



Qualified Vendor List (QVL) Contract

YH20-0102

Specialty Contract for Transplantation Services

Procurement Officer:

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Issue Date: June 22, 2020

LOCATION: ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM ADMINISTRATION (AHCCCS)
Procurement Office (First Floor)
701 E. Jefferson, MD 5700
Phoenix, AZ 85034

DESCRIPTION:

Specialty Contract for Transplantation Services

First Round of Applications DUE
DATE:

July 14, 2020

AT 3:00 P.M.
ARIZONA TIME

QUESTIONS about this specialty contract or the application process shall be submitted to the Procurement Officer in writing via email by June 30, 2020 **5:00 PM** ARIZONA TIME on the QUESTIONS AND ANSWERS FORM provided as a separate attachment. Answers to questions will be posted publicly on the AHCCCS website.

Applicants will be required to submit their applications through the AHCCCS Procurement email: procurement@azahcccs.gov

After the first round of applications, this specialty contract may be open for new applications at the discretion of AHCCCS and on an as needed basis.

APPLICANTS ARE STRONGLY ENCOURAGED TO CAREFULLY READ THE ENTIRE QUALIFIED VENDOR LIST CONTRACT.

TABLE OF CONTENTS

1.	Offer and Acceptance document	Page 3
2.	Scope of Work	Page 4
3.	Definition of Terms	Page 13
4.	Application Instructions	Page 17
5.	Uniform Terms and Conditions	Page 18
6.	Special Terms and Conditions	Page 25
7.	Special Terms and Conditions Insurance Requirements	Page 30
	▪ Anticipated Procurement Timeline	
8.	HIPAA Business Associates Addendum	Page 34
	<i>End of Solicitation</i>	Page 38

Attachments and Exhibits below are incorporated into this solicitation by reference and located:

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

Attachment A: Covered Transplant Services List

Attachment B: Proposed Pricing

Attachment C: Application Requirements

Attachment D: Contact Information

Attachment E: Boycott of Israel Attestation

Exhibit A: Transplant Services Invoice & Instructions

Exhibit B: Transplant Outlier Payment Calculation

OFFER AND ACCEPTANCE

OFFER

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

Arizona Transaction (Sales) Privilege Tax License No.:

For clarification of this offer, contact:

Name: _____

Federal Employer Identification No.:

Title: _____

E-Mail Address: _____

Phone: _____

Company Name

Signature of Person Authorized to Sign Offer

Address

Printed Name

City State Zip

Title

CERTIFICATION

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

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

ACCEPTANCE OF OFFER (to be completed by AHCCCS)

Your contract application, including all exhibits, amendments and submission requirements contained herein, is accepted. The Contractor is now bound to provide all services listed by the attached contract, including all terms and conditions, and the Contractor's Application as accepted by AHCCCS.

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

This contract shall henceforth be referred to as

Contract No. _____.

CONTRACT SERVICE START DATE: _____.

AWARD DATE: _____.

MEGGAN LAPORTE, CPPO, MSW, AHCCCS Chief Procurement Officer

SCOPE OF WORK

1. AHCCCS OVERVIEW

AHCCCS is the single state Medicaid agency for the State of Arizona. In that capacity it is responsible for operating the Title XIX and Title XXI programs through the State's 1115 Research and Demonstration Waiver, which was granted by the Centers for Medicare and Medicaid Services (CMS), U.S. Department of Health and Human Services. As of June 1, 2019, AHCCCS provides coverage to approximately 1.994 million Members in Arizona.

Approximately 85% of the AHCCCS program's expenditures as of May 2020 were through managed care programs. AHCCCS contracts with Managed Care Organizations (MCOs) that are responsible for providing Acute, Long Term Care, and Behavioral Health Services. A list of contracted plans can be found here:

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

The program has a total fund budget for SFY 2021 of approximately \$16.2 Billion. AHCCCS has over 70,000 active providers in Arizona, such as individual medical and behavioral health practitioners, therapy disciplines, institutions, durable medical equipment companies and transportation entities. Additional information may be found on the AHCCCS website reporting page: <https://www.azahcccs.gov/Resources/Reports/federal.html>

2. PROJECT OR SERVICE OVERVIEW/BACKGROUND

AHCCCS, for the last seven (7) years has established a network of facilities and practitioners to provide solid organ and tissue transplant services to eligible Members as described in the AHCCCS State Plan and AHCCCS Medical Policy Manual (AMPM). Current contracts for these services will expire September 30, 2020 and new contracts will be awarded through the Qualified Vendor List (QVL) process. Awards will be made approximately sixty (60) days prior to the Start Date of services, October 1, 2020.

AHCCCS is the authorizing payer for AHCCCS fee for service Members including eligible American Indians who choose to receive services through the Indian Health Service (IHS) or tribal health programs operated under PL 93-638 (known as 638 facilities). AHCCCS' contracted Health Plans may access transplant services under the terms and conditions of this contract for eligible AHCCCS Complete Care (ACC) Program, Arizona Long Term Care Program [Elderly and Physically Disabled (EPD), and Developmentally Disabled (DD)], Regional Behavioral Health Authority (RBHA), and Comprehensive Medical and Dental Program (CMDP) Members enrolled in their plans.

3. PURPOSE OF THE QVL

3.1. The purpose of this Qualified Vendor List contract (QVL) is to solicit applications from licensed hospitals and medical facilities throughout Arizona and the United States to perform organ and tissue transplant services in adherence to the requirements set forth in Section 5, Contractor Responsibilities. The Terms and Conditions of this contract apply to the awarded Contractor and any provider that furnishes items and services to an enrolled Member upon the request or authorization of the Contractor.

- 3.1.1. In the event that a provision of federal or state law, regulation, or policy is repealed or modified during the term of this contract, effective on the date the repeal or modification by its own terms takes effect:
- 1) The provisions of this contract shall be deemed to have been amended to incorporate the repeal or modification; and
 - 2) The Contractor shall comply with the requirements of the contract as amended, unless the AHCCCS Administration and the Contractor otherwise stipulate in writing.

4. LEGAL AUTHORITY

This Contract is entered into pursuant to A.R.S. §36-2903 et seq. and 36-2932 et seq.

5. CONTRACTOR RESPONSIBILITIES:

The Contractor shall:

SCOPE OF WORK

- 5.1. Provide covered services to AHCCCS Members in accordance with all applicable federal and state laws regulations and policies, including those listed by reference in Attachments and Exhibits in this solicitation.
- 5.2. Request prior authorization from AHCCCS Medical Management Unit for AHCCCS Members enrolled in Fee For Service, including eligible American Indians who choose to receive services through the Indian Health Service (IHS) or tribal health programs operated under PL 93-638, prior to providing component services, as described in this solicitation and the AMPM.
- 5.3. Request prior authorization from the Health Plan for Members enrolled with AHCCCS Health Plans, prior to providing component services. Refer to Section 6.5 for out-of-state facility referrals.
- 5.4. Ensure the evaluation component is completed within sixty (60) days or sooner, depending on the Member's medical condition, of referral if the Member is outpatient or within seventy-two (72) hours of referral if the Member is inpatient.
- 5.5. Provide to the authorizing payer (AHCCCS or Health Plan) a transplant evaluation summary as well as the Transplant Committee's decision to approve or deny the Member as a candidate for transplant, including the reason for the denial, within three (3) weeks of completion of the evaluation component. The evaluation summary shall include:
 - 5.5.1. An overview of the Member's current medical condition, current medications, and recommendation for further medical treatment based upon diagnostic tests and procedures.
 - 5.5.2. Diagnostic test results and/or procedure reports as supporting documentation.
- 5.6. Immediately notify the authorizing payer (within 24 hours) if the Member has a change in medical condition and is no longer a candidate for transplantation.
- 5.7. Immediately notify the authorizing payer (within 24 hours) of the begin dates and/or end dates of any of the transplant service billing components and any subsequent changes thereto. Failure to communicate all begin and end dates timely may delay payments by AHCCCS or Health Plans.
- 5.8. Notify and request prior authorization if the Member requires a new evaluation or partial evaluation due to a prolonged waiting period for an organ.
- 5.9. Submit directly to the authorizing payer weekly clinical updates during the Member's hospitalization. Updates shall be presented in the format customarily used by the Contractor, and must, at a minimum, include:
 - 5.9.1. New treatments,
 - 5.9.2. Medical progress and/or complications,
 - 5.9.3. Results of major laboratory/diagnostic imaging tests; and
 - 5.9.4. Reports of special procedures.
- 5.10. Submit the discharge summary within thirty (30) days of Member's discharge from the transplant facility directly to the authorizing payer. Contractor shall provide recommendations for the on-going treatment and monitoring of the Member for the Member's primary care provider or specialist and shall be available for consultation with the primary care provider or specialist.
- 5.11. Provide all information requested by AHCCCS or the Health Plan including medical records within forty-eight (48) hours of the request. All documents will be provided to AHCCCS or the Health Plan at no additional cost.

SCOPE OF WORK

- 5.12. Instruct all subcontracted providers to not submit bills or claims separately to AHCCCS or the Health Plan; this includes Affiliated Hospitals that provide services related to the transplant. Affiliated Hospitals shall not bill AHCCCS Health Plans or AHCCCS separately for services rendered for the transplant.
- 5.13. Comply with the Administrative Simplification Requirements of Subpart F of the Health Insurance Portability and Accountability Act of 1996 (Public Law 107-191) and all Federal regulations implementing that subpart that are applicable to the operations of the Contractor.
- 5.14. Maintain adequate staff of experienced personnel, capable of and devoted to the successful completion of services. Contractor must assign specific individuals to the key positions. Contractor shall ensure key personnel shall not be removed or replaced without thirty (30) days prior written notification to the AHCCCS Medical Management Unit.
- 5.15. Submit to the AHCCCS, Division of Healthcare Management, Medical Management Unit the following Reporting Requirements:
 - 5.15.1. Copies of all annual reports of cumulative volume and success rates of transplantation services provided to United Network for Organ Sharing (UNOS) and Foundation for the Accreditation of Cellular Therapy (FACT).
 - 5.15.2. Copies of all written notification to AHCCCS Members that are transplant candidates upon inactivating a transplant program or relinquishing the status as a designated transplant program facility.
 - 5.15.3. Copies of all applications to UNOS and Organ Procurement Transplant Network (OPTN) for Changes in Key Personnel.
 - 5.15.4. Written notification at least thirty (30) days in advance of any changes to transplant programs including but not limited to: inactivating a transplant program or relinquishing the status of a designated transplant program (a copy shall also be issued to the Contract Officer of record to create a Contract Amendment); transitioning services to another facility; and any other changes that may affect the referral of Member(s) to the Contractor.
- 5.16. Adhere to the following Standards, Licensure and Certification Requirements:
 - 5.16.1. The Contractor and any provider that furnishes items or services to an enrolled Member upon the request or authorization of the Contractor shall be registered with AHCCCS as an approved service provider. In addition:
 - 5.16.1.1. A current Provider Participation Agreement (available on the AHCCCS website) must be signed by each provider upon initiation of this contract, and the original shall be forwarded to AHCCCS.
 - 5.16.1.2. The provider registration process must be completed in order for the Contractor to be paid. The National Provider Identifier (NPI) is required on all claim submissions. All providers, including subcontractors, performing services related to the transplant must be registered with AHCCCS as well as be registered with an NPI.
 - 5.16.2. Any Contractor providing solid organ transplantation services under this contract must be registered as a certified transplant center with both the Centers for Medicare and Medicaid Services (CMS), as well as the United Network for Organ Sharing (UNOS) for each transplant case (organ) type that is contracted with AHCCCS.
 - 5.16.3. The Contractor providing hematopoietic stem cell transplant services must have achieved Foundation for the Accreditation of Cellular Therapy (FACT) accreditation and be registered with AHCCCS as an approved service provider.

SCOPE OF WORK

5.16.4. All professional services shall be performed by qualified, licensed personnel pursuant to the limitations and licensing requirements as set forth by the Arizona Department of Health Services.

6. AHCCCS AND/OR HEALTH PLAN RESPONSIBILITIES

AHCCCS, Division of Health Care Management, Medical Management Unit will review all prior authorization requests for all transplant service billing components for AHCCCS fee for service Members including eligible American Indians. The Health Plans' Transplant Coordinator will review all prior authorization requests for all transplant service billing components for Members enrolled with AHCCCS contracted Health Plan.

- 6.1. AHCCCS or the Health Plan will issue a written decision approving or denying the authorization request within fourteen (14) days from receipt of a complete request for non-emergent services. In the case of emergent requests, the written decision will be provided within 72 hours of the request.
- 6.2. AHCCCS or the Health Plan may request a consultation for a second opinion prior to rendering an authorization determination.
- 6.3. AHCCCS or the Health Plan may select another qualified provider if the Contractor is unable to provide services in a timely manner.
- 6.4. AHCCCS will review and approve all requests for services at non-contracted transplant facilities, and at contracted transplant facilities outside the state of Arizona when the same service can be provided within the state of Arizona, prior to the commencement of services.

7. COVERED SERVICES

AHCCCS covers limited medically necessary transplantation services and related immunosuppressant medications as described in the AHCCCS Medical Policy Manual (AMPM), Policy 310-DD, *Covered Transplants and Related Immunosuppressant Medications*. The solid organ and tissue transplant services described in the AMPM, including the relevant standards of coverage, are referenced in the AHCCCS State Plan (which can be located on the AHCCCS website at the following link <https://www.azahcccs.gov/Resources/Downloads/StatePlans/EntireStatePlan.pdf>). The AHCCCS State Plan is the document approved by the Federal government which outlines the eligibility requirements and covered services for the AHCCCS program.

When a State elects to cover transplant services, Federal law 42 U.S.C. §1396b(i) limits Federal financial participation to only those organ transplant procedures with written standards of coverage described in the State Plan. Additionally, Federal provisions authorize the Title XIX agency to impose limits on transplant services based on medical necessity and to place restrictions on the facilities and practitioners performing organ transplant procedures as long as they are consistent with accessibility to high quality care (42 C.F.R. 441.35).

For adults, organ transplant services are not mandatory covered services under Title XIX, and each State has the discretion to choose whether or not transplants will be available to Members. The AHCCCS Administration, as the single State agency, has the authority under Federal law to determine which transplant procedures, if any, will be reimbursed as covered services.

The Early and Periodic Screening Diagnostic and Treatment (EPSDT) Program for individuals under age 21 requires coverage of all non-experimental transplants necessary to correct or ameliorate defects, illnesses and physical conditions whether or not the particular non-experimental transplant is covered by the AHCCCS State Plan.

Transplantation related services and immunosuppressant drugs are not covered services for individuals in the Federal Emergency Services (FES) Program, pursuant to 42 U.S.C. 1396b(v)(3) and A.A.C. R9-22-206. Persons who

SCOPE OF WORK

qualify for transplant services, but who are later determined ineligible under A.R.S. 36-2907.10 due to excess income may qualify for extended eligibility (refer to *Attachment A* of Policy 310-DD in the AMPM).

- 7.1. Corneal transplants and bone grafts are not covered under this specialty contract.
- 7.2. Live donor kidney transplants are covered for pediatric and adult Members. Live donor liver transplants are covered for pediatric Members only. For all other solid organ transplants, live donor transplants may be considered on a case-by-case basis.
- 7.3. Covered services under this contract are limited to transplants, transplant related component services and convalescent care. Complications arising from the transplant are considered transplant related and covered under the follow up care component(s) if they occur during the 60/10 days post-transplant. Services provided post day 60/10 are not covered under this specialty contract under any circumstances with the exception of one continuous inpatient hospital stay from the prep and transplant surgery. Non-transplant related services are not covered under this contract. Non-transplant related care is defined as any care that is provided not related to the specific transplant component and any care provided to treat the underlying disease.
- 7.4. Services provided to members while on a transplant waiting list (period of time after the member has been determined to be a candidate for transplant, by the transplant facility, and is awaiting transplant) are not covered under this contract. Only those services provided under an approved transplant component as set forth in paragraph 5.5 hereof will be covered under this contract.
- 7.5. Coverage of transplantation services includes all bundled professional, facility and pharmacy services for the following service billing components, as required by the specific type of transplantation (Refer to Policy 310-DD in the AMPM for specific criteria and conditions of coverage). The transplant specific billing components are as follows:

Hematopoietic Stem Cell (bone marrow, peripheral blood or cord blood) Transplant (HSCT)

Outpatient Evaluation	Pre-transplant outpatient evaluation which includes, but is not limited to, the following: Physical examination, Psychosocial evaluation, Laboratory studies, X-ray and diagnostic imaging, and biopsies. The outpatient evaluation component is not eligible for outlier reimbursement. Inpatient Evaluations are covered outside of the Transplant contract.
Donor Search	Limited to allogeneic related, allogeneic unrelated, and allogeneic related Haploid transplant types only. Only one Donor Search shall be remitted for a candidate of Allogeneic Related and Allogeneic Related Haploid transplants.
Harvest	Tissue harvesting for autologous, or allogeneic related donor case types, or invoice charges billed by the National Bone Marrow Donor Program (NMDP) for allogeneic unrelated donor types.
Total Body Irradiation	Series of treatments administered over a two to four day period of time, if the series is repeated, this component would be billed each time a new series begins.

SCOPE OF WORK

Prep and Transplant	Includes the inpatient stay up to 24 hours prior to the actual transplant surgery for the transplant recipient. Transplant includes an intravenous infusion of the stem cells in an inpatient facility.
Follow Up Care 1-30	First 30 days of post-transplant follow up care in an inpatient, skilled nursing facility and/or outpatient hospital setting including laboratory, diagnostic imaging, and pharmacy services; including immunosuppressant medication, any AHCCCS covered service that is related to the transplant until the Member is released by the transplant team.
Follow Up Care 31-60	Second 30 days of post-transplant follow up care in an inpatient, skilled nursing facility and/or outpatient hospital setting including laboratory, diagnostic imaging and pharmacy services including immunosuppressant medication, any AHCCCS covered service that is related to the transplant until the Member is released by the transplant team. Billed only after the first 30 days of care is complete.
Follow Up Care 61+	Day 61+ of post-transplant care (per diem for <u>inpatient facility services only and only if one continuous inpatient stay from prep and transplant</u>)

Living Donor Kidney Transplant

Outpatient Evaluation	Pre-transplant outpatient evaluation which includes, but is not limited to, the following: Physical examination, Psychosocial evaluation, Laboratory studies, X-ray and diagnostic imaging, and Biopsies. The outpatient evaluation component is not eligible for outlier reimbursement. Inpatient Evaluations are covered outside of the Transplant contract.
Prep and Transplant	Includes the inpatient stay up to 24 hours prior to the actual transplant surgery through and including day 10 in an inpatient setting.
Follow Up Care 11+	Day 11+ of post-transplant care (per diem for <u>inpatient facility services only and only if one continuous inpatient stay from prep and transplant</u>)
Donor Surgery	Surgical and inpatient follow up care provided to the organ donor through and including day 3 post surgery of inpatient convalescent care.

Living Donor Liver Transplant (pediatric Members only)

Outpatient Evaluation	Pre-transplant outpatient evaluation which includes, but is not limited to, the following: Physical examination, Psychosocial evaluation, Laboratory studies, X-ray and diagnostic imaging, and Biopsies. The outpatient evaluation component is not eligible for outlier reimbursement. Inpatient Evaluations are covered outside of the Transplant contract.
Prep and Transplant	Includes the inpatient stay up to 24 hours prior to the actual transplant surgery for the transplant recipient. Includes Donor Surgery, including surgical and inpatient follow up care provided to the organ donor through and including day 3 post surgery of inpatient convalescent care.

SCOPE OF WORK

Follow Up Care 1-30 First 30 days of post-transplant follow up care in an inpatient, skilled nursing facility and/or outpatient hospital setting including laboratory, diagnostic imaging and pharmacy services including immunosuppressant medication, **any** AHCCCS covered service that is related to the transplant until the Member is released from the transplant team.

Follow Up Care 31-60 Second 30 days of post-transplant follow up care in an inpatient, skilled nursing facility and/or outpatient hospital setting including laboratory, diagnostic imaging and pharmacy services including immunosuppressant medication, **any** AHCCCS covered service that is related to the transplant until the Member is released by the transplant team. Billed only after the first 30 days of care is complete.

Follow Up Care 61+ Day 61+ of post-transplant care (per diem for inpatient facility services only and only if one continuous inpatient stay from prep and transplant)

All Other Solid Organ Transplants (refer to the AMPM for a list of covered transplants)

Outpatient Evaluation Pre-transplant evaluation which includes, but is not limited to, the following: Physical examination, Psychosocial evaluation, Laboratory studies, X-ray and diagnostic imaging, and Biopsies. The outpatient evaluation component is not eligible for outlier reimbursement. Inpatient Evaluations are covered outside of the Transplant contract (See below).

Prep and Transplant Includes the inpatient stay up to 24 hours prior to the actual transplant surgery for the transplant recipient.

Follow Up Care 1-30 First 30 days of post-transplant follow up care in an inpatient, skilled nursing facility and/or outpatient hospital setting including laboratory, diagnostic imaging and pharmacy services including immunosuppressant medication, **any** AHCCCS covered medically necessary service that is related to the transplant until the Member is released from the transplant team.

Follow Up Care 31-60 Second 30 days of post-transplant follow up care in an inpatient, skilled nursing facility and/or outpatient hospital setting including laboratory, diagnostic imaging and pharmacy services including immunosuppressant medication, **any** AHCCCS covered service that is related to the transplant until the Member is released by the transplant team. Billed only after the first 30 days of care is complete.

Follow Up Care 61+ Day 61+ of post-transplant care (per diem for inpatient facility services only and only if one continuous inpatient stay from prep and transplant).

7.6. Inpatient Evaluations

Inpatient evaluation services provided to a Member by a transplant facility for the purpose of determining whether the Member is a candidate for a solid organ or a hematopoietic stem cell (bone marrow, peripheral

SCOPE OF WORK

blood or cord blood) transplant are reimbursed outside the contract and will be based on the AHCCCS Fee-For-Service rates, including the DRG based hospital payment system when the Member is inpatient.

7.7. Transportation and Lodging

Transportation and lodging within the United States for the transplant recipient and donor when necessary, and adult caregiver, to and from medical treatment during the time it is necessary for the Member to remain in close proximity to the transplant center is covered at the **AHCCCS allowable rates**. When it is necessary for a potential donor to travel for testing to determine if they are a match or to donate either stem cells or organs, the donor's travel costs including room and board within the United States are covered under the transplant recipient's benefit, and transportation and lodging for post-transplant evaluation and treatment when medically necessary. The transplant facility is responsible for assisting the Health Plan and/or AHCCCS with the lodging arrangements. Health Plans and/or AHCCCS is responsible for the payment for lodging and transportation.

In the event an AHCCCS Member expires while at the transplant facility, the expense of transporting the remains is to be borne by the Member's family. No claims for transportation of the remains will be approved.

7.8. Prorating Follow Up Care Component When multiple Transplants Occur Within 60 Days

When billing for a second covered transplant that occurs during the follow up care (days 1-60) of an initial transplant, the initial transplant shall be end dated on the day prior to the Prep and Transplant of the second transplant. For example: If, on day 15 of the first transplant (50% of the way through the day 1-30 component), the determination to conduct the next transplant is made, day 15 ends the follow up care component, and 50% of the day 1-30 post-transplant follow up care component is billed. Day 16 becomes day 1 of the prep and transplant component for the second transplant. Remaining transplant components follow. All applicable notification and claims filing requirements apply.

8. **PRICING**

- 8.1. If the Offeror is a current AHCCCS Specialty Transplant Contractor at time this application is released, the rates for this Contract shall be the same or similar as the prior Contract.
- 8.2. AHCCCS Division of Health Care Management (DHCM) shall review and approve or deny any proposed rate adjustments for each transplant service. Any rate adjustments shall be made via written contract amendment.
- 8.3. New Contractors shall provide proposed rates for the Covered Transplant Service Type(s) identified on the submission of Attachment A – Covered Transplant Service List. The proposed rates will be reviewed and evaluated by AHCCCS. AHCCCS makes the final determination of all rates.
- 8.4. Rate adjustments are at the sole discretion of AHCCCS and are subject to the availability of funds.

9. **BILLING REQUIREMENTS AND CLAIMS PAYMENTS**

The Contractor shall:

- 9.1. Bill AHCCCS or the Health Plan within six (6) months of the end date of each of the transplant service billing components.
 - 9.1.1. Timeliness of the claim submission for each billing component of the transplant will be based on the submission date for the complete set of claims related to the component.
 - 9.1.2. Claims initially received beyond the six (6) month time frame will be denied.

SCOPE OF WORK

- 9.1.3. If a claim is originally received within the six (6) month time frame, the Contractor has up to twelve (12) months from the end date of the billing component to resubmit the claim and achieve clean claim status or to adjust a previously processed claim.
- 9.1.4. If a claim does not achieve clean claim status or is not adjudicated correctly within twelve (12) months of the end date of the billing component, AHCCCS or the Health Plan is not liable for payment of that component.
- 9.2. Submit a packet of all individual claims for all transplant related services as a transplant service billing component using the entitled AHCCCS Transplant Invoice and Instructions included herein as Exhibit A.
 - 9.2.1. The packet must include all services rendered to the Member for the transplant including all services rendered by subcontractors or affiliated hospitals. The Invoice must list each individual claim included in the component by form type including the dollar amount of the individual claims, subtotaled by form type and a grand total for the entire component. Packets must be complete and include the *AHCCCS TRANSPLANT CLAIM*. All claims must meet clean claim status.
- 9.3. Bill all medically necessary services provided to the transplant recipient that are related to the transplant using the appropriate diagnosis codes, CPT and HCPCS procedure codes, and revenue codes to meet clean claim status.
- 9.4. Enter the proper ICD-10 procedure code identifying the transplant procedure in the primary procedure field (Field 74) on the UB 04 for all prep and transplant billing components.
- 9.5. Bill all outlier amounts using the Transplant Outlier Payment Calculation Worksheet included herein as Attachment B, if the rate sheet for the case type includes an outlier provision.
- 9.6. The transplant may qualify for an outlier payment when the transplant stay is one continuous inpatient stay from date of admission through date of discharge from the acute care facility and the stay exceeds 10 days from date of admission for Kidney case types and 60 days from date of admission for all other case types. Bill all outlier amounts using the Day 11+/61+ Transplant Stage Component Worksheet, included herein as Attachment E -1, for the Day 11+/61+ component. Refer to the Worksheet Instructions/Example included herein as Attachment E-2, for additional information to assist with completion of Attachment E-1.
- 9.7. Submit claims for services authorized by AHCCCS for Fee for Service Members pursuant to the billing requirements set forth in Chapter 24 of the AHCCCS Fee for Service Provider Manual located on the AHCCCS website at <https://www.azahcccs.gov/PlansProviders/RatesAndBilling/FFS/providermanual.html>
- 9.8. Submit claims directly to the Health Plan for services authorized by the Health Plan according to the terms of this contract.
- 9.9. Bill and accept payments from any of the AHCCCS Health Plans for Members enrolled with their plan or from AHCCCS for fee-for-service Members. Payments will be consistent with the attached rate schedule (including amendments thereto and as hereby incorporated by reference and located on the AHCCCS website), State and Federal Law, the terms of this Agreement, including amendments thereto and hereby incorporated by reference: the AHCCCS Fee-for-Service Manuals, the AHCCCS Medical Policy Manual, AHCCCS Claims Clues, the Arizona DRG Payment Policies, and other written directives provided by AHCCCS to the Provider. These documents are made available to the provider via the AHCCCS website (www.azahcccs.gov).
- 9.10. File all claims according to the requirements set forth in Section 9 hereof; failure on the part of the Contractor to comply with the billing requirements will result in non-payment of claims.

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. **ADULT:** Any Member aged 21 years old or older. "Adult" shall also include any Member whose chronological age is classified as "Pediatric," but whose physical characteristics, such as height and weight, are equivalent to that of an adult's physical characteristics as determined by the transplant facility. The rates which apply to an "Adult" transplant shall apply in both circumstances stated here.
4. **AHCCCS:** The Arizona Health Care Cost Containment System – a managed health care program which pertains to health care services provided pursuant to A.R.S. 36-2903 et seq., and is also the name of the State agency.
5. **AHCCCS COVERED SERVICES:** Those services set forth in A.R.S. § § 36-2907 and 36-2939, A.A.C. Title 9 Chapter 22, Articles 2 and 12 and, Chapter 28, Articles 2 and 11.
6. **AMERICAN INDIAN HEALTH PROGRAM (AIHP):** An acute care program that delivers acute care and behavioral health services to the eligible American Indians who choose to receive services through the Indian Health Services (IHS) or tribal health programs operated under PL 93-638.
7. **AMPM:** The AHCCCS Medical Policy Manual available on the AHCCCS website at: <https://www.azahcccs.gov/shared/MedicalPolicyManual/>
8. **A.R.S.:** Arizona Revised Statute
9. **ATTACHMENT:** Any item the Solicitation requires an Offeror to submit as part of the Offer.
10. **AUTHORIZING PAYER:** For Members in the AHCCCS Fee for Services Program, AHCCCS is the authorizing payer. For Members enrolled with an AHCCCS contracted Health Plan, the Health Plan is the authorizing payer.
11. **CLEAN CLAIM:** A claim that has been paid and adjudicated in the AHCCCS system.
12. **CMS:** Centers for Medicare and Medicaid Services, an organization within the U.S. Department of Health and Human Services, which administers the Medicare and Medicaid programs and the State Children's Health Insurance Program.
13. **CHIP:** Children's Health Insurance Program.
14. **COMPONENT:** The collective group of covered services as defined in the AHCCCS Medical Policy Manual including but not limited to inpatient, outpatient, skilled nursing facility, and pharmacy services as required by the specific type of transplantation.
15. **CONTRACT:** The combination of Contract Terms and Conditions, Scope of Work, Attachments and Exhibits, Contract Amendments; and any terms applied by law.
16. **CONTRACT AMENDMENT:** A written document signed by the Procurement officer that is issued for the purpose of making changes in the contract.

DEFINITIONS

17. **CONTRACTOR:** A person who has a contract with AHCCCS.
18. **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.
19. **EPSDT:** Early and Periodic Screening, Diagnosis and Treatment; services for persons under 21 years of age, as described in AHCCCS rules R9-22, Article 2 (R9-22-213).
20. **EXHIBIT:** Any item labeled as an Exhibit in the Solicitation or placed in the Exhibits section of the Solicitation.
21. **FDSH:** Federal Data Services Hub. HEAplus interfaces with the FDSH to make several types of identity verifications.
22. **FEDERAL FISCAL YEAR:** The United States federal government's fiscal year; the 12-month period beginning October 1 and ending September 30.
23. **FEE-FOR-SERVICE (FFS):** A method of payment to registered providers on an amount per-service basis.
24. **FEDERAL EMERGENCY SERVICES (FES)** Federal Emergency Services program covered under R9-22-217, to treat an emergency medical condition for a Member who is determined eligible under A.R.S. § 36-2903.03 (D).
25. **FFM:** Federally-Facilitated Marketplace.
26. **FFP (FEDERAL FINANCIAL PARTICIPATION):** The Federal share of reimbursement for services provided in accordance with Federal requirements for school-based Medicaid services.
27. **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.
28. **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.
29. **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.
30. **HIPAA:** Health Insurance Portability and Accountability Act of 1996.
31. **KIDSCARE:** The State of Arizona's CHIP program.
32. **MANAGED CARE:** Systems that integrate the financing and delivery of health care services to covered individuals by means of arrangements with selected providers to furnish comprehensive services to Members; establish explicit criteria for the selection of health care providers; have financial incentives for Members to

DEFINITIONS

use providers and procedures associated with the plan; and have formal programs for quality, utilization management and the coordination of care.

33. **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.
34. **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.
35. **MAY:** Indicates something that is not mandatory but permissible.
36. **MEMBER:** An eligible person that is enrolled in AHCCCS as defined in A.R.S. § 36-2901, A.R.S. § 36-2981, A.R.S. § 36-2901.01, and 42 CFR 438.10(a).
37. **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).
38. **NTE:** Not-to-Exceed amount.
39. **PEDIATRIC:** Any Member newborn to their 21st birthday. "Pediatric" shall also include any Member whose chronological age is classified as "Adult," but whose physical characteristics, such as height and weight, are equivalent to that of a child's physical characteristics as determined by the transplant facility.
40. **PERSON:** Any corporation, business, individual, union, committee, club or other organization or group of individuals.
41. **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.
42. **PROVIDER:** Any person or entity that has a provider agreement with AHCCCS for the provision of covered services to Members according to the provisions A.R.S. § 36-2901 or any subcontractor of a provider delivering services pursuant to A.R.S. § 36-2901.
43. **QUALIFIED VENDOR LIST (QVL):** A list of Pre-qualified vendors or service providers that meet the qualifications, licensure, certifications and accreditation requirements for entering into a QVL contract with AHCCCS.
44. **RELATED PARTY:** A party that has, or may have, the ability to control or significantly influence a Contractor, or a party that is, or may be, controlled or significantly influenced by a Contractor. "Related parties" include, but are not limited to, agents, managing employees, persons with an ownership or controlling interest in the disclosing entity, and their immediate families, subcontractors, wholly-owned subsidiaries or suppliers, parent companies, sister companies, holding companies, and other entities controlled or managed by any such entities or persons.
45. **SCOPE OF WORK:** Those provisions of this solicitation which specify the work and/or results to be achieved by the Contractor.

DEFINITIONS

46. **SHALL, MUST:** Indicates a mandatory requirement. Failure to meet these mandatory requirements may result in the rejection of a proposal as non-responsive.
47. **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.
48. **STATE:** The State of Arizona and AHCCCS.
49. **STATE FISCAL YEAR:** The period beginning with July 1 and ending June 30.
50. **STATE PLAN:** The written agreements between the State and CMS, which describe how the AHCCCS program meets CMS requirements for participation in the Medicaid program and the State Children's Health Insurance Program.
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.

APPLICATION INSTRUCTIONS

1. **Anticipated Timeline for first round of Applications:**

Activity	Date
Publish Date	June 22, 2020
Questions Due	June 30, 2020 by 5pm
Applications Due	July 14, 2020 by 3pm
Initial Award (Subject to change)	August 3, 2020
Services Start Date	October 1, 2020*

*Unless otherwise changed in writing by AHCCCS

2. **Questions:**

All questions concerning this solicitation shall be submitted to the Procurement Officer identified on the first page of this document. Providers and current Contractors may not contact other AHCCCS employees concerning this solicitation.

3. **Submission of Application:**

The Offeror shall submit its Application as specified in Attachment B, Application Requirements.

4. **Cost:**

- 4.1. The Applicant, not established as a current Contractor, shall submit proposed rates for each Covered Transplant Service Type as referenced in Attachment A, required for submission.
- 4.2. The Applicant that is a current Contractor and adding a new Transplant Service Type, where a rate has not been previously established, shall submit the necessary approvals as referenced in Attachment B – Application Requirements, in addition to submitting proposed rates for the added Covered Transplant Service Type to be reviewed and evaluated by AHCCCS.
- 4.3. The Applicant that is a current Contractor is not required to submit pricing for an existing transplant service type(s) in their contract unless the offeror wants AHCCCS to evaluate a different rate than what is currently established.

5. **Intent to Provide Certificate of Insurance:**

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

6. **Financial Stability**

The Offeror must be financially stable and if requested shall be able to substantiate the financial stability of its company. Upon written request from AHCCCS, the Offeror shall submit an annual financial statement for itself, and parent company (if applicable) within five (5) business days of request. The State reserves the right to request additional documentation from the Applicant and to request reports on financial stability from independent financial rating services. The State reserves the right to reject any Offeror who does not demonstrate financial stability sufficient for the scope of this contract award.

7. **Request for Confidential/Proprietary Determination:**

Nothing in the Application shall be deemed confidential.

UNIFORM TERMS AND CONDITIONS

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

2. **Contract Interpretation**

- 2.1 Arizona Law. The Arizona law applies to this Contract including, A.R.S. § 36-2906 and its implementing rules.
- 2.2 Implied Contract Terms. Each provision of law and any terms required by law to be in this Contract are a part of this Contract as if fully stated in it.
- 2.3 Contract Order of Precedence. In the event of a conflict in the provisions of the Contract, as accepted by the State and as they may be amended, the following shall prevail in the order set forth below:
 - 2.3.1 HIPAA Business Associates Agreement or Addendum (if included)
 - 2.3.2 Special Terms and Conditions;
 - 2.3.3 Uniform Terms and Conditions;
 - 2.3.4 Statement or Scope of Work;
 - 2.3.5 Attachments;
 - 2.3.6 Exhibits;
 - 2.3.7 Documents referenced or included in the Solicitation.
- 2.4 Relationship of Parties. The Contractor under this Contract is an independent Contractor. Neither party to this Contract shall be deemed to be the employee or agent of the other party to the Contract.
- 2.5 Severability. The provisions of this Contract are severable. Any term or condition deemed illegal or invalid shall not affect any other term or condition of the Contract.
- 2.6 No Parole Evidence. This Contract is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms used in this document and no other understanding either oral or in writing shall be binding.
- 2.7 No Waiver. Either party's failure to insist on strict performance of any term or condition of the Contract shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.

3. **Contract Administration and Operation**

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

UNIFORM TERMS AND CONDITIONS

- 3.3 Audit. Pursuant to ARS § 35-214, at any time during the term of this Contract and five (5) years thereafter, the Contractor's or any subcontractor's books and records shall be subject to audit by the State and, where applicable, the Federal Government, to the extent that the books and records relate to the performance of the Contract or Subcontract.
- 3.4 Facilities Inspection and Materials Testing. The Contractor agrees to permit access to its facilities, subcontractor facilities and the Contractor's processes or services, at reasonable times for inspection of the facilities or materials covered under this Contract.
- The State shall also have the right to test, at its own cost, the materials to be supplied under this Contract. Neither inspection of the Contractor's facilities nor materials testing shall constitute final acceptance of the materials or services. If the State determines noncompliance of the materials, the Contractor shall be responsible for the payment of all costs incurred by the State for testing and inspection.
- 3.5 Notices. Notices to the Contractor required by this Contract shall be made by the State to the person indicated on the Offer and Acceptance form submitted by the Contractor unless otherwise stated in the Contract. Notices to the State required by the Contract shall be made by the Contractor to the Solicitation Contact Person indicated on the Solicitation cover sheet, unless otherwise stated in the Contract. An authorized Procurement Officer and an authorized Contractor representative may change their respective person to whom notice shall be given by written notice to the other and an amendment to the Contract shall not be necessary.
- 3.6 Advertising, Publishing and Promotion of Contract. The Contractor shall not use, advertise or promote information for commercial benefit concerning this Contract without the prior written approval of the Procurement Officer.
- 3.7 Property of the State. Any materials, including reports, computer programs and other deliverables, created under this Contract are the sole property of the State. The Contractor is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. The Contractor shall not use or release these materials without the prior written consent of the State.
- 3.8 Federal Immigration and Nationality Act. The Contractor shall comply with all federal, state and local immigration laws and regulations relating to the immigration status of their employees during the term of the contract. Further, the Contractor shall flow down this requirement to all subcontractors utilized during the term of the contract. The State shall retain the right to perform random audits of Contractor and subcontractor records or to inspect papers of any employee thereof to ensure compliance. Should the State determine that the Contractor and/or any subcontractors be found noncompliant, the State may pursue all remedies allowed by law, including, but not limited to; suspension of work, termination of the contract for default and suspension and/or debarment of the Contractor.
- 3.9 E-Verify Requirements. In accordance with A.R.S. § 41-4401, Contractor warrants compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with A.R.S. § 23-214, Subsection A.
- 3.10 Offshore Performance of Work Prohibited. Any services that are described in the specifications or scope of work that directly serve the State of Arizona or its clients and involve access to secure or sensitive data or personal client data shall be performed within the defined territories of the United States. Unless specifically stated otherwise in the specifications, this paragraph does not apply to indirect or 'overhead'

UNIFORM TERMS AND CONDITIONS

services, redundant back-up services or services that are incidental to the performance of the contract. This provision applies to work performed by subcontractors at all tiers.

4. Costs and Payments

4.1 Applicable Taxes.

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

4.1.2 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.

4.1.3 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.

4.1.4 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.

4.2 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.

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

4.3.1 Accept a decrease in price offered by the Contractor;

4.3.2 Cancel the Contract; or

4.3.3 Cancel the contract and re-solicit the requirements.

5. Contract Changes

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

UNIFORM TERMS AND CONDITIONS

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

6. Risk and Liability

6.1 Indemnification.

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

6.2 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 section shall not apply.

6.3 Force Majeure.

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

6.3.2 Force Majeure shall not include the following occurrences:

6.3.2.1 Late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, or an oversold condition of the market;

6.3.2.2 Late performance by a subcontractor unless the delay arises out of a force majeure occurrence in accordance with this force majeure term and condition; or

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

6.3.3 If either party is delayed at any time in the progress of the work by force majeure, the delayed party shall notify the other party in writing of such delay, as soon as is practicable and no later than the following working day, of the commencement thereof and shall specify the causes of such delay in such notice. Such notice shall be delivered or mailed certified-return receipt and shall make a specific reference to this article, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing

UNIFORM TERMS AND CONDITIONS

when it has done so. The time of completion shall be extended by Contract Amendment for a period of time equal to the time that results or effects of such delay prevent the delayed party from performing in accordance with this Contract.

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

6.4 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.

7. Compliance With Applicable Laws

7.1 The materials and services supplied under this Contract shall comply with all applicable Federal, state and local laws, and the Contractor shall maintain all applicable license and permit requirements.

8. State's Contractual Remedies

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

8.2 Stop Work Order.

8.2.1 The State may, at any time, by written order to the Contractor, require the Contractor to stop all or any part, of the work called for by this Contract for period(s) of days indicated by the State after the order is delivered to the Contractor. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage.

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

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

8.4 Nonconforming Tender. Materials or services supplied under this Contract shall fully comply with the Contract. The delivery of materials or services or a portion of the materials or services that do not fully comply constitutes a breach of contract. On delivery of nonconforming materials or services, the State may terminate the Contract for default under applicable termination clauses in the Contract, exercise any of its rights and remedies under the Uniform Commercial Code, or pursue any other right or remedy available to it.

UNIFORM TERMS AND CONDITIONS

8.5 Right of Offset. The State shall be entitled to offset against any sums due the Contractor, any expenses or costs incurred by the State, or damages assessed by the State concerning the Contractor's non-conforming performance or failure to perform the Contract, including expenses, costs and damages described in the Uniform Terms and Conditions.

9. Contract Termination

9.1 Cancellation for Conflict of Interest. Pursuant to A.R.S. § 38-511, the State may cancel this Contract within three (3) years after Contract execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of the State is or becomes at any time while the Contract or an extension of the Contract is in effect an employee of or a consultant to any other party to this Contract with respect to the subject matter of the Contract. The cancellation shall be effective when the Contractor receives written notice of the cancellation unless the notice specifies a later time. If the Contractor is a political subdivision of the State, it may also cancel this Contract as provided in A.R.S. § 38-511.

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

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

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

9.5 Termination for Default.

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

UNIFORM TERMS AND CONDITIONS

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

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

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

10. Arbitration

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

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;
 - 5.3 The Contractor fails to complete the work required or furnish the materials required within the time stipulated by the contract;

SPECIAL TERMS AND CONDITIONS

- 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 this contract. This nondisclosure requirement shall also pertain to any information contained in reports, documents, or other records furnished to the Contractor by AHCCCS.
 - 8.2 The Contractor shall establish and maintain written policies procedures and controls, approved by AHCCCS, governing access to, duplication of, and dissemination of all such information for the purpose

SPECIAL TERMS AND CONDITIONS

of assuring that no information contained in its records or obtained from AHCCCS or others carrying out its functions under the contract, is used or disclosed by it, its agents, officers or employees, except as required to efficiently perform duties under the contract. Persons requesting such information shall be referred to AHCCCS. The Contractor's data safeguard program shall further conform to the data confidentiality and security requirements of AHCCCS policy and procedures, and all-relevant state and federal requirements, including HIPAA standards.

8.3 The disclosure of information in summary, statistical, or other form that does not identify particular individuals is permitted only with prior AHCCCS approval. The use or disclosure of information concerning Members will be limited to purposes directly connected with the scope of this contract.

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

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

10. **Contract:** This specialty contract between AHCCCS and the Contractor shall consist of (1) this QVL Specialty Contract including AHCCCS policies and procedures incorporated by reference as part of the RFP and (2) the application submitted by the Contractor in response to the QVL. In the event of a conflict in language between the Contractor's Application and the QVL (including AHCCCS policies and procedures incorporated by reference), the provisions and requirements set forth and/or referenced in the QVL (including AHCCCS policies and procedures incorporated by reference) shall govern.

11. **Fraud and Abuse:**

11.1 It shall be the responsibility of the Contractor to report all cases of suspected fraud and abuse by subcontractors, Members or employees. The Contractor shall provide written notification of all such incidents to the Procurement officer.

11.2 As stated in A.R.S. § 13-2310, incorporated herein by reference, any person who knowingly obtains any benefit by means of false or fraudulent pretenses, representations, promises or material omissions is guilty of a class 2 felony.

11.3 Contractors are required to research potential overpayments identified by a fraud and abuse investigation or audit conducted by AHCCCS. After conducting a cost benefit analysis to determine if such action is warranted, the Contractor should attempt to recover any overpayments identified due to erroneous, false or fraudulent billings.

12. **Independent Contractor and Employees of Contractor:** The Contractor represents himself/herself to be an independent contractor offering such services to the general public and shall not represent himself/herself or 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.

SPECIAL TERMS AND CONDITIONS

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

SPECIAL TERMS AND CONDITIONS

18. Records:

- 18.1 In addition to the requirements set forth in this contract under the Uniform Terms and Conditions, all books and records shall be maintained to the extent and in such detail as required by AHCCCS Rules and Policies. The AHCCCS records management guidelines are located at: <http://www.azahcccs.gov>. Records shall include, but not be limited to, financial statements, case files (both hard copy and stored data), and other records specified by AHCCCS.
- 18.2 The Contractor shall make available at its office at all reasonable times during the term of this contract and the period set forth in in this section, any of its records for inspection, audit or reproduction by any authorized representative of AHCCCS, State or Federal government.
- 18.3 The Contractor shall preserve and make available all records for a period of five (5) years from the date of final payment under this contract except as provided below:
- 18.3.1 If this contract is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for a period of five years from the date of any such termination.
- 18.3.2 Records that relate to grievances, disputes, litigation or the settlement of claims arising out of the performance of this contract, or costs and expenses of this contract to which exception has been taken by AHCCCS, shall be retained by the Contractor for a period of five years after the date of final disposition or resolution thereof.
- 18.3.3 Completed case files shall be scheduled for archive shipment to AHCCCS, as defined by AHCCCS Policy and Procedures.

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

20. Term of Contract and Option to Renew:

The initial term of this contract shall be for three (3) years, with annual options to extend, not to exceed a total contracting period of five (5) years. Vendors added after the initial solicitation date may have a prorated term based upon their initial application approval date.

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

SPECIAL TERMS AND CONDITIONS

INSURANCE REQUIREMENTS

1. Indemnification Clause

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

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

2. Insurance Requirements

2.1 Contractor and subcontractors shall procure and maintain, until all of their obligations have been discharged, including any warranty periods under this Contract, insurance against claims for injury to persons or damage to property arising from, or in connection with, the performance of the work hereunder by the Contractor, its agents, representatives, employees or subcontractors.

2.2 The Insurance Requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The State of Arizona in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that arise out of the performance of the work under this Contract by the Contractor, its agents, representatives, employees or subcontractors, and the Contractor is free to purchase additional insurance.

2.3 Minimum Scope and Limits of Insurance

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

2.3.1 Commercial General Liability (CGL) – Occurrence Form

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

- General Aggregate \$2,000,000
- Products – Completed Operations Aggregate \$1,000,000
- Personal and Advertising Injury \$1,000,000

INSURANCE REQUIREMENTS

- Damage to Rented Premises \$50,000
 - Each Occurrence \$1,000,000
- a. The policy shall include coverage for Sexual Abuse and Molestation (SAM). This coverage may be sub-limited to no less than \$500,000. The limits may be included within the General Liability limit or provided by separate endorsement with its own limits. If you are unable to obtain SAM coverage under your General Liability because the insurance market will not support it, it should be included with the Professional Liability.
 - b. Contractor must provide the following statement on their Certificate(s) of Insurance: "Sexual Abuse and Molestation coverage is included" or "Sexual Abuse and Molestation coverage is not excluded."
 - c. The policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor.
 - d. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

2.3.2 Business Automobile Liability

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

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

2.3.3 Workers' Compensation and Employers' Liability

- Workers' Compensation Statutory
 - Employers' Liability
 - Each Accident \$1,000,000
 - Disease – Each Employee \$1,000,000
 - Disease – Policy Limit \$1,000,000
- a. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from

INSURANCE REQUIREMENTS

work performed by or on behalf of the Contractor.

- b. This requirement shall not apply to each Contractor or subcontractor that is exempt under A.R.S. § 23-901, and when such Contractor or subcontractor executes the appropriate waiver form (Sole Proprietor or Independent Contractor).

2.3.4 Professional Liability (Errors and Omissions Liability)

- Each Claim \$ 2,000,000
 - Annual Aggregate \$ 2,000,000
- a. If SAM coverage is being provided under this policy then Contractor must provide the following statement on their Certificate(s) of Insurance: "Sexual Abuse and Molestation coverage is included" or "Sexual Abuse and Molestation coverage is not excluded." This coverage may be sub-limited to no less than \$500,000.
 - b. In the event that the professional liability insurance required by this Contract is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of this Contract; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years beginning at the time work under this Contract is completed.
 - c. Policy shall cover professional misconduct or wrongful acts for those positions defined in the Scope of Work of this contract.

2.4 **Additional Insurance Requirements**

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

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

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

2.5 **Notice of Cancellation**

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

2.6 **Acceptability of Insurers**

Contractor's insurance shall be placed with companies licensed in the State of Arizona or hold approved non-admitted status on the Arizona Department of Insurance List of Qualified Unauthorized Insurers.

INSURANCE REQUIREMENTS

Insurers shall have an "A.M. Best" rating of not less than A- VII. The State of Arizona in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

If the Contractor utilizes the Social Service Contractors Indemnity Pool ("SSCIP") or other prior approved insurance pool for insurance coverage, SSCIP or the other prior approved insurance pool is exempt from the A.M. Best's rating requirements listed in this section. If the Contractor chooses to use SSCIP or another approved insurance pool as its insurance provider, the Contractor would be considered in full compliance with insurance requirements relating to the A.M. Best rating requirements.

2.7 Verification of Coverage

Contractor shall furnish the State of Arizona with certificates of insurance (valid ACORD form or equivalent approved by the State of Arizona) evidencing that Contractor has the insurance as required by this Contract. An authorized representative of the insurer shall sign the certificates.

2.7.1 All such certificates of insurance and policy endorsements must be received by the State before work commences. The State's receipt of any certificates of insurance or policy endorsements that do not comply with this written agreement shall not waive or otherwise affect the requirements of this agreement.

2.7.2 Each insurance policy required by this Contract must be in effect at, or prior to, commencement of work under this Contract. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.

2.7.3 All certificates required by this Contract shall be sent directly to the Department. The State of Arizona project/contract number and project description shall be noted on the certificate of insurance. The State of Arizona reserves the right to require complete copies of all insurance policies required by this Contract at any time.

2.8 Subcontractors

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

2.9 Approval and Modifications

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

2.10 Exceptions

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

HIPAA BUSINESS ASSOCIATES ADDENDUM

Updated April 2020

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

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

1. DEFINITIONS

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

2. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

Business Associate agrees to:

- 2.1. Not use or disclose protected health information ("PHI") other than as permitted or required by this Addendum or as required by law;
- 2.2. Use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to electronic PHI, to prevent use or disclosure of protected health information other than as provided for by this Addendum;
- 2.3. Report to AHCCCS any use or disclosure of PHI not provided for by this Addendum of which it becomes aware, including breaches of unsecured protected health information as required at 45 CFR §164.410, and any security incident of which it becomes aware in the following manner;
 - 2.3.1. Reporting. Business Associate shall report to AHCCCS any use or disclosure of PHI that is not authorized by the Contract, by law, or in writing by AHCCCS. Business Associate shall make an initial report to the AHCCCS Privacy Official not more than twenty-four (24) hours after Business Associate learns of such unauthorized use or disclosure. The initial report shall include all of the following information to the extent known to the Business Associate at the time of the initial report:
 - A. A description of the nature of the unauthorized use or disclosure, including the number of individuals affected by the unauthorized use or disclosure;
 - B. A description of the PHI used or disclosed;
 - C. The date(s) on which the unauthorized use or disclosure occurred;
 - D. The date(s) on which the unauthorized use or disclosure was discovered;
 - E. Identify the person(s) who used or disclosed the PHI in an unauthorized manner;
 - F. Identify the person(s) who received PHI disclosed in an unauthorized manner;
 - G. A description of actions, efforts, or plans undertaken by the Business associate to mitigated the harm of the unauthorized disclosure;

HIPAA BUSINESS ASSOCIATES ADDENDUM

- H. A description of corrective actions undertaken or planned to prevent future similar unauthorized use or disclosure;
- I. An assessment of whether a breach, as defined in 45 CFR 164.402, including, if necessary, an assessment of the probability of harm, and
- J. Such other information, as may be reasonably requested by the AHCCCS Privacy Official.

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

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

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

2.4. In accordance with 45 CFR §164.502(e)(1)(ii) and §164.308(b)(2), if applicable, ensure that any subcontractors that create, receive, maintain or transmit PHI on behalf of the Business Associate agree to the same restrictions, conditions and requirements that apply to the Business Associate with respect to such information;

2.5. Make available PHI in a designated record set to AHCCCS as necessary to satisfy AHCCCS' obligations under 45 CFR §164.524;

2.6. Make any amendment(s) to PHI in a designated record set as directed or agreed to by AHCCCS pursuant to 45 CFR §164.526, or take other measures as necessary to satisfy AHCCCS' obligations under 45 CFR §164.526;

2.7. Maintain and make available the information required to provide an Accounting of Disclosures to AHCCCS as necessary to satisfy AHCCCS' obligations under 45 CFR §164.528;

2.8. To the extent Business Associate is to carry out one or more of AHCCCS' obligations under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to AHCCCS in the performance of such obligation(s); and

2.9. Make its internal practices, books and records available to AHCCCS and the Secretary for purposes of determining compliance with the HIPAA rules.

3. PERMITTED USES AND DISLOSURES BY BUSINESS ASSOCIATE

3.1. Business Associate may only use or disclosure PHI as necessary to perform the services and obligations set forth in the underlying Contract;

3.2. Business Associate may use or disclose protected health information as required by law;

HIPAA BUSINESS ASSOCIATES ADDENDUM

- 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.
- 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;

HIPAA BUSINESS ASSOCIATES ADDENDUM

- 5.3.3. Continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic PHI to prevent use or disclosure of the PHI, other than as provided for in this Section, for as long as Business Associate retains the PHI;
- 5.3.4. Not use or disclose the PHI retained by Business Associate other than for the purposes for which such protected health information was retained and subject to the same conditions set out in this Addendum that applied prior to termination; and
- 5.3.5. Destroy or return to AHCCCS the PHI retained by Business Associate when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal and contractual responsibilities.

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

6. INDEMNIFICATION AND MISCELLANEOUS

- 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 CONTRACT

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