 - 2.6.1.11. Have a process to review receivables to ensure that all invoiced amounts for the current quarter are paid regardless of outstanding credits to the account.
 - 2.6.1.12. Maintain records of receipt and acceptance of daily deposit entries or its designated agent and with reconciliation of any differences within five (5) business days.
 - 2.6.1.13. Prepare a check receipt/sent tracking report and reconcile all checks received by the Contractor on a daily basis with the AHCCCS staff.
 - 2.6.1.14. Maintain a record of receipts of manufacturer's/labeler's documentation regarding payments sent.
 - 2.6.1.15. Provide and make rate and/or unit adjustments.
 - 2.6.1.16. Use the envelope postmark or other electronic means acceptable to the manufacturer/labeler and AHCCCS to determine the timeliness of payments and the posting of all payments which are to be applied to the quarters billed at the manufacturer/labeler and NDC level within five (5) calendar days of receipt.
 - 2.6.1.17. Notify the manufacturer/labeler of interest due on late payments at the time the check is posted.
 - 2.6.1.18. Perform matching, without exception, to the information of the Prior Quarter Adjustment Statement (PQAS) forms to the PPA records on the CMS tape.
 - 2.6.1.19. Calculate the interest in accordance with CMS regulation by acquiring interest rates on a weekly basis based on the yield of the 13-week Treasury Bill auction rates; use these rates of the weekly auctions and the balance of the unpaid rebate to determine the daily amount of interest due.
 - 2.6.1.19.1. Report interest separately from other payments and separate CMS OBRA and ACA amounts from the Supplemental interest.
 - 2.6.1.19.2. Produce and provide online real-time monthly reports of all payments and interest received by CMS OBRA and ACA level and supplemental rebate programs by the 5th day of each month.

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- 2.6.1.19.3. Provide the capability to view and retrieve all payments and interest posted in a specified time period to show, by manufacturer/labeler and quarter what amounts have been posted, adjusted, beginning and ending balance.
- 2.6.1.19.4. Obtain written approval from AHCCCS prior to writing off any unpaid balances.
- 2.6.1.19.5. Assist AHCCCS with all audits relevant to the rebate process and attend meetings as necessary for dispute resolution of all matters.
- 2.6.1.19.6. Maintain continuous and complete documentation of every contact with the manufacturer/labeler when clarification is required for collection of past due balances.

2.7. Quality Assurance

The Contractor shall:

- 2.7.1. Perform quality assurance and monitoring on a quarterly basis to ensure accurate invoices are produced that includes:
 - 2.7.1.1. Validating the compilation of data.
 - 2.7.1.2. Auditing units that appear excessive.
 - 2.7.1.3. Precisely calculating amounts due.
 - 2.7.1.4. Electronically creating invoices for each manufacturer/labeler.
 - 2.7.1.5. Establishing controls to ensure duplicate invoices are issued only upon specific request.
 - 2.7.1.6. Monitor the remittance advice documentation to ensure the collection of the correct amount of interest.
 - 2.7.1.7. Monitor and require the manufacturer/labeler to use the standard ROSI and PQAS forms for adjustments to invoices and ensure that they follow CMS instructions.
 - 2.7.1.8. Retain and use postmarked envelopes or other electronic means as approved by CMS and AHCCCS as proof of dates of issuance to or receipt from the manufacturer/labeler and for interest calculations.

2.8. Reporting

The Contractor shall:

- 2.8.1. Provide access to all reports and data via a web-based real-time portal.
- 2.8.2. Provide reports and/or data sufficient for the purposes of invoice status monitoring, cash receipts reconciliations and the federal reporting of the Drug Rebate collected for submission to CMS as required for the Medicaid Drug Rebate Program, including but not limited to:
 - 2.8.2.1. Cash Report Summary by program (Fee-for-Services National Agreement, Managed Care National Agreement, Fee-for-Services Supplemental, Managed Care Supplemental) with total cash collected for each quarter, rebate payments collected, and the interest collected.
 - 2.8.2.2. Detail Receipts Listing Report by program for each month with individual payments: each receipt number, each check number, deposit date, receipt status, Manufacturer Code, date received, date posted, receipt amount as a total for each payment and also split between invoice amount and interest (if any).
 - 2.8.2.3. Labeler Paid Amount versus Billed Amount Report by program, by quarters and by labeler which shall include the rebate invoice billed amount, rebate invoice adjusted amount, rebate amount collected, the amount still due and interest accrued and paid.
 - 2.8.2.4. Summary Report for all programs together with quarterly historical and current data which shall include: Medicaid reimbursement amount, original invoice amount, adjusted invoice amount, outstanding balance, outstanding disputed amount, rebated collected

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- and interest collected. The report shall present a clear audit trail between the invoiced amount, the rebate collected and the outstanding amount.
- 2.8.2.5. Report for the Unit Rebate Offset Amounts Combined for the current quarter based on current quarter adjustments to the rate and/or unit paid compared to the prior quarter.
 - 2.8.2.6. Report for the Drugs Invoiced During the Quarter by program, by manufacturer and by specific drug which shall include: the invoiced units, rebate amount claimed, number of scripts, Medicaid reimbursement amount.
 - 2.8.2.7. Report for Invoice Totals for the Quarter by NDC which shall include the drug name, DC, HIC3 codes, unit rebate rate, CMS units, invoiced units, rebate amount claimed, number of scripts, Medicaid reimbursement amount, Non-Medicaid reimbursement amount, and total reimbursement amount.
 - 2.8.2.8. Reports of the Drug Rebate Collected by program (Fee-for-Services National Agreement, Managed Care National Agreement, Fee-for-Services Supplemental, Managed Care Supplemental) and by CMS-64 Waiver Categories which shall include waiver groups as specified by AHCCCS. The report shall include sufficient data as specified by AHCCCS to allow accurate calculation of federal share.
 - 2.8.2.9. Provide completed quarterly Forms CMS 64.9R and 64.21 (if applicable) combined for all four programs and by program.
 - 2.8.2.10. Provide online reports of receivables, aging's, list of disputes (including a brief narrative explaining the issue in dispute), check logs, NDC specific data, rebate summaries and payment summaries for specific manufacturer/labelers, and other customized reports.
 - 2.8.2.11. Report CMS and supplemental rebate statistics for:
 - 2.8.2.11.1. The number and percentage of rebate dollars received, sorted by rebate type and manufacturer.
 - 2.8.2.11.2. The number and percentage of rebate dollars disputed. Report of variances from the usual amounts paid and quantities used based on benchmark and prior reporting.
 - 2.8.2.11.3. Overdue Amounts Report by manufacturer/labeler for amounts greater than 12 months.
 - 2.8.2.12. Provide all necessary data on a monthly and quarterly basis to meet the CMS-64 reporting requirements in an exportable format as defined by AHCCCS. Work with AHCCCS and implement changes as required to the waiver groups to ensure accurate CMS-64 reporting and accurate calculation of federal share.
 - 2.8.2.12.1. Provide data for reporting of OUD MAT Drugs and the related drug rebate for lines 46A1 through 46A6 of the CMS-64 per the SUPPORT for Patients and Communities Act Section 1006(b).
 - 2.8.2.13. Provide a listing of disputed dollars by manufacturers/labelers on a quarterly basis.
 - 2.8.2.14. Provide to AHCCCS as the business needs change any other required reports approved by the Agency for the purposes of clear audit trail, accurate reconciliations and accurate federal reporting to CMS.
 - 2.8.2.15. Provide a comprehensive plan for the transition from the existing vendor to the new vendor. The plan needs to include all important aspects of accepting work over the aged invoices, cash collection, report consistency and other aspects as required by AHCCCS.
 - 2.8.2.16. Provide information to AHCCCS that identifies potential fraud and/or abuse within one (1) day of identification.
 - 2.8.2.17. Submit by May 15th of each year or other date as defined by AHCCCS, a Report of Controls Placed in Operation and Tests of Operating Effectiveness, meeting all standards and requirements of the AICPA's Statement on Standards for Attestation Engagements (SSAE) No. 16, for the Contractor's operations performed for AHCCCS.

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- 2.8.2.18. Provide specialty reports as required by AHCCCS. Currently these include:
 - 2.8.2.18.1. Quarterly 340B Unit Price Report to be delivered no later than 45 days after the close of the quarter, February 15th, May 15th, August 15th and November 15th –).
 - 2.8.2.18.2. Convert the package size listed by drug in the CMS Drug Rebate File to the actual package size listed for the specific NDC as noted in the drug reference files MediSpan or First DataBank.
 - 2.8.2.18.3. Annual 340B Report – Exhibit C to be delivered to AHCCCS no later than November 1st each year.
- 2.8.2.19. Provide AHCCCS with access to an online flexible query and ad hoc reporting tool that will provide information to accommodate the managerial requirements of AHCCCS.

2.9. Review and Resolution Process

The Contractor shall:

- 2.9.1. Report quarterly to manufacturer/labeler that interest is due at the rate set by the CMS schedule published on the CMS website for the specific quarter referenced and that there are outstanding Prior Quarter Adjustment Statements (PQAS) that need to be reconciled.
- 2.9.2. Follow-up with the manufacturers/labelers who have not fulfilled their responsibilities relative to prior period adjustments.
- 2.9.3. Respond to all drug manufacturer/labeler inquiries regarding drug rebate billing within two (2) days of receipt.
- 2.9.4. Provide corrected invoices resulting from the dispute resolution process within one week of resolution.
- 2.9.5. Provide AHCCCS copies of the corrected invoices, documenting explanation of corrections, adjustments, modifications and any potential interest due.

2.10. Program Planning

The Contractor shall:

- 2.10.1. Meet with AHCCCS staff to finalize all user requirements and technical system requirements thirty (30) calendar days after the Notice of Award.
 - 2.10.1.1. Customize its system to meet the State of Arizona’s processing and reporting requirements. AHCCCS staff will identify and provide information regarding the enhancements required for the drug rebate processing system. These requirements shall be in place sixty (60) calendar days prior to implementation.
- 2.10.2. Submit the overall architecture and network configuration as it relates to connectivity to AHCCCS.

2.11. Additional Requirements for the AHCCCS Supplemental Rebate Program

The Contractor shall:

- 2.11.1. Solicit supplemental rebate contracts, quarterly or on an ad hoc basis, from pharmaceutical manufacturers for drugs/drug classes for preferred agent status consideration on the AHCCCS Drug List;
- 2.11.2. Solicit value-based contracts from pharmaceutical manufacturers;
- 2.11.3. Manage the process for obtaining required outcomes information for value-based contracting.
- 2.11.4. Solicit rebate contracts for blood glucose monitors, strips/lancets and from manufacturers developing and producing continuous glucose monitors (CGM) and additional equipment needed to use with the CGM device;
- 2.11.5. Provide all of the same services for the AzSRP that are listed in this RFP for the MDRP as they pertain to the facilitation, management, support and reconciliation processes as noted all of Section 3;

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- 2.11.6. Facilitate the Pharmacy and Therapeutics Committee Meeting:
 - 2.11.6.1. The clinical pharmacist and account manager shall be present in person or virtually for each P&T meeting as required by AHCCCS.
 - 2.11.6.1.1. Prepare all clinical materials for P&T members to review.
 - 2.11.6.1.2. The materials shall be placed in a secure file on the Contractor's website for committee members to access the materials.
 - 2.11.6.1.3. The materials shall be available on the Contractor's website, in a secure file, 30 days before the meeting.
 - 2.11.6.1.4. Prepare and present PowerPoint presentation that includes:
 - 2.11.6.1.5. All clinical information to be presented on the therapeutic classes and biosimilars listed on the P&T meeting agenda:
 - 2.11.6.1.5.1. All clinical information for new drugs to be presented at the meeting; and
 - 2.11.6.1.5.2. Any other topics requested by AHCCCS.
 - 2.11.6.1.6. The clinical presentation for the meeting is due to AHCCCS, at a minimum, 15 days prior to the P&T Committee meeting.
 - 2.11.6.1.7. Prepare and present a PowerPoint presentation that details the P&T recommendations to be voted on by the committee.
 - 2.11.6.1.7.1. A draft of the PowerPoint recommendation slides shall be provided 10 days in advance of the P&T meeting date.
 - 2.11.6.1.7.2. Facilitate and manage the P&T therapeutic class and individual drug public voting session of the meeting.
 - 2.11.6.1.7.3. Provide the cost sheets to the Agency for the drug classes to be reviewed at the P&T Committee meeting
 - 2.11.6.1.8. AHCCCS to provide the PowerPoint template to the awarded Contractor.
 - 2.11.6.1.9. Present at the Executive Session, virtually or onsite as requested by AHCCCS, all P&T clinical and cost information for individual drugs, biosimilars and therapeutic drug classes (market baskets);
 - 2.11.6.1.9.1. All cost sheets shall be provided in excel and the information fields of the excel spreadsheet shall be determined by AHCCCS.
 - 2.11.6.1.9.2. Develop the cost sheets to include proposed supplemental rebate bids that have been received;
 - 2.11.6.1.9.3. Provide the cost sheets to AHCCCS, at a minimum, 15 days in advance of the P&T meeting.
 - 2.11.6.1.9.4. Prepare a Quarterly NDC file that includes all individual drugs, biosimilars, and therapeutic classes reviewed at the P&T meeting and the AHCCCS approved recommendations of preferred agents in an excel file delivered no later than ten days after the P&T Committee Meeting. See Exhibit C).
 - 2.11.6.1.9.5. Prepare a weekly NDC file that includes all updates for preferred drugs on the AHCCCS Drug List. This update shall include individual drugs, biosimilars and drugs from the therapeutic classes reviewed at the P&T meetings.
 - 2.11.6.2. Facilitate and manage the Executive Session of the P&T meeting which includes:
- 2.11.7. Responding to P&T member questions.
- 2.11.8. Explaining the external cost sheets to members.
- 2.11.9. Review all materials submitted by a pharmaceutical manufacturer to determine if the materials are valid and meet the AHCCCS P&T Operational Policy, ACOM Policy 111, requirements for distribution to P&T Committee members.

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- 2.11.10. Provide the pharmaceutical manufacturer accepted materials for P&T members in a separate file on the Contractor's website, at a minimum 14 days in advance of the P&T meeting as requested by AHCCCS.
- 2.11.11. Assign a dedicated team that includes a clinical pharmacist, and financial analyst, and with experience in facilitating supplemental rebate programs and the P&T Committee, to work with the AHCCCS Pharmacy Director for this contract. The clinical pharmacist shall be responsible for:
 - 2.11.11.1. Meeting weekly with the AHCCCS Pharmacy Director
 - 2.11.11.2. Developing Internal and External Cost sheets with the contractor's analyst, as defined by AHCCCS, for individual drug and or drug classes that will be reviewed at the P&T Committee meeting. These cost sheets are due, at a minimum, 30 calendar days prior to the P&T meeting.
 - 2.11.11.3. Provide the Weekly NDC Preferred Drug Files as required by AHCCCS. These files are provided weekly except for the file after the P&T meeting. See Exhibit D (see separate electronic exhibits)
 - 2.11.11.4. A NDC Preferred Drug List file defined by AHCCCS shall be provided no later than 10 days after the P&T Meeting which include the NDC preferred and non-preferred AHCCCS accepted P&T recommendations that will be implemented on the first day of the following quarter after the P&T meeting or a date defined by AHCCCS.
 - 2.11.11.5. Track all of the P&T Committee recommended decisions.
 - 2.11.11.6. Track all the AHCCCS approved P&T recommendations and those that are modified or not accepted.
- 2.11.12. The following shall be posted on the Contractor's website:
 - 2.11.12.1. A link on the front page of the Contractor's website to the page containing the following information in 2.11.12.4 – 2.11.12.9.
 - 2.11.12.2. All solicitation letters for supplemental rebates, non-supplemental rebates, value-based contracting, and/or diabetic supplies bid requests.
 - 2.11.12.3. The solicitation shall also include individual new drugs that will be reviewed at the P&T meeting.
 - 2.11.12.4. A listing of the specific drugs by NDC and including the drug name and strength or device products, package sizes or services that are being solicited.
 - 2.11.12.5. The Offer Form that manufacturers are to use when submitting a proposed supplemental rebate.
 - 2.11.12.6. The Line-Item Extension Form that manufacturers are to use when requesting the addition of a new formulation or strength of a current product that is under a supplemental rebate contract.
 - 2.11.12.7. The P&T Public Testimony Form that can be filled out and submitted on the contractor's website and simultaneously electronically sent to the AHCCCS Pharmacy Department.
 - 2.11.12.8. The Conflict-of-Interest Form that can be filled out and simultaneously electronically sent to the AHCCCS Pharmacy Department.
 - 2.11.12.9. Directions for pharmaceutical representatives on how and where to provide clinical information to the Contractor.

2.12. ISD Requirements

The Contractor shall:

- 2.12.1. Support the receipt of the drug claims extract(s) and drug encounters extract(s) from PMMIS. The extract Formats to be agreed upon by both AHCCCS and the Contractor.
- 2.12.2. Convert Healthcare Common Procedure Coding System (HCPCS) codes and units used in claims for physician administered drugs.

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- 2.12.3. Remove PHS/340B drug records from the rebate invoicing process.
- 2.12.4. Provide feedback to AHCCCS regarding any missing data elements from the extract and any aberrant billing practice patterns due to rebate analysis or other discovery processes.
- 2.12.5. Inform AHCCCS of all inappropriate unit billing issues/errors and any other data anomalies because of analysis or discovery.
- 2.12.6. Download CMS rates and integrate into a host environment on a quarterly basis within 24 hours of receipt. Download CMS rates within 24 hours of receipt and integrate into a host environment on a quarterly basis.
- 2.12.7. Generate rebate invoices and cover letters in the media indicated by the manufacturer/labeler within CMS specified timeframes.
- 2.12.8. Provide variance analysis and comparisons.
- 2.12.9. Support online access to aggregated data with multi-level drill down capabilities to support summarized findings.
- 2.12.10. Operate in a fully hosted environment.
- 2.12.11. Store all data and reporting requirements.
- 2.12.12. Establish an interface to transfer data to CMS, manufacturer / labeler and AHCCCS.
- 2.12.13. Transition, at no cost, a complete, all inclusive, data transfer to AHCCCS or other specified vendor, in the event of a contract termination.
- 2.12.14. Prior to January 1st, annually provide a list of scheduled office closings and scheduled downtimes for the calendar year.

3. EXHIBITS

Exhibits included in this solicitation are listed below:

- 3.1. Exhibit A –Solicitation Instruction to Offerors
- 3.2. Exhibit B - 340B Annual Report_2 Tabs
 - 3.2.1. Annual 340B Report – Exhibit C to be delivered to AHCCCS no later than November 1st each year.
- 3.3. Exhibit C- Quarterly AHCCCS P&T Accepted Recommendations Report
 - 3.3.1. Quarterly AHCCCS P&T Accepted Recommendations Report to be delivered no later than 45 days after the close of the quarter, February 15th, May 15th, August 15th and November 15th
- 3.4. Exhibit D – Weekly NDC File Reports_4 Tabs
 - 3.4.1. Provide the Weekly NDC Preferred Drug Files as required by AHCCCS. These files are provided weekly except for the file after the P&T meeting.

4. PRICING

- 4.1. The proposed pricing shall be inclusive of all costs associated with the delivery of the service and includes staff time, mileage, insurance, and administrative cost. No additional fees will be paid by AHCCCS.
- 4.2. Offeror shall propose pricing on ATTACHMENT 3: PRICING SCHEDULE. OBJ

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5. **INVOICES**

Invoices shall be submitted monthly to AHCCCS to include the following:
AHCCCS Contract number and Purchase Order number.

- 5.1. Description of service and deliverable performed for each fee.
- 5.2. Name of AHCCCS Program contact for this Contract
- 5.3. Date(s) services were performed.
- 5.4. Adequate supporting documentation attached.
- 5.5. Signature and title of authorized representative.

All invoices shall be submitted electronically to: AHCCCSDBFAdminPayables@azahcccs.gov

DEFINITIONS

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

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

DEFINITIONS

16. **FEE-FOR-SERVICE (FFS):** A method of payment to an AHCCCS registered provider on an amount-per-service basis for services reimbursed directly by AHCCCS for members not enrolled with a managed care Contractor.
17. **FDSH:** Federal Data Services Hub. HEAplus interfaces with the FDSH to make several types of identity verifications.
18. **FFM:** Federally-Facilitated Marketplace.
19. **FFP (FEDERAL FINANCIAL PARTICIPATION):** The Federal share of reimbursement for services provided in accordance with Federal requirements for school-based Medicaid services.
20. **FMAP (FEDERAL MEDICAL ASSISTANCE PERCENTAGE):** Defined in CFR 42 §433.10 Rates of FFP for Program Services, is the Federal matching assistance percentage used to calculate payment to the states for part of their expenditures for services under an approved State Plan.
21. **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.
22. **HEALTH PLAN:** An organization which contracts with the AHCCCS Administration to administer the provision of a comprehensive package of AHCCCS covered acute and behavioral health care services to AHCCCS members enrolled with the health plan.
23. **HPMMIS:** Hawaii's Prepaid Medicaid Management Information System, the management information system used by MQD.
24. **KEY PERSONNEL:** Contractor's Authorized Representative, the Project Manager, and all other Contractor personnel designated as Key Persons.
25. **KNOWLEDGE TRANSFER:** Activities designed to impart detailed information from Contractor to the Agencies in relation to the activities described in the Scope of Work. Knowledge Transfer goes beyond formalized training and documentation to include Contractor ensuring that staff is prepared to launch a successful Modularity program. Knowledge Transfer includes AHCCCS/MQD staff and other resources being integrated into Contractor's work activities and being an integral part of identifying and resolving issues. Knowledge Transfer activities include 'shoulder to shoulder' training, which is informal training with the specific intent of developing skills or knowledge working side by side with Contractor.
26. **KIDSCARE:** The State of Arizona's CHIP program.
27. **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.
28. **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.
29. **MAY:** *Indicates* something that is not mandatory but permissible.
30. **MEDICAID:** A Federal/State program authorized by Title XIX of the Social Security Act, as amended.

DEFINITIONS

31. **MILESTONE:** The completion date for a specific group of tasks or deliverables identified as a milestone in the statement of work.
32. **MQD/Med-QUEST:** The State of Hawaii Med-QUEST Division (MQD) provides eligible low-income adults and children access to health and medical coverage through managed care plans. The QUEST program is designed to provide Quality care, Universal access, Efficient utilization, Stabilizing costs, and to Transform the way healthcare is provided to recipients.
33. **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).
34. **NTE:** Not-to-Exceed amount.
35. **OFFER:** A response to a solicitation.
36. **OFFEROR:** A vendor or person who responds to a Solicitation.
37. **PERSON:** Any corporation, business, individual, union, committee, club or other organization or group of individuals.
38. **PMMS:** Prepaid Medicaid Management Information System, the management information system used by AHCCCS.
39. **PROJECT MANAGER:** the person representing both Agencies who serves as the Contractor's primary point of contact for the term of the Contract.
40. **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.
41. **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.
42. **SCOPE OF WORK:** The documents that describe the Services to be provided by Contractor, including the Tasks, Deliverables and Milestones, Documentation, Work Product, the attributes (including requirements and specifications) of each Deliverable, identification of the Deliverables and Services that are associated with each Task, and a completion date for each Milestone and Deliverable, the payment schedule for each Deliverable and Milestone, and any other items as agreed by the parties.
43. **SERVICE LEVEL AGREEMENT:** A type of subcontract with a corporate owner or any of its Divisions or Subsidiaries that requires specific levels of service for administrative functions or services for the Contractor specifically related to fulfilling the Contractor's obligations to AHCCCS under the terms of this Contract.
44. **SERVICES:** Means all effort to be expended by the Contractor under the Contract, including advice and expertise, and development and delivery of deliverables

DEFINITIONS

45. **SHALL, MUST: Indicates** a mandatory requirement. Failure to meet these mandatory requirements may result in the rejection of a proposal as non-responsive.
46. **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.
47. **SOLICITATION: An** Invitation for Bids (“IFB”), a Request for Proposals (“RFP”), or a Request for Quotations (“RFQ”).
48. **SOLICITATION AMENDMENT: A** written document that is authorized by the Procurement officer and issued for the purpose of making changes to the Solicitation.
49. **STATE:** The State of Arizona and AHCCCS.
50. **STATE FISCAL YEAR: The** period beginning with July 1 and ending June 30.
51. **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.
52. **TITLE XIX:** Title XIX of the Social Security Act means Medicaid as defined in 42 U.S.C. 7.19.

SPECIAL TERMS AND CONDITIONS

[Special Terms and Conditions](#)

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;

SPECIAL TERMS AND CONDITIONS

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

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this contract. This nondisclosure requirement shall also pertain to any information contained in reports, documents, or other records furnished to the Contractor by AHCCCS.

8.1.1. 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.

8.1.2. 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.

8.1.3. The Contractor shall advise its employees, agents and subcontractors, if any, that they are subject to these confidentiality requirements. A signed confidentiality statement containing language approved by AHCCCS will be obtained from all employees, agents and subcontractors, if any, and maintained in the individual's personnel file with a copy sent to AHCCCS upon request.

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

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

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

10.1. The RFP consists of the following, in order of Precedence:

- 10.1.1. HIPAA Business Associates Addendum
- 10.1.2. Special Terms and Conditions;
- 10.1.3. Uniform Terms and Conditions;
- 10.1.4. Statement or Scope of Work;
- 10.1.5. Attachments;
- 10.1.6. Exhibits;
- 10.1.7. Documents referenced or included in the Solicitation.
- 10.1.8. AHCCCS policies and procedures incorporated by reference.

10.2. The awarded Contract between AHCCCS and the Contractor consist of the following in order of Precedence:

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- 10.2.1. All Contract Amendments issued after award in descending order,
- 10.2.2. The Request for Proposal (RFP) as described above; and
- 10.2.3. The proposal submitted by the Contractor in response to the RFP including any Best and Final Offers.

10.3. In the event of a conflict in language between the Offeror's proposal (including any Best and Final Offers) and the RFP (including AHCCCS policies and procedures incorporated by reference), the provisions and requirements set forth and/or referenced in the RFP (including AHCCCS policies and procedures incorporated by reference) shall govern.

10.4. The contract shall be construed according to the laws of the State of Arizona. The State of Arizona is not obligated for the expenditures under the contract until funds have been encumbered.

11. Administrative Changes

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

12. Fraud and Abuse:

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

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

14. **Licenses:** Contractor shall maintain in current status all federal, state and local licenses and permits required for the operation of the business conducted by the Contractor.

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15. **Lobbying:** No funds paid to the Contractor by AHCCCS, or interest earned thereon, shall be used for the purpose of influencing or attempting to influence an officer or employee of any federal or State agency, a member of the United States Congress or State Legislature, an officer or employee of a member of the United States Congress or State Legislature in connection with awarding of any federal or State contract, the making of any federal or State grant, the making of any federal or State loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any federal or State contract, grant, loan, or cooperative agreement. The Contractor shall disclose if any funds other than those paid to the Contractor by AHCCCS have been used or will be used to influence the persons and entities indicated above and will assist AHCCCS in making such disclosures to CMS.
16. **No Guaranteed Quantities:** AHCCCS does not guarantee the Contractor any minimum or maximum quantity of services or goods to be provided under this contract.
17. **Non-exclusive Contract:** Any contract resulting from this solicitation shall be awarded with the understanding and agreement that it is for the sole convenience of AHCCCS. The state reserves the right to obtain like goods or services from another source when necessary.
18. **Ownership of Information and Data:**
 - 18.1. Any data or information system, including all software, documentation and manuals, developed by Contractor pursuant to this contract, shall be deemed to be owned by AHCCCS. The federal government reserves a royaltyfree, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use and to authorize others to use for federal government purposes, such data or information system, software, documentation and manuals. Proprietary software which is provided at established catalog or market prices and sold or leased to the general public shall not be subject to the ownership or licensing provisions of this section.
 - 18.2. Data, information and reports collected or prepared by Contractor in the course of performing its duties and obligations under this contract shall be deemed to be owned by AHCCCS. The ownership provision is in consideration of Contractor's use of public funds in collecting or preparing such data, information and reports. These items shall not be used by Contractor for any independent project of Contractor or publicized by Contractor without the prior written permission of the Procurement officer. Subject to applicable state and federal laws and regulations, AHCCCS shall have full and complete rights to reproduce, duplicate, disclose and otherwise use all such information. At the termination of the contract, Contractor shall make available all such data to the Procurement officer within thirty (30) days following termination of the contract or such longer period as approved by the Procurement officer. For purposes of this subsection, the term "data" shall not include member medical records.
 - 18.3. Except as otherwise provided in this section, if any copyrightable or patentable material is developed by Contractor in the course of performance of this contract, the federal government, AHCCCS and the State of Arizona shall have a royaltyfree, nonexclusive, and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the work for state or federal government purposes. Contractor shall additionally be subject to the applicable provisions of 45 CFR Part 74 and 45 CFR Parts 6 and 8.
19. **Records:**
 - 19.1. In addition to the requirements set forth in this contract under the Uniform Terms and Conditions, all books and records shall be maintained to the extent and in such detail as required by AHCCCS Rules and Policies. The AHCCCS records management guidelines are located at: <http://www.azahcccs.gov>. Records

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shall include, but not be limited to, financial statements, case files (both hard copy and stored data), and other records specified by AHCCCS.

- 19.2. The Contractor shall make available at its office at all reasonable times during the term of this contract and the period set forth in in this section, any of its records for inspection, audit or reproduction by any authorized representative of AHCCCS, State or Federal government.
- 19.3. The Contractor shall preserve and make available all records for a period of five (5) years from the date of final payment under this contract except as provided below:
- 19.3.1. If this contract is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for a period of five years from the date of any such termination.
- 19.3.2. Records that relate to grievances, disputes, litigation or the settlement of claims arising out of the performance of this contract, or costs and expenses of this contract to which exception has been taken by AHCCCS, shall be retained by the Contractor for a period of five years after the date of final disposition or resolution thereof.
- 19.3.3. Completed case files shall be scheduled for archive shipment to AHCCCS, as defined by AHCCCS Policy and Procedures.

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

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

- 21.1. The initial term of this contract shall be for three (3) initial years with two (2) one-year options to extend, not to exceed a total contracting period of five (5) years. The terms and conditions of any such contract extension shall remain the same as the original contract, as amended. All contract extensions shall be through contract amendment, and shall be at the sole option of AHCCCS.
- 21.2. When the Procurement officer issues an amendment to extend the contract, the provisions of such extension will be deemed to have been accepted 60 days after the date of mailing by the Procurement officer, even if the extension amendment has not been signed by the Contractor, unless within that time the Contractor notifies the Procurement officer in writing that it refuses to sign the extension amendment. If the Contractor provides such notification, the Procurement officer will initiate contract termination proceedings.
- 21.3. If the Contractor chooses not to renew this contract, the Contractor may be liable for certain costs associated with the transition of its members to a different Contractor. If the Contractor provides the Procurement officer written notice of its intent not to renew this contract at least 180 days before its expiration, this liability for transition costs may be waived by the Procurement officer.
- 21.4. Contract amendments, including renewals, may be subject to approval by the Centers for Medicare and Medicaid Services (CMS)

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22. Warranty

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

23. INTELLECTUAL PROPERTY

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

24. INDEMNIFICATION

Contractor shall indemnify, defend with counsel reasonably approved by the State, and hold harmless, the State, its departments, agencies, boards, commissions, universities, officers, agents and employees (collectively, the "Indemnitee") from and against any and all claims, actions, damages, costs (including attorneys' fees), and losses arising under this Contract, including, but not limited to, bodily injury or personal injury (including death) or loss or damage to tangible or intangible property, but excluding damages arising solely from the gross negligence or willful misconduct of the Indemnitee. This indemnification obligation includes any claim or amount arising out of, or recovered under, the Workers' Compensation Law or arising out of the failure of the Contractor to comply with any federal, state or local law, statute, ordinance, rule, regulation or court decree. Contractor shall have control, subject to the reasonable approval of the State, of the defense of any action on such claim and all negotiations for its settlement or compromise, provided,

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however, that when substantial principles of government of public law are involved, or when involvement of the State is otherwise mandated by law, the State may elect, in its sole and absolute discretion, to participate in such action at its own expense with respect to attorneys' fees and costs, but not liability and the State shall have the right to approve or disapprove any settlement which approval shall not be unreasonably withheld or delayed. The State shall reasonably cooperate in its defense and any related settlement negotiations.

25. **INTELLECTUAL PROPERTY INDEMNIFICATION**

25.1. With respect solely to Materials provided or proposed by Contractor or Contractor's agents, employees, or subcontractors (each a "Contractor Party") for the performance of this Contract, Contractor shall indemnify, defend and hold harmless the State its departments, agencies, boards, commissions, universities, officers, agents and employees (collectively, the "Indemnitee"), against any third-party claims for liability including but not limited to, reasonable costs and expenses, including attorneys' fees, for infringement or violation of any patent, trademark, copyright or trade security, by such Materials or the State's use thereof.

25.2. In addition, with respect to claims arising from computer hardware or software manufactured or developed solely by a third party, Contractor shall pass through to the State such indemnity rights as it receives from such third party (the "Third Party Obligation") and will cooperate in enforcing then; provided, however, that (i) if the third party manufacturer fails to honor the Third Party Obligation, or (ii) the Third Party Obligation is insufficient to fully indemnify the State, Contractor shall indemnify, defend and hold harmless the State against such claims in their entirety or for the balance of any liability not fully covered by the Third Party Obligation.

25.3. The State shall reasonably notify Contractor of any claim for which the Contractor may be liable under this section. If the Contractor is insured pursuant to ARS 41-621 and 35-154, this section shall not apply. Contractor shall have control, subject to the reasonable approval of the State, of the defense of any action on such claim and all negotiation for its settlement or compromise, provided, however, that when substantial principles of government or public law are involved or when involvement of the State is otherwise mandated by law, the State may elect, in its sole and absolute discretion, to participate in such action at its own expense with respect to attorneys' fees and costs, but not liability, and the State shall have the right to approve or disapprove any settlement, which approval shall not be unreasonably withheld or delayed. The State shall reasonably cooperate in the defense and any related settlement negotiations.

25.4. If Contractor believes at any time that any Materials provided or in the use pursuant to this Contract infringe a third party's intellectual property rights, Contractor shall, at Contractor's sole cost and expense, and upon receipt of the state's prior written consent, which shall not be unreasonably withheld, (i) replace in infringing Material with a non-infringing Material; (ii) obtain for the State the right to continue to use the infringing Material; or (iii) modify the infringing Material to be non-infringing, provided that following any replacement or modification made pursuant to the foregoing, the Material continues to function in accordance with the Contract. Contractor's failure or inability to accomplish any of the foregoing shall be deemed a material breach of this Contract.

25.5. Notwithstanding the foregoing, Contractor shall not be liable for infringement based solely on any Indemnitee's:

25.5.1. Modification of Materials provided by Contractor other than as contemplated by the Contract or the specifications of such Materials or as otherwise authorized or proposed in any way by Contractor or a Contractor Party;

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- 25.5.2. Use of the Materials in a manner other than as contemplated by this Contract or the specifications of such Materials, or as otherwise authorized or proposed in any way by Contractor or a Contractor Party; or
 - 25.5.3. Use of the Materials in combination, operation, or use with other products in a manner not contemplated by the Contract, or, the specifications of such Materials, or as otherwise authorized or proposed in any way by Contractor or a Contractor Party.
- 25.6. Contractor certifies, represents and warrants to the State that it has appropriate systems and controls in place to ensure that State funds will not be used in the performance of the Contractor for the acquisition, operation or maintenance of Materials in violation of intellectual property laws.

Addendum A to the Special Terms and Conditions (Insurance)

Addendum A to the Special Terms and Conditions (Insurance)

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, and any jurisdiction or agency issuing permits for any work included in the project, and their respective directors, officers, officials, agents and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, costs, losses, or expenses, (including reasonable attorney's fees), (hereinafter collectively referred to as "Claims") arising out of actual or alleged bodily injury or personal injury of any person (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 Contractor's directors, officers, agents, employees, volunteers or subcontractors. This indemnity includes any claim or amount arising or recovered under the Workers' Compensation Law or arising out of the failure of 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. This indemnification will survive the termination of the above listed contract with the Contractor. 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.

3. Minimum Scope and Limits of Insurance

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

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

- 3.1.1. 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.

Addendum A to the Special Terms and Conditions (Insurance)

3.1.2. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

3.2. Workers' Compensation and Employers' Liability

- Workers' Compensation Statutory
- Employers' Liability
 - Each Accident \$1,000,000
 - Disease – Each Employee \$1,000,000
 - Disease – Policy Limit \$1,000,000

3.2.1. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

3.2.2. 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).

3.3. Technology Errors & Omissions Insurance

- Each Claim \$2,000,000
- Annual Aggregation \$2,000,000

3.3.1. Such insurance shall cover any, and all errors, omissions, or negligent acts in the delivery of products, services, and/or licensed programs under this contract.

3.3.2. Coverage shall include copyright infringement, infringement of trade dress, domain name, title or slogan.

3.3.3. In the event that the Tech E&O 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.

3.4. Network Security (Cyber) and Privacy Liability

- Each Claim \$2,000,000
- Annual Aggregation \$2,000,000

3.4.1. 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

Addendum A to the Special Terms and Conditions (Insurance)

(data asset protection), network business interruption, computer fraud coverage, and funds transfer loss.

- 3.4.2. 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.
- 3.4.3. 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.
- 3.4.4. 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.

4. **Additional Insurance Requirements**

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

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

5. **Notice of Cancellation**

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

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.

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.

Addendum A to the Special Terms and Conditions (Insurance)

- 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.
- 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.
- 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.

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 this contract, proof from the Contractor that its subcontractors have the required coverage.

9. Approval and Modifications

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

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.

Addendum B to Special Terms and Conditions IT Security Requirements

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

1. Privacy and Security Requirements

- 1.1. The Contractor (and any subcontractor) will be responsible for the privacy and security requirements below for the Solution throughout the engagement. See the Business Associate Addendum for additional requirements.
- 1.2. AHCCCS/MQD shall determine the level of criticality for incidences in consultation with the Contractor. Following the contract award, AHCCCS/MQD shall supply contact information to the Contractor for reporting incidents.

Privacy and Security	The Contractor must meet the applicable State and Federal privacy and security standards in the hosting and support of all infrastructure, including the Federal Centers for Medicare and Medicaid Services (CMS) and Social Security Administration (SSA) cloud computing standards for data maintained within the system. If not hosted in AHCCCS Azure tenant, then Contractor must provide the following and submit evidence as part of the proposal submission: <ul style="list-style-type: none"> • FedRAMP or StateRAMP authorization, • HITRUST certification, or • A security and privacy assessment and SSAE-18 assessment or its equivalent. Authorizations and/or certifications must be maintained throughout the life of the contract and provided to AHCCCS annually.
Privacy and Security	The Contractor shall prevent any user or system administrator from having a shared account.
Privacy and Security	The Contractor's Solution shall be compliant with NIST 800-53, or its replacement, at the moderate level and the Minimum Acceptable Risk Standards for Exchanges (MARS-E), or its equivalent. The Solution shall become compliant with any revisions made to MARS-E within the CMS-defined timeframes provided at publication.
Privacy and Security	The Contractor shall comply with AHCCCS/MQD information security requirements and employ appropriate security controls in accordance with applicable laws, Executive Orders, directives, policies, regulations, standards, and guidance.
Privacy and Security	The Contractor shall establish and maintain security and privacy policies and procedures for how data is stored, handled, and accessed within the Contractor environment.
Privacy and Security	The Contractor shall encrypt data to and from the Contractor environment using current FIPS 140 regulations for compliant encryption technologies.
Privacy and Security	The Contractor shall be responsible for monitoring emerging information security threats and vulnerabilities and the necessary remediation at no additional cost to the State.
Privacy and Security	For all persons identified to have access to the Contractor's Solution and data prior to execution of the contract and throughout the life of the agreement, the Contractor shall complete and submit the following: <ol style="list-style-type: none"> 1) AHCCCS Electronic Data Exchange Request Form https://azahcccs.gov/PlansProviders/Downloads/ISD/ElectronicDataExchangeForm.docx 2) External User Affirmation Statement https://www.azahcccs.gov/PlansProviders/Downloads/ISD/ExternalUserAffirmationStatement.pdf

Addendum B to Special Terms and Conditions IT Security Requirements

Privacy and Security	The Contractor shall be subject to U.S. Federal laws and regulations protecting Personally Identifiable Information (PII).
Privacy and Security	The Contractor shall provide all MARS-E, or equivalent federal requirement, compliance documentation within the timeframes indicated in the approved project schedule.
Privacy and Security	<p>Contractor must implement:</p> <ol style="list-style-type: none"> 1. Security measures sufficient to reduce risks and vulnerabilities to a reasonable and appropriate level to comply with Section 164.306(a). 2. For risk analysis, an accurate and thorough assessment of the potential risks and vulnerabilities to the confidentiality, integrity, and availability of ePHI held by the covered entity. 3. Applied appropriate sanctions to workforce members who fail to comply with the security policies and procedures of the covered entity. 4. Procedures to review records of information system activity, such as audit logs, access reports, and security incident tracking reports, on a frequency determined by State. 5. Assigned security officer who is responsible for the development and implementation of the policies and procedures required by this subpart for the entity. 6. Security awareness and training program for all members of its workforce. 7. Procedures for guarding against, detecting, and reporting malicious software. 8. Identify and respond to suspected or known security incidents, mitigate, to the extent practicable, harmful effects of security incidents and their outcomes.
Privacy and Security	<p>The Contractor's solution shall work with AHCCCS/MQD to design, configure and automatically transmit Integration Platform log data to the AHCCCS/MQD Security Event and Incident Management (SIEM) system leveraging Open Cybersecurity Schema Framework (OCSF)</p> <p>https://github.com/ocsf.</p>
Privacy and Security	<p>The Contractor's solution shall adhere with the sub-parts of Section 508 of the Americans with Disabilities Act (ADA) guidelines, and any other appropriate State or Federal disability legislation (https://www.section508.gov/). The Contractor must provide the State with their Voluntary Product Accessibility Template (VPAT) explaining how their products meet (conform to) the Revised 508 Standards for IT accessibility.</p>
Privacy and Security	<p>The Contractor shall assign a dedicated privacy and security officer to serve as the liaison to the AHCCCS CISO to ensure and maintain compliance with HIPAA, NIST, MARS-E, and other Federal and State privacy and security standards.</p> <p>The Privacy and Security officer would be responsible for:</p> <ol style="list-style-type: none"> 1. Implementing all applicable security controls, documenting those implementations, and maintaining security documentation (as policy, procedural, or system changes are made) 2. Facilitating internal and external Security Control Assessments and Audits 3. Providing other system security documentation to the State as necessary, including but not limited to System Security Plans.

Compliance Documentation	Submission Timeline
<ul style="list-style-type: none"> • FedRAMP or StateRAMP authorization, • HITRUST Certification, or • A security and privacy assessment and SSAE-18 assessment or its equivalent. 	<ul style="list-style-type: none"> • Include with proposal submission • Annually throughout the life of the contract
Penetration Testing and Security and Privacy Controls Assessment Report (SAR) performed by an independent third party	<ul style="list-style-type: none"> • Prior to execution of the contract • Annually

Addendum B to Special Terms and Conditions IT Security Requirements

AHCCCS Electronic Data Exchange Request Form	<ul style="list-style-type: none"> • Prior to execution of the contract • As needed
External User Affirmation Statement for all persons identified to have access to the Solution and data.	<ul style="list-style-type: none"> • Prior to execution of the contract • Annually • As needed
System Security Plan (SSP)	<ul style="list-style-type: none"> • Prior to execution of the contract • Annually
Contingency Plan and Test Plan	<ul style="list-style-type: none"> • Prior to execution of the contract • Annually
Contingency Plan Test Results	<ul style="list-style-type: none"> • Prior to execution of the contract • Annually
Incident Response Plan (IRP)	<ul style="list-style-type: none"> • Prior to execution of the contract • Annually
Information Security Risk Assessment (ISRA)	<ul style="list-style-type: none"> • Prior to execution of the contract • Annually

UNIFORM TERMS AND CONDITIONS

[Uniform Terms and Conditions](#)

Version 10.5

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

UNIFORM TERMS AND CONDITIONS

Subcontractor as a part of a Contract with the State.

2. Contract Interpretation

- 2.1. Arizona Law. The Arizona law applies to this Contract including, where applicable, the Uniform Commercial Code as adopted by the State of Arizona and the Arizona Procurement Code, Arizona Revised Statutes (A.R.S.) Title 41, Chapter 23, and its implementing rules, Arizona Administrative Code (A.A.C.) Title 2, Chapter 7.
- 2.2. Implied Contract Terms. Each provision of law and any terms required by law to be in this Contract are a part of this Contract as if fully stated in it.
- 2.3. Relationship of Parties. The Contractor under this Contract is an independent Contractor. Neither party to this Contract shall be deemed to be the employee or agent of the other party to the Contract.
- 2.4. Severability. The provisions of this Contract are severable. Any term or condition deemed illegal or invalid shall not affect any other term or condition of the Contract.
- 2.5. No Parol Evidence. This Contract is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms used in this document and no other understanding either oral or in writing shall be binding.
- 2.6. No Waiver. Either party's failure to insist on strict performance of any term or condition of the Contract shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.

3. Contract Administration and Operation

- 3.1. Records. Under A.R.S. § 35-214 and § 35-215, the Contractor shall retain and shall contractually require each Subcontractor to retain any and all Data and other "records" relating to the acquisition and performance of the Contract for a period of five (5) years after the completion of the Contract. All records shall be subject to inspection and audit by the State at reasonable times. Upon request, the Contractor shall produce a legible copy of any or all such records.
- 3.2. Non-Discrimination. The Contractor shall comply with State Executive Order Nos. 2023-09, 2023-01, 2009-09, and any and all other applicable Federal and State laws, rules and regulations, including the Americans with Disabilities Act. Contractor shall include these provisions in contracts with Subcontractors when required by Federal or State law.
- 3.3. Audit. Pursuant to A.R.S. § 35-214, at any time during the term of this Contract and five (5) years thereafter, the Contractor's or any Subcontractor's books and records shall be subject to audit by the State and, where applicable, the Federal Government, to the extent that the books and records relate to the performance of the Contract or Subcontract.
- 3.4. Facilities Inspection and Materials Testing. The Contractor agrees to permit access to its facilities, Subcontractor facilities, and the Contractor's processes or services, at reasonable times for inspection of the facilities or Materials covered under this Contract as required under A.R.S. § 41-2547. The State shall also have the right to test, at its own cost, the Materials to be supplied under this Contract. Neither inspection of the Contractor's facilities nor Materials testing shall constitute final acceptance of the Materials or Services. If the State determines non-compliance of the Materials, the Contractor shall be responsible for the payment of all costs incurred by the State for testing and inspection.
- 3.5. Notices. Notices to the Contractor required by this Contract shall be made by the State to the person indicated on the Offer and Acceptance form submitted by the Contractor unless otherwise stated in the Contract. Notices to the State required by the Contract shall be made by the Contractor to the Solicitation Contact Person indicated on the Solicitation, stated in the Contract, or listed on the State's eProcurement system. An authorized Procurement Officer and an authorized Contractor representative may change their respective person to whom notice shall be given by written notice

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to the other and an amendment to the Contract shall not be necessary.

- 3.6. Advertising, Publishing and Promotion of Contract. The Contractor shall not use, advertise or promote information for commercial benefit concerning this Contract without the prior written approval of the Procurement Officer.
- 3.7. Continuous Improvement. Contractor shall recommend continuous improvements on an on-going basis in relation to any Materials and Services offered under the Contract, with a view to reducing State costs and improving the quality and efficiency of the provision of Materials or Services. State may require Contractor to engage in continuous improvements throughout the term of the Contract.
- 3.8. Other Contractors. State may undertake on its own or award other contracts to the same or other suppliers for additional or related work. In such cases, the Contractor shall cooperate fully with State employees and such other suppliers and carefully coordinate, fit, connect, accommodate, adjust, or sequence its work to the related work by others. Where the Contract requires handing-off Contractor's work to others, Contractor shall cooperate as State instructs regarding the necessary transfer of its work product, Materials, Services, or records to State or the other suppliers. Contractor shall not commit or permit any act that interferes with the State's or other suppliers' performance of their work, provided that, State shall enforce the foregoing section equitably among all its suppliers so as not impose an unreasonable burden on any one of them.
- 3.9. Ownership of Intellectual Property
 - 3.9.1 Rights In Work Product. All intellectual property originated or prepared by Contractor pursuant to the Contract, including but not limited to, inventions, discoveries, intellectual copyrights, trademarks, trade names, trade secrets, technical communications, records reports, computer programs and other documentation or improvements thereto, including Contractor's administrative communications and records relating to the Contract, are considered work product and Contractor's property, provided that, State has Government Purpose Rights to that work product as and when it was delivered to State.
 - 3.9.2 "Government Purpose Rights" are: the unlimited, perpetual, irrevocable, royalty free, non-exclusive, worldwide right to use, modify, reproduce, release, perform, display, sublicense, disclose and create derivatives from that work product without restriction for any activity in which State is a party; the right to release or disclose that work product to third parties for any State government purpose; and the right to authorize those to whom it rightfully releases or discloses that work product to use, modify, release, create derivative works from the work product for any State government purpose; such recipients being understood to include the federal government, the governments of other states, and various local governments.
 - 3.9.3 "Government Purpose Rights" do not include any right to use, modify, reproduce, perform, release, display, create derivative works from or disclose that work product for any commercial purpose, or to authorize others to do so.
 - 3.9.4 Joint Developments. The Contractor and State may each use equally any ideas, concepts, know-how, or techniques developed jointly during the course of the Contract, and may do so at their respective discretion, without obligation of notice or accounting to the other party.
 - 3.9.5 Pre-existing Material. All pre-existing software and other Materials developed or otherwise obtained by or for Contractor or its affiliates independently of the Contract or applicable Purchase Orders are not part of the work product to which rights are granted State under subparagraph 3.9.1 above, and will remain the exclusive property of Contractor, provided that: any derivative works of such pre-existing Materials or elements thereof that are created pursuant to the Contract are part of that work product; any elements of derivative work of such pre-existing Materials that was not created pursuant to the Contract are not part of that work product; and except as expressly stated otherwise, nothing in the Contract is to be construed to interfere or diminish Contractor's or its affiliates' ownership of such pre-existing Materials.
- 3.10. Developments Outside Of Contract. Unless expressly stated otherwise in the Contract, this Section does not preclude Contractor from developing competing Materials outside the Contract, irrespective of any similarity to Materials delivered or to be delivered to State hereunder.

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- 3.11. Property of the State. If there are any materials that are not covered by Section 3.9 above created under this Contract, including but not limited to, reports and other deliverables, these materials are the sole property of the State. The Contractor is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. The Contractor shall not use or release these materials without the prior written consent of the State.
- 3.12. Federal Immigration and Nationality Act. Contractor shall comply with all federal, state and local immigration laws and regulations relating to the immigration status of their employees during the term of the contract. Further, Contractor shall flow down this requirement to all Subcontractors utilized during the term of the contract. The State shall retain the right to perform random audits of Contractor and Subcontractor records or to inspect papers of any employee thereof to ensure compliance. Should the State determine that the Contractor or any Subcontractors be found noncompliant, the State may pursue all remedies allowed by law, including, but not limited to: suspension of work, termination of the contract for default and suspension or debarment of the contractor.
- 3.13. E-Verify Requirements. In accordance with A.R.S. § 41-4401, Contractor warrants compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with Section A.R.S. § 23- 214, Subsection A.
- 3.14. Offshore Performance of Work involving Data is Prohibited. Any Services that are described in the specifications or scope of work that directly serve the State of Arizona or its clients and involve access to Data shall be performed within the defined territories of the United States.
- 3.15. Protection of State Cybersecurity Interests. The Contractor shall comply with State Executive Order No. 2023-10, which includes, but is not limited to, a prohibition against
- (a) downloading and installing of TikTok on all State-owned and State-leased information technology; and (b) accessing TikTok through State information technology.
- 3.16. Artificial Intelligence (AI) Prohibitions. Consistent with State policy, if Contractor supplies AI Services or Materials (either directly or through Subcontractors or the sale of licenses), such as research, development, training, implementation, deployment, maintenance, provision, or sale of AI systems, then Contractor is prohibited from using State of Arizona Materials or Data in generative AI queries or for building or training proprietary generative AI programs unless explicitly approved in advance by the State in writing.
- 3.16.1. Contractor shall also disclose the utilization of generative AI before producing works owned by the State and/or integrating generative AI into Materials or Services used by the State.
- 3.16.2. Contractor shall perform due diligence to ensure proper licensure of model training data for all generative AI services throughout the life of the Contract.
- 3.17. Certifications Required by State Law.
- 3.17.1. If Contractor is a Company as defined in A.R.S. § 35-393, Contractor certifies that it is not currently engaged in a boycott of Israel as described in
- 3.17.2. A.R.S. §§ 35-393 et seq. and will refrain from any such boycott for the duration of this Contract.
- 3.17.3. Contractor further certifies that it shall comply with A.R.S. § 35-394, regarding use of the forced labor of ethnic Uyghurs, as applicable.
4. Costs and Payments
- 4.1. Payments. Payments shall comply with the requirements of A.R.S. Titles 35 and 41, Net 30 days. Upon receipt and acceptance of Materials or Services, the Contractor shall submit a complete and accurate invoice for payment from the State within thirty (30) days.

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- 4.2. Delivery. Unless stated otherwise in the Contract, per A.R.S. § 47-2319, all prices shall be F.O.B. (“free on board”) Destination and shall include all freight delivery and unloading at the destination.
- 4.3. Firm, Fixed Price. Unless stated otherwise in the Special Terms and Conditions of the Contract, all prices shall be firm-fixed-prices.
- 4.4. Applicable Taxes
- 4.4.1. Payment of Taxes. The Contractor shall be responsible for paying all applicable taxes.
- 4.4.2. 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.
- 4.4.3. 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.
- 4.4.4. IRS W9 Form. In order to receive payment the Contractor shall have a current I.R.S. W9 Form on file with the State of Arizona, unless not required by law.
- 4.5. 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.
- 4.6. Availability of Funds for the Current State Fiscal Year. Should the State Legislature enter back into session and reduce the appropriations or for any reason and these Materials or Services are not funded, the State may take any of the following actions:
- 4.6.1. Accept a decrease in price offered by the Contractor;
 - 4.6.2. Cancel the Contract; or
 - 4.6.3. 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 Services or Materials, the revision of payment terms, or the substitution of Services or Materials, directed by a person who is not specifically authorized by the Procurement Officer in writing or made unilaterally by the Contractor are violations of the Contract and of applicable law. Such changes, including unauthorized written Contract Amendments shall be void and without effect, and the Contractor shall not be entitled to any claim under this Contract based on those changes.
- 5.2. Subcontracts. The Contractor shall not enter into any Subcontract under this Contract for the performance of this Contract without the advance written approval of the Procurement Officer as described in Arizona State Procurement Office Standard Procedure 002. The Contractor shall clearly list any proposed Subcontractors and the Subcontractor’s proposed responsibilities. The Subcontract shall incorporate by reference the terms and conditions of this Contract.
- 5.3. Assignment and Delegation. The Contractor shall not assign any right nor delegate any duty under this Contract without the prior written approval of the Procurement Officer. The State shall not unreasonably withhold approval.

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6. Risk and Liability

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

7. Indemnification

- 7.1. Contractor/Vendor Indemnification (Not Public Agency). To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees (hereinafter referred to as "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 Subcontractor(s) is/are an agency, board, commission or university of the State of Arizona.

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

- 7.3. Force Majeure. Except for payment of sums due, neither the Contractor nor State shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes: acts of God, acts of the public enemy, war, riots, strikes, mobilization, labor disputes, civil disorders, fire, flood, lockouts, injunctions-intervention-acts, failures or refusals to act by government authority, and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence. Force Majeure shall not include the following occurrences:

7.3.1. Late delivery of equipment, Materials, or Services caused by congestion at a manufacturer's plant or elsewhere, or an oversold condition of the market;

7.3.2. 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

7.3.3. Inability of either the Contractor or any Subcontractor to acquire or maintain any required insurance, bonds, licenses or permits.

7.3.4. If either the Contractor or State is delayed at any time in the progress of the work by force majeure, the delayed

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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.

7.3.5. 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.

7.4. 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.

8. Warranties

8.1. Liens. The Contractor warrants that the Materials supplied under this Contract are free of liens and shall remain free of liens.

8.2. Quality. Unless otherwise modified elsewhere in the Special Terms and Conditions, the Contractor warrants that, for one (1) year after acceptance by the State of the Materials, they shall be:

8.2.1. Of a quality to pass without objection in the trade under the Contract description;

8.2.2. Fit for the intended purposes for which the Materials are used;

8.2.3. Within the variations permitted by the Contract and are of even kind, quantity, and quality within each unit and among all units;

8.2.4. Adequately contained, packaged, and marked as the Contract may require; and

8.2.5. Conform to the written promises or affirmations of fact made by the Contractor.

8.3. Conformity to Requirements.

8.3.1. Contractor warrants that, unless expressly provided otherwise elsewhere in the Contract, the Materials and Services will for one (1) year after acceptance and in each instance:

8.3.2. Conform to the requirements of the Contract, which by way of reminder include without limitation all descriptions, specifications, and drawings identified in the Scope of Work and any and all Contractor affirmations included as part of the Contract;

8.3.2.1. Be free from defects of material and workmanship;

8.3.2.2. Conform to or perform in a manner consistent with current industry standards; and

8.3.2.3. Be fit for the intended purpose or use described in the Contract.

8.3.3. Mere delivery or performance does not substitute for express acceptance by the State. Where inspection, testing, or other acceptance assessment of Materials or Services cannot be done until after installation or invoicing, the forgoing warranty will not begin until State's explicit acceptance of the Materials or Services.

8.4. Inspection/Testing. The warranties set forth in this Section 7 [Warranties] are not affected by inspection or testing of or

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payment for the Materials or Services by the State.

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

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

8.11. Lobbying

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

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

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

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

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

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

8.16. 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.

8.17. 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.

9. State's Contractual Remedies

9.1. 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

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contract.

9.2. Stop Work Order.

9.2.1. 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.

9.2.2. 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.

9.3. Non-exclusive Remedies. The rights and the remedies of the State under this Contract are not exclusive.

9.4. 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.

9.5. 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.

10. Contract Termination

10.1. 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.

10.2. Gratuities. The State may, by written notice, terminate this Contract, in whole or in part, if the State determines that employment or a Gratuity was offered or made by the Contractor or a representative of the Contractor to any officer or employee of the State with the purpose of influencing the outcome of the procurement or securing the Contract, an amendment to the Contract, or favorable treatment concerning the Contract, including the making of any determination or decision about contract performance. The State, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three (3) times the value of the Gratuity offered by the Contractor.

10.3. Suspension or Debarment. The State may, by written notice to the Contractor, immediately terminate this Contract if the State determines that the Contractor has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a Subcontractor of any public procurement unit or other governmental body. Submittal of an offer or execution of a contract shall attest that the Contractor is not currently suspended or debarred. If the Contractor becomes suspended or debarred, the Contractor shall immediately notify the State.

10.4. 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

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for work in progress, work completed, and Materials or Services accepted before the effective date of the termination. The cost principles and procedures provided in A.R.S. § 41-2543 and A.A.C. Title 2, Chapter 7, Article 7, shall apply.

10.5. Termination for Default. 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.

10.6. 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. 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.

10.7. 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.

11. Contract Claims

All contract claims or controversies under this Contract shall be resolved according to A.R.S. Title 41, Chapter 23, Article 9, and rules adopted thereunder.

12. Arbitration

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

HIPAA BUSINESS ASSOCIATES ADDENDUM

[HIPAA BAA](#)

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;
- 2.4 **Reporting.** Business Associate shall report to AHCCCS any use or disclosure of PHI that is not authorized by the Contract, by law, or in writing by AHCCCS. Business Associate shall make an initial report to the AHCCCS Privacy Official not more than twenty-four (24) hours after Business Associate learns of such unauthorized use or disclosure. The initial report shall include all of the following information to the extent known to the Business Associate at the time of the initial report:
 - A. A description of the nature of the unauthorized use or disclosure, including the number of individuals affected by the unauthorized use or disclosure;
 - B. A description of the PHI used or disclosed;
 - C. The date(s) on which the unauthorized use or disclosure occurred;
 - D. The date(s) on which the unauthorized use or disclosure was discovered;
 - E. Identify the person(s) who used or disclosed the PHI in an unauthorized manner;

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

- 2.5 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.
- 2.6 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.
- 2.7 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.
- 2.8 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;
- 2.9 Make available PHI in a designated record set to AHCCCS as necessary to satisfy AHCCCS' obligations under 45 CFR §164.524;
- 2.10 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;
- 2.11 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;
- 2.12 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
- 2.13 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

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- 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
- 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.

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

6. INDEMNIFICATION AND MISCELLANEOUS

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

END OF SOLICITATION

Intentionally left blank.