



Notice of Request for Proposal

SOLICITATION # YH23-0093

Specialty Pharmacy Services for Anti-Hemophilia and Other Blood Disorder Medications

AHCCCS Procurement Officer:

Cynthia Smolens

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Issue Date: March 30, 2023

RFP DESCRIPTION:	Specialty Pharmacy Services for Anti-Hemophilia and Other Blood Disorder Medications
Pre-Proposal Conference:	A Pre-Proposal Conference has NOT been scheduled.
<p>Questions Due: <i>Questions shall be submitted to the procurement on the Q&A form provided with this RFP. Answers will be posted publicly on the AHCCCS website in the form of a Solicitation Amendment for the benefit of all Potential Offerors.</i></p>	<p>April 17, 2023 by 3:00 PM Arizona Time</p>
<p>INTENT TO BID DUE <i>ALL OFFERORS MUST REQUEST ACCESS TO THE AHCCCS SECURE FILE SHARE (ASFS)</i> <i>See Proposal Submission Instructions for details</i></p>	<p>May 8, 2023 by 3:00 PM Arizona Time</p>
<p>PROPOSAL DUE DATE: <i>Proposals shall be submitted in accordance with this solicitation proposal instructions prior to the time and date indicated here, or as may be amended through a solicitation amendment.</i></p>	<p>June 1, 2023 by 3:00 PM ARIZONA TIME</p>

Late proposals shall not be considered.

OFFERORS ARE STRONGLY ENCOURAGED TO CAREFULLY READ THE ENTIRE SOLICITATION.

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

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

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

Attachment 1 - Price Sheet

Attachment 2 – Boycott of Israel Disclosure

Attachment 3 – Forced Labor of Ethnic Uyghurs Ban Certification

Attachment 4 – Intent to Bid

Solicitation Questions and Answers Form

Exhibit A – AHCCCS Hemophilia Factor Hemlibra Ceprotin Utilization CY2022 (Located in the Bidders Library folder of the ASFS)

Exhibit B – Quarterly Reporting Template

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. § 18-132 when offering electronics or information technology products, services, or maintenance; and
6. The Offeror certifies that it is not debarred from, or otherwise prohibited from participating in any contract awarded by federal, state, or local government.

ACCEPTANCE OF OFFER (to be completed by AHCCCS)

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

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

This contract shall henceforth be referred to as

Contract No. YH23-0093

CONTRACT SERVICE START DATE: _____

AWARD DATE: _____

MEGGAN LAPORTE, 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 December 1, 2022, AHCCCS provides coverage to nearly 2.5 million members in Arizona.

The program has a total fund budget for SFY 2023 of approximately \$19 billion. AHCCCS has over 121,000 active providers in Arizona, such as individual medical and behavioral health practitioners, therapy disciplines, institutions, durable medical equipment companies and transportation entities. AHCCCS contracts with Managed Care Organizations (MCO) 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>

As of June 1, 2022, approximately 15 percent of AHCCCS Members are enrolled in a Fee-for-Service program.

2. PURPOSE OF THE RFP

The primary purpose of this Request for Proposal (RFP) is to solicit proposals from qualified Offerors to provide Specialty Pharmacy Services for medications and related services/supplies for the pharmaceutical treatment of hemophilia and other blood disorders for Medicaid members living with bleeding/blood disorders. AHCCCS may add additional medications from other therapeutic classes. Services provided by the awarded Contractor include the provision of anti-hemophilic and/or other blood disorder medications, supplies, the disposal of medications, the care coordination and the delivery of these services.

This RFP is intended as a statewide initiative to achieve greater cost-efficiencies for the purchase of medically necessary hemophilic factor, hemophilic non-factor and other blood disorder medications and provide supplies, patient monitoring and coordinated delivery of all medications covered under this contract.

Participants in the program are all AHCCCS eligible Members with a qualifying bleeding or blood disorder, enrolled with an AHCCCS Managed Care Contractor or enrolled in the AHCCCS Fee-For-Service program.

Qualified Offerors shall be Specialty Pharmacies that have experience in the provision of hemophilia factor and non-factor and other blood disorder medications.

3. LEGAL AUTHORITY

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

4. CONTRACTOR REQUIREMENTS

The Contractor shall provide, at a minimum, the following:

- 4.1 Prescription products to treat hemophilia and blood disorders including factor, non-factor medications, and gene therapies.
- 4.2 Submission of claims at the awarded contracted rate on all medically necessary, anti-hemophilic, other blood disorder medications, gene therapies and other medications as identified by AHCCCS.
- 4.3 Care coordination with AHCCCS and its MCO Contractors, hemophilia treatment centers, and other AHCCCS registered providers as it pertains to providing pharmaceutical care;

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- 4.4 Customer service for Members and providers with access to appropriately trained, qualified, and licensed professional staff twenty-four (24) hours a day, seven (7) days a week through a toll-free telephone number and an email address.
 - 4.4.1 The Contractor shall be accessible by phone and provide a monitored email address that Members may use twenty-four (24) hours a day, seven (7) days a week.
 - 4.4.2 Respond to urgent/emergent member inquiries within two (2) hours.
 - 4.4.3 Respond to non-urgent member inquiries within twenty-four (24) hours.
 - 4.4.4 Respond to AHCCCS and MCO Contractors inquiries within four (4) hours.
 - 4.4.5 Translation services shall be available on an as needed basis and provided upon request.
 - 4.4.6 Have all informational materials written in easily understandable language, accessible to the Member, and approved by AHCCCS prior to distribution to Members.
 - 4.4.6.1 The reading level and name of the evaluation methodology used shall be included.
 - 4.4.6.2 Supply Member materials upon request via email and/or mail through postal mail.
 - 4.4.7 Development and the provision of Member and provider educational materials specific to the management of hemophilia and other blood disorders treated under this contract.
 - 4.4.8 Assistance to AHCCCS MCO Contractors in implementing quality improvement and cost control strategies.
 - 4.4.9 Education and outreach to providers on current standards of care and treatment protocols for bleeding and other blood disorders.
 - 4.4.10 Procurement, dispensing, storage and home delivery (or other defined delivery site) of anti-hemophilic and other blood disorder medications and related products and supplies.
 - 4.4.11 Inventory management of hemophilic factor, non-factor & other blood disorder medications and related products and supplies.
 - 4.4.12 Assay management of hemophilic factor and other blood disorder agents, as appropriate, within a 2.5% percent variance from the prescribed amounts.
 - 4.4.13 Medical waste removal and disposal for Members;
 - 4.4.14 Emergency and standard delivery services to the Members.
 - 4.4.14.1 The Contractor shall include in their offer, local Arizona specialty pharmacies that are able to provide hemophilic factor, non-factor and other blood disorder medications in an urgent/emergent situation or when delays may occur due to weather conditions or other national disasters.
 - 4.4.15 Assessment and reporting of the WAC unit pricing of anti-hemophilic and other blood disorder agents, utilization changes, and trends as required by AHCCCS as applicable to the awarded Contractor.
 - 4.4.16 Establishment and maintenance of successful internal quality controls and quality improvement processes;
 - 4.4.17 A dedicated account management team.
 - 4.4.18 Preparation and delivery of scheduled and as hoc reports at a frequency and in the format approved by AHCCCS, which includes at a minimum, the reports provided in "Exhibit B –Quarterly Reporting Template."
 - 4.4.18.1 Quarterly Reports shall be submitted to the AHCCCS Pharmacy Program Director by the 15th day following the end of the quarterly reporting period.
 - 4.4.19 Quarterly meetings with the AHCCCS Pharmacy Director and staff on data findings, which shall include providing program recommendations.
 - 4.4.20 Pricing is inclusive of all medications, necessary supplies and related products for delivery and administration of anti-hemophilic factor and non-factor blood disorder related medications.

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- 4.4.21 Accept prescriptions from all AHCCCS registered hematologists and from prescribers who have consulted with an AHCCCS registered hematologist.
- 4.4.22 Comply with the needs of the Agency that may occasionally identify additional medications, which may or may not be related to hemophilia or a blood disorder that shall need to be supplied by the Contractor under this contract.
 - 4.4.22.1 This contract includes all medically necessary supplies.

4.5 Required Knowledge

The Contractor shall:

- 4.5.1 Have a thorough understanding of the Medicaid program, health care policy and managed care operations.
- 4.5.2 Successful hemophilia educational programs.
- 4.5.3 Have the appropriate staff and electronic resources necessary to analyze, trend and report on the claims under this contract.

4.6 Staffing Requirements

The Contractor shall:

- 4.6.1 Maintain sufficient staffing levels to complete all the responsibilities pertaining to this RFP and be clearly outlined in Offeror's proposal, as referenced in the Special Instructions To Offerors.
- 4.6.2 Have organization, management and administrative systems firmly in place, capable of fulfilling all contract requirements.
- 4.6.3 Not employ or contract with any individual that has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement or non-procurement activities or from receiving federal financial participation.
- 4.6.4 Secure staff and services to be available and medication delivered in urgent situations and within four (4) hours of the Contractor receiving initial notification of the urgent situation.
- 4.6.5 Be responsible for any additional costs associated with on-site audits or other oversight activities.

4.7 Written Policies, Procedures, and Job Descriptions

The Contractor shall:

- 4.7.1 Develop and maintain written policies and procedures and job descriptions for each functional area, in a consistent format and style.
- 4.7.2 Maintain written guidelines for developing, reviewing and approving all policies, procedures and job descriptions. All policies and procedures shall be reviewed at least annually to ensure that the Contractor's written policies reflect current practices. Reviewed policies shall be dated and signed by the Contractor's appropriate designated staff; i.e. manager, coordinator, director or administrator and available upon request for AHCCCS review.

4.8 Provider Registration

The Contractor, its Subcontractors/Providers shall:

- 4.8.1 Register with AHCCCS to become an approved service provider and obtain an AHCCCS Provider ID number. Any provider that does not have a current AHCCCS Provider ID number, must sign a Provider Participation Agreement or Letter of Intent. The original shall be forwarded to AHCCCS.
- 4.8.2 Each provider must also have a National Provider Identifier (NPI) number. More information is available on the AHCCCS website (www.azahcccs.gov).

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4.9 All Specialty Pharmacies participating in this contract must have an Arizona State Board of Pharmacy License in good standing. All Specialty Pharmacies must be registered in multiple states in order to provide medication under this contract to AHCCCS members who may be out of state.

4.10 AHCCCS MEDICAL POLICY MANUAL AND AHCCCS CONTRACTOR OPERATIONS MANUAL

The *AHCCCS Medical Policy Manual (AMPM)* and the *AHCCCS Contractor Operations Manual (ACOM)* are hereby incorporated by reference into this contract. The Contractor is responsible for complying with applicable portions of the requirements set forth within. The *AMPM and ACOM*, with search capability and linkages to AHCCCS rules, statutes and other resources, are available to all interested parties through the AHCCCS Home Page on the Internet at www.azahcccs.gov. Upon adoption by AHCCCS, updates will be available through the Internet at the beginning of each month.

4.11 CLAIMS

The Contractor is responsible for claims submission and the adjudication process including third party billing, secondary/tertiary billing, Medicare Part B billing, analysis, reporting and accounting procedures for reconciliation and auditing. Claims for hemophilic factor, non-factor, gene therapies and other blood disorder medications shall be billed as a pharmacy benefit using the Point-of-Sale system through the Managed Care Contractors and the Fee-for-Service Pharmacy Benefit Managers. All medications submitted for reimbursement under this contract must be federally and state reimbursable under the Medicaid program.

4.12 CONTRACTOR'S IMPLEMENTATION PLAN

The Contractor shall:

4.12.1 Submit a comprehensive Implementation Plan with their proposal.

4.12.1.1 The Implementation Plan shall specify tasks to be completed, a timeline of completion for all tasks and identification of the staff position(s) responsible for each task/step.

4.12.2 Meet with AHCCCS and all relevant parties prior to the commencement start date of the contract for the purposes of coordinating implementation activities.

4.12.3 Submit a finalized Comprehensive Implementation Plan and schedule to AHCCCS for review and approval within fourteen (14) calendar days of the Award Date.

4.12.3.1 The final Implementation Plan shall specify tasks to be completed, dates of completion for all tasks and identification of the person(s) responsible for each task/step.

5 CONTRACT UTILIZATION

5.1 Fee for Service: The AHCCCS Administration is the authorizing payor for AHCCCS Fee-For-Service (FFS) Members. The AHCCCS Administration will provide the prior authorization process through the FFS PBM, facilitate care coordination in conjunction with the Contractor and provide reimbursement to the pharmacy for federally and state reimbursable anti-hemophilic and blood disorder medications, which also includes supplies and delivery under the contract for FFS members through the Contractor.

5.2 Managed Care Organization: AHCCCS' Managed Care Organizations (MCOs) are required to utilize this contract for all hemophilia prescription products including factor, non-factor, gene therapies (as applicable) as well as other blood disorder medications.

5.2.1 For MCO member reimbursement under the contract, the awarded contractor shall submit pharmacy claims to and be reimbursed by the MCOs PBM. As such, the AHCCCS MCO Contractors

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will provide the prior authorization process, facilitate care coordination, and provide reimbursement for all components covered under this contract for their members.

5.2.2 Medically necessary services provided to AHCCCS FFS and MCO enrolled members that are not covered under this contract will be reimbursed at the rate negotiated between the AHCCCS FFS Administration or the MCO Contractors and the awarded contractor.

5.2.2.1 The services to infuse hemophilia factor or other blood disorder products are not included in this contract and are billed separately to the AHCCCS FFS Administration or the Managed Care Contractors.

5.2.3 Nursing services are not included in this contract and are billed separately to the AHCCCS FFS Administration or to the MCO Contractors.

5.3 The most recent utilization of Hemophilia factor, non-factor and other blood disorder products is located in "Exhibit A – Hemophilia Factor, Ceprothin and Hemlibra Utilization for Calendar Year 2022. Due to the sensitive nature of the information contained in this exhibit, only potential bidders for this procurement are authorized to view the exhibit. Once the Offeror submits its Attachment 4 - Intent to Bid, the Offeror will be given access to this information.

6 PRICING

6.1 The Offeror shall complete and submit Attachment 1 – Price Sheet, according to the instructions on the Attachment.

6.2 The Offeror shall submit pricing methodology using the Wholesale Acquisition Cost minus a percentage for factor, non-factor or other blood products currently utilized. The Offeror must also commit to the same pricing methodology for future products added to this contract.

6.3 340B Covered Entities are not permitted to purchase Hemophilia Factor, Non-Factor, Gene Therapy or other medications under the 340B Drug Pricing Program.

6.4 340B Covered Entities are not permitted to purchase other drugs that may be added to this contract, under the 340B Drug Pricing Program.

6.5 340B Covered Entities are not permitted to include or utilize a 340B Contract Pharmacy in the submitted offer.

DEFINITIONS

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

1. **340B Contract Pharmacy:** A separate pharmacy that a 340B covered entity contracts with to provide and dispense prescription and physician-administered drugs using medications that are subject to 340B drug pricing program.
2. **340B Covered Entity:** An organization as defined by 42 United States Code section 256b that participates in the 340B drug pricing program.
3. **340B Drug Pricing Program:** The discount drug purchasing program described in section 256b of 42 United States Code.
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. **ANTI-HEMOPHILIC AND OTHER BLOOD DISORDER MEDICATIONS:** Include factor, non-factor products to treat hemophilia or other blood disorders, and gene therapies to treat blood disorders.
7. **ASFS:** AHCCCS Secure File Share
8. **ATTACHMENT:** Any item the Solicitation requires an Offeror to submit as part of the Offer.
9. **BEST AND FINAL OFFER:** A revision to an Offer submitted after negotiations are completed that contains the Offeror's most favorable terms for price, service and products to be delivered. Sometimes referred to as a Final Proposal Revision.
10. **CONTRACT:** The combination of the Solicitation, including the Instructions to Offerors, Contract Terms and Conditions, and Scope of Work; the Offer; any Best and Final Offers; any Solicitation Amendments or Contract Amendments; and any terms applied by law.
11. **CONTRACT AMENDMENT:** A written document signed by the Procurement officer that is issued for the purpose of making changes in the contract.
12. **CONTRACTOR:** A person who has a contract with AHCCCS.
13. **CULTURAL and LINGUISTIC COMPETENCE:** A set of congruent behaviors, attitudes, and policies that come together in a system, agency, or among professionals that enables effective work in cross-cultural situations. 'Culture' refers to integrated patterns of human behavior that include the language, thoughts, communications, actions, customs, beliefs, values, and institutions of racial, ethnic, religious, or social groups. 'Competence' implies having the capacity to function effectively as an individual and an organization within the context of the cultural beliefs, behaviors, and needs presented by consumers and their communities.
14. **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.
15. **DELIVERABLES:** All items that the Contractor is required to deliver under this Contract.
16. **DOCUMENTATION:** Means all documents, including documents that are Deliverables described in the Statement of Work that are to be delivered by Contractor under this Contract. Documentation includes documents in hard copy or electronic form.
17. **EXHIBIT:** Any item labeled as an Exhibit in the Solicitation or placed in the Exhibits section of the Solicitation generally containing maps, schematics or other documents that will be used to perform the requirement after contract award.

DEFINITIONS

18. **FURNISHING FEE:** A fee per unit of factor, also known as the Medicare Furnishing Fee. The term Furnishing Fee is not recognized by CMS Medicaid.
19. **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.
20. **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. Health Plan and MCO are used interchangeably.
21. **KEY PERSONNEL:** Contractor's Authorized Representative, the Project Manager, and all other Contractor personnel designated as Key Persons.
22. **KNOWLEDGE TRANSFER:** Activities designed to impart detailed information from Contractor to the Agencies in relation to the activities described in the Scope of Work. Knowledge Transfer goes beyond formalized training and documentation to include Contractor ensuring that staff is prepared to launch a successful Modularity program. Knowledge Transfer includes AHCCCS/MQD staff and other resources being integrated into Contractor's work activities and being an integral part of identifying and resolving issues. Knowledge Transfer activities include 'shoulder to shoulder' training, which is informal training with the specific intent of developing skills or knowledge working side by side with Contractor.
23. **Managed Care Organization (MCO):** 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. MCO and Health Plan are used interchangeably.
24. **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.
25. **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.
26. **MAY:** Indicates something that is not mandatory but permissible.
27. **MEDICAID:** A Federal/State program authorized by Title XIX of the Social Security Act, as amended.
28. **MEMBER -** An eligible individual who is enrolled in AHCCCS, as specified in A.R.S. § 36-2931, § 36-2901, § 36-2901.01 and A.R.S. § 36- 2981. Also referred to as Title XIX/XXI member or Medicaid member.
29. **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).
30. **NTE:** Not-to-Exceed amount.
31. **OFFER:** A response to a solicitation.
32. **OFFEROR:** A vendor or person who responds to a Solicitation.
33. **PBM:** Pharmacy Benefit Manager
34. **PERSON:** Any corporation, business, individual, union, committee, club or other organization or group of individuals.
35. **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.
36. **PROFESSIONAL FEE:** The fee for the pharmacist's professional services and the cost to dispense the drug product to a Medicaid beneficiary. For the purposes of this contract the Professional Fee shall be inclusive of all costs associated with the delivery of the service, supplies and includes staff time, mileage, insurance, and all administrative costs.

DEFINITIONS

37. **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.
38. **SCOPE OF WORK:** The documents that describe the Services to be provided by Contractor, including the Tasks, Deliverables and Milestones, Documentation, Work Product, the attributes (including requirements and specifications) of each Deliverable, identification of the Deliverables and Services that are associated with each Task, and a completion date for each Milestone and Deliverable, the payment schedule for each Deliverable and Milestone, and any other items as agreed by the parties.
39. **SERVICES:** Means the furnishing of labor, time or effort by a Contractor or Subcontractor which does not involve the delivery of a specific end product other than required reports and performance, but does not include employment agreements or collective bargaining agreements.
40. **SHALL, MUST:** Indicates a mandatory requirement. Failure to meet these mandatory requirements may result in the rejection of a proposal as non-responsive.
41. **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.
42. **SOLICITATION:** An Invitation for Bids ("IFB"), a Request for Proposals ("RFP"), or a Request for Quotations ("RFQ").
43. **SOLICITATION AMENDMENT:** A written document that is authorized by the Procurement officer and issued for the purpose of making changes to the Solicitation.
44. **STATE:** Means any department, commission, council, board, bureau, committee, institution, agency, government corporation or other establishment or official of the executive branch or corporation commission of the State of Arizona that executes the Contract.
45. **STATE FISCAL YEAR:** The period beginning with July 1 and ending June 30.
46. **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.
47. **SUBCONTRACTOR:** means a person who contracts to perform work or render Services to a Contractor or to another Subcontractor as a part of a Contract with the State.
48. **TITLE XIX:** Title XIX of the Social Security Act means Medicaid as defined in 42 U.S.C. 7.19.
49. **WAC:** Wholesale Acquisition Cost as provided in MediSpan or First Databank.

UNIFORM INSTRUCTIONS TO OFFERORS

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

2 Inquiries:

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

3 Offer Preparation:

- 3.1 Electronic Documents: The Solicitation is provided in an electronic format. Offerors are responsible for clearly identifying any and all changes or modifications to any Solicitation documents upon submission. Any unidentified alteration or modification to any Solicitation, attachments, exhibits, forms, charts or illustrations contained herein shall be null and void. Offeror's electronic files shall be

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submitted in a format acceptable to the State. Acceptable formats include Microsoft Word, Excel and PowerPoint, Adobe Acrobat PDF, or as otherwise included in the solicitation. Offerors wishing to submit files in any other format shall submit an inquiry to the Procurement Officer.

- 3.2 Evidence of Intent to be Bound: The Offer and Acceptance form within the Solicitation shall be submitted with the Offer and shall include a signature by a person authorized to sign the Offer. The signature shall signify the Offeror's intent to be bound by the Offer and the terms of the Solicitation and that the information provided is true, accurate and complete. Failure to submit verifiable evidence of an intent to be bound, such as an original signature, may result in rejection of the Offer.
- 3.3 Exceptions to Terms and Conditions: All exceptions included with the Offer shall be submitted in a clearly identified separate section of the Offer in which the Offeror clearly identifies the specific paragraphs of the Solicitation where the exceptions occur. Any exceptions not included in such a section shall be without force and effect in any resulting Contract unless such exception is specifically accepted by the Procurement Officer in a written statement. The Offeror's preprinted or standard terms will not be considered by the State as a part of any resulting Contract.
- 3.3.1 All exceptions that are contained in the Offer may negatively impact an Offeror's susceptibility for award. An Offer that takes exception to any material requirement of the solicitation may be rejected.**
- 3.3.2 Any exceptions submitted with your proposal shall be listed as C4 (See Special Instructions To Offerors).**
- 3.4 Subcontracts: Offeror shall clearly list any proposed subcontractors and the subcontractor's proposed responsibilities in the Offer.
- 3.5 Cost of Offer Preparation: AHCCCS will not reimburse any Offeror the cost of responding to a Solicitation.
- 3.6 Federal Excise Tax: The State of Arizona is exempt from certain Federal Excise Tax on manufactured goods. Exemption Certificates will be provided by the State.
- 3.7 Provision of Tax Identification Numbers: Offerors are required to provide their Arizona Transaction Privilege Tax Number and/or Federal Tax Identification number, if applicable, in the space provided on the Offer and Acceptance Form.
- 3.7.1 Employee Identification: Offeror agrees to provide an employee identification number or social security number to the State for the purposes of reporting to appropriate taxing authorities, monies paid by the Department under this contract. If the federal identifier of the Offeror is a social security number, this number is being requested solely for tax reporting purposes and will be shared with only appropriate state and federal officials. This submission is mandatory under 26 U.S.C. § 6041A.
- 3.8 Identification of Taxes in Offer. The State of Arizona is subject to all applicable state and local transaction privilege taxes. All applicable taxes shall be identified as a separate item offered in the solicitation. When applicable, the tax rate and amount shall be identified on the price sheet.

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- 3.9 Disclosure: If the firm, business or person submitting this Offer has been debarred, suspended or otherwise lawfully precluded from participating in any public procurement activity, including being disapproved as a subcontractor with any federal, state or local government, or if any such preclusion from participation from any public procurement activity is currently pending, the Offeror shall fully explain the circumstances relating to the preclusion or proposed preclusion in the Offer. The Offeror shall include a letter with its Offer setting forth the name and address of the governmental unit, the effective date of this suspension or debarment, the duration of the suspension or debarment, and the relevant circumstances relating to the suspension or debarment. If suspension or debarment is currently pending, a detailed description of all relevant circumstances including the details enumerated above shall be provided.
- 3.10 Delivery (commodities only): Unless otherwise stated in the Contract, all prices shall be F.O.B. Destination and shall include all delivery and unloading at the destination.
- 3.11 Federal Immigration and Nationality Act: By signing of the Offer, the Offeror warrants that both it and all proposed subcontractors are in compliance with federal immigration laws and regulations (FINA) relating to the immigration status of their employees. The State may, at its sole discretion, require evidence of compliance during the evaluation process. Should the State request evidence of compliance, the Offeror shall have 5 days from receipt of the request to supply the adequate information. Failure to comply with this instruction or failure to supply requested information within the timeframe specified shall result in the offer not being considered for contract award.
- 3.12 Offshore Performance of Work Prohibited: Any service that are described in the specifications or scope of work that directly serve the State of Arizona or its clients involve access to secure or sensitive data or personal client data shall be performed within the defined territories of the United States. Unless specifically stated otherwise in the specifications, this paragraph does not apply to indirect or “overhead” services, redundant back-up services or services that are incidental to the performance of the contract. This provision applies to work performed by subcontractors at all tiers. **Offerors shall declare all anticipated offshore services in the Offer.**

4 Submission of Offer:

- 4.1 Offer and Acceptance: Offers shall include a signed Offer and Acceptance form. The Offer and Acceptance form shall be signed with a signature by the person authorized to sign the Offer, and shall be submitted no later than the Solicitation due date and time. Failure to return an Offer and Acceptance form may result in rejection of the Offer.
- 4.2 Solicitation Amendments: Each Solicitation Amendment shall be signed by the person signing the Offer, and shall be submitted no later than the Offer due date and time. Failure to return a signed copy of a material Solicitation Amendment may result in rejection of the Offer.
- 4.3 Offer Amendment or Withdrawal: An Offer may not be amended or withdrawn after the Offer due date and time except as otherwise provided under applicable law.

UNIFORM INSTRUCTIONS TO OFFERORS

- 4.4 Public Record: All Offers submitted and opened are public records and must be retained by the State for a period of time in accordance with the law. Offers shall be open and available to public inspection after Contract award, except for such portions deemed to be confidential in accordance with the procurement.
- 4.5 Non-collusion, Employment, and Services: By signing the Offer and Acceptance Form or other official contract form, the Offeror certifies that:
- 4.5.1 The Offeror did not engage in collusion or other anti-competitive practices in connection with the preparation or submission of its Offer; and
 - 4.5.2 The Offeror does not discriminate against any employee or applicant for employment or person to whom it provides services because of race, color, religion, sex, national origin, or disability, and that it complies with all applicable federal, state and local laws and executive orders regarding employment.

5 Evaluation:

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

6 Award:

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

- 6.1 Number or Types of Awards: AHCCCS reserves the right to make multiple awards or to award a Contract by individual line items or alternatives, by group of line items or alternatives, or to make an aggregate award, or regional awards, whichever is deemed most advantageous to AHCCCS and to the State.

UNIFORM INSTRUCTIONS TO OFFERORS

- 6.2 **Contract Inception:** An Offer does not constitute a Contract nor does it confer any rights on the Offeror to the award of a Contract. A Contract is not created until the Offer is accepted in writing by the Procurement officer's signature on the Offer and Acceptance Form. A notice of award or of the intent to award shall not constitute acceptance of the Offer.
- 6.3 **Effective Date:** The effective date of this Contract shall be the date that the Procurement officer signs the Offer and Acceptance form or other official contract form, unless another date is specifically stated in the Contract.
- 6.4 A response to this Request for Proposal is an offer to contract with AHCCCS based upon the terms, conditions, scope of work and specifications of the RFP. All of the terms and conditions of the Contract are contained in this Solicitation, Solicitation amendments and subsequent Contract amendments, if any, signed by the AHCCCS Chief Procurement Officer. Proposals do not become Contracts unless and until they are accepted by the AHCCCS Chief Procurement Officer. The Proposal submitted by the Offeror will become part of the Contract with AHCCCS. A Contract is formed when the AHCCCS Chief Procurement Officer signs the award page and provides written notice of the award(s) to the Successful Offeror(s), and the Offeror accepts any special provisions to the Contract and the final rates awarded. All Offerors will be promptly notified of Contract award.
- 6.5 The Offeror should note that, if awarded a Contract, the Offeror must meet all AHCCCS requirements, irrespective of what is requested and evaluated through this Solicitation. The Proposal submitted by the Offeror will become part of the Contract with AHCCCS and the Offeror shall comply with all commitments and statements included in its RFP submission.
- 7 **Protests:** Any protest shall comply with and be resolved according to A.R.S. § 36-2906 and rules adopted thereunder. Protests shall be submitted via email to the AHCCCS Procurement officer.

SPECIAL INSTRUCTIONS TO OFFERORS

1. **Anticipated Procurement Schedule:**

All dates here are subject to change at any time.

Activity	Date
RFP Release	March 30, 2023
Pre-Proposal Conference (if applicable)	Not scheduled
Offeror Questions Due	April 17, 2023
Deadline submit Intent to Bid	May 8, 2023
Offeror's Proposals Due	June 1, 2023
Final RFP Award (Subject to change)	July 18, 2023
Services Start Date	February 1, 2024

2. **Questions:** All questions concerning this solicitation shall be submitted **via email using the AHCCCS Q&A form found with the solicitation document** to the Procurement Officer identified on the first page of this solicitation document. Offerors may not contact other AHCCCS employees concerning this solicitation.
3. **Evaluation Criteria and Selection Process:** In accordance with the A.R.S. 36-2903 et seq., awards shall be made to the responsible Offeror(s) whose proposal is determined in writing to be the most advantageous to the State based upon the evaluation criteria.

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

- 3.1 **Method of Approach**
- 3.2 **Cost**
- 3.3 **Experience and Expertise**

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

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

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

It is the responsibility of the Offeror to examine the entire RFP, timely seek clarification of any requirement that may not be clear, and review all responses for accuracy before submitting its Proposal. The Proposal becomes a part of the Contract. Therefore, whatever information is stated in the Proposal may be evaluated either during the Proposal evaluation process or subsequently during other reviews. If any information contained inside an Offeror's proposal contradicts or does not comply with the solicitation requirements, the solicitation requirements prevail, unless otherwise accepted by AHCCCS in writing.

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4. **Submission of Proposal:**

- 4.1. The Offeror shall submit its proposal to **AHCCCS Secure File Share (ASFS)**. Once the signed and submitted Attachment 4 - Intent to Bid is received, the Offeror will receive an email with access and instructions to the ASFS. Inside the ASFS will be a folder labeled BIDDERS LIBRARY containing Exhibit A - AHCCCS Hemophilia Factor Hemlibra Ceprotin Utilization CY2022 will also be made available to the Offeror . Failure to follow the prescribed format for submission may result in AHCCCS determining that the submission is non-responsive. The deadline to request access to the ASFS is May 8, 2023. Offerors must request access to ASFS by this date in order to submit a proposal.
- 4.2. **Font and Margins:** All proposals shall be submitted in Calibri 11 point font or larger with margins no less than ½”.
- 4.3. **Page Limits:** The Offeror has the discretion to include or exclude the narrative submission requirement text as a part of the Offeror’s response; however, the required page limit applies regardless of whether or not the text is included. AHCCCS will only consider the information provided within the allotted page limit and permitted attachments, if any, in response to a specific submission requirement when evaluating the Offeror’s Proposal. AHCCCS will not consider information outside the allotted page limit or any other information provided elsewhere in the Proposal when reviewing a specific response to an individual submission requirement.

5. **Contents of Proposal :**

The Offeror’s Proposal shall contain the following and be organized as follows:

PART A

- A1 Transmittal Letter
- A2 Signed Offer and Acceptance Page
- A3 Signed Solicitation Amendment(s)

PART B

- B1 Narrative Proposal Method of Approach (limited to 25 pages)
- B2 Narrative Proposal Experience and Expertise (limited to 10 pages)
- B3 Attachment 1 – Price Sheet

PART C

- C1 Intent to provide insurance
- C2 Separate, signed, legal Analysis for Confidential /Proprietary Determination (if any)
- C3 Signed Attestations for Attachment 4 and 5 (Boycott of Israel and Forced Labor)
- C4 Exceptions to any part of solicitation

5.1. **Transmittal Letter (A1):**

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

A person authorized to commit the Offeror to its representations and who can certify that the information offered in the proposal meets all general conditions must sign the Transmittal Letter. In

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the Transmittal Letter, please indicate the principal contact for the proposal along with an address, telephone number, and an e-mail address if that contact is different than the individual authorized for signature.

5.2. **Narrative Proposal:**

Narrative Proposals must be structured and numbered according to the RFP section numbers and headers as presented below. Responses in each section must be addressed in the order given. Since the evaluators have already read the Scope of Work for the services described, it is not necessary for the Offeror to repeat the exact language, nor to present a paraphrased version, as an original idea for the method of approach. The language of the narrative should be straightforward and limited to facts, solutions to problems, and plans of proposed action. The usage of technical language should be minimized and used only to describe a technical process.

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

The Narrative Proposal should be broken into two files:

- B1 - Method of Approach and
- B2 - Experience/Expertise.

5.2.1. **Method of Approach Narrative Proposal (B1)**

This section defines how the Method of Approach Narrative Proposal should be prepared, addressing the following Proposal Response Requirements. These are the requirements listed in Section 4.1. The Method of approach Narrative Proposal must be limited to 25 pages. The Offeror shall submit:

- 5.2.1.1. Describe the procedures, if applicable, for the transition of member care to the Offeror's services to minimize disruption of care and to address member and family concerns.
- 5.2.1.2. Describe how the Offeror ensures the availability of adequate anti-hemophilic and blood disorder medications and supplies.
- 5.2.1.3. Describe how the Offeror will provide personalized education and enhanced monitoring, including addressing issues of member non-compliance.
- 5.2.1.4. Describe the Offeror's customer service business and after-hours availability for member and process for responding to provider questions within Arizona time zones and the calendar days of operation.
- 5.2.1.5. Describe the Offeror's capability to provide Member and provider emergency access to appropriately trained, qualified, and licensed professional staff twenty-four (24) hours a day, seven (7) days a week, through a toll-free telephone number including information on how the Offeror ensures that its staff are culturally

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competent, and its customer services can be provided in other languages as appropriate for the population or as required.

- 5.2.1.6. Describe the Offeror's proposed use of translation services.
- 5.2.1.7. Describe the Offeror's delivery of services to ensure high quality, cost-effective care delivery, including, but not limited to:
 - 5.2.1.7.1. Workflow and quality assurance procedures in place for procurement, dispensing, and home/site delivery of appropriate quantities of anti-hemophilic/other blood disorder medications, related products and supplies;
 - 5.2.1.7.2. Documentation of response time from the receipt of the order to the shipment of medications and supplies to receipt by member;
 - 5.2.1.7.3. Packaging, shipping, and delivery procedures to assure safe and timely delivery according to manufacturer guidelines in Arizona's climate extremes;
 - 5.2.1.7.4. Inventory management of daily demand for anti-hemophilic medications including protocols on the management of short-dated pharmaceuticals (the expiration date is less than 90 days from the current date of dispensing) and maintenance of inventory levels to ensure fulfillment of initial and refill orders;
 - 5.2.1.7.5. Established procedures and responses to product shortages for any reason;
 - 5.2.1.7.6. Procedures for monitoring and AHCCCS quarterly reporting of the appropriate selection of factor assay versus prescribed amounts within established maximum variances approved by AHCCCS;
 - 5.2.1.7.7. Management of member's anti-hemophilic and blood disorder medications and supplies to minimize unnecessary stockpiling;
 - 5.2.1.7.8. Medical waste removal and disposal for members; and
 - 5.2.1.7.9. Emergency delivery service procedures, tracking and response logs/times.
- 5.2.1.8. Provide a detailed description and examples of proposed quarterly clinical, statistical, and financial analyses. Include the following at a minimum:
 - 5.2.1.8.1. Assessment, reporting, and consultation with AHCCCS on current and future trends regarding the use of prescribed anti-hemophilic agents;
 - 5.2.1.8.2. Identification of trends that may be a result of over or under-utilization of anti-hemophilic agents;
 - 5.2.1.8.3. Documentation of members' treatment compliance;
 - 5.2.1.8.4. Documentation including claims data per member, data trends in utilization and costs, and cost control strategies; and
 - 5.2.1.8.5. Documentation of scheduled and emergency shipping and delivery times of anti-hemophilic and other blood disorder medication, related products and supplies.
 - 5.2.1.8.6. Utilization reports by product, member, and prophylaxis/non-prophylaxis use.

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- 5.2.1.9. Describe the process for transitioning members who are required to meet the 340B Covered Entity relationship requirements. The 340B Covered Entity must demonstrate that the one-to-one relationship between the patient, the covered entity and the prescribing clinician has been met in order to be compliant with the 340B Program requirements, if applicable to the Offeror.

5.2.2. **Experience/Expertise Narrative Proposal (B2)**

This section defines how the Experience/Expertise Narrative Proposal should be prepared, addressing the following Proposal Response Requirements. The Experience/Expertise Narrative Proposal must be limited to 10 pages with the exception of Org Chart and References. The Offeror shall submit:

- 5.2.2.1. Information documenting successful and reliable experience in past performances in the management of hemophilic and other blood disorders pharmaceutical care and as related to the services in this RFP. The Offeror's experience and past performance will be evaluated on the extent of its success in managing and integrating work relevant to that of a specialty pharmacy and as defined in the Scope of Work;
- 5.2.2.2. Any information documenting successful and reliable experience with transition of members to and/or from another contractor or vendor;
- 5.2.2.3. A summary documenting the experience and expertise of its key staff; and
- 5.2.2.4. A listing of their specialty pharmacies/fulfillment centers.
- 5.2.2.5. A detailed description of the Offeror's experience with Member transitions.
- 5.2.2.6. An Organizational Chart that identifies the hierarchy of the organization including all functional areas and the proposed Key personnel designated and dedicated to the provision of services under this RFP.
- 5.2.2.7. A listing of all prior and current awarded contracts directly or indirectly with Medicaid agencies that provided hemophilia and/or blood disorder services for Medicaid individuals.
- 5.2.2.8. References of the Firm:
Provide three (3) Medicaid references. References should be verifiable and be able to comment on the Offeror's related experience, which demonstrates that the Offeror possesses an understanding and experience in providing the required service. AHCCCS may choose to contact references when considering an Offeror's proposal at its discretion. All information must be current and accurate, with prior permission obtained from each reference to use. References are not included in the page limit.

SPECIAL INSTRUCTIONS TO OFFERORS

- 5.3. **Intent to Provide Certificate of Insurance (C1)**: The Offeror shall provide a brief statement that, if notified of contract award, the Offeror will submit to AHCCCS for review and acceptance, the applicable certificate/s of insurance as required within this RFP document, within five (5) business days of such notification.
- 5.4. **Additional Information (OPTIONAL)**: The Offeror may, at its option, submit any other pertinent information which would substantiate the Offeror has the experience, expertise and capability to provide the required services. The intent is to allow flexibility to an Offeror who may have desire to submit information that is not specifically requested by AHCCCS in the Special Instructions to Offerors as part of its Experience and Expertise submission and is NOT intended to allow any Offeror to circumvent the page limits of any requirement. Any additional information that is received pursuant to this section must be contained exclusively in the Experience and Expertise section, and the submission MUST adhere to any prescribed page limits. Any pages submitted beyond the page limits for any submission requirement will not be reviewed by evaluators nor will it be included in the scored portion of the Offeror's proposal.
6. **Presentations and Demonstrations**: AHCCCS may request Offerors who are determined to be reasonably susceptible for award to give a presentation or show a demonstration of the product or service to the evaluation committee.
7. **Financial Stability** The Offeror must be financially stable and if requested shall be able to substantiate the financial stability of its company. Upon written request from AHCCCS, the Offeror shall submit an annual financial statement for itself, and parent company (if applicable) within five (5) business days of request. The State reserves the right to request additional documentation from the Offeror and to request reports on financial stability from independent financial rating services. The State reserves the right to reject any Offeror who does not demonstrate financial stability sufficient for the scope of this contract award.
8. **Clarification of Offers**: AHCCCS may request clarification of an offer any time after receipt. Clarifications may be requested orally or in writing. If clarifications are requested orally, the Offeror shall confirm the request in writing. A request for clarifications shall not be considered a determination that the Offeror is susceptible for award.
9. **Negotiations**: Negotiations may be conducted orally or in writing at the discretion of AHCCCS. Negotiations may be conducted in order to improve offers in such areas of cost, price, specifications performance, or terms, to achieve best value for the State. Negotiations may include demonstrations (oral presentations). Award(s) may be made without negotiations; therefore, offers should be submitted on most favorable terms.
10. **Final Proposal Revisions / Best and Final Offers**: Written Final Proposal Revisions, or Best and Final Offers, will be requested from any Offeror with whom negotiations have been conducted, unless the Offeror has been determined not within the competitive range, not susceptible for award or non-responsible.
11. **Request for Confidential/Proprietary Determination**:
 - 11.1. If an Offeror believes that a specific portion of its bid, proposal, offer, specification, or protest contains information that should be withheld from public inspection due to confidentiality, the Offeror shall submit to the Procurement officer a list of distinct portions, including exact page numbers, of their

SPECIAL INSTRUCTIONS TO OFFERORS

document is requested to be kept confidential, along with a detailed legal analysis, prepared by legal counsel, which sets forth the bases for the requested non-disclosure and the specific harm or prejudice which may arise if disclosed. The analysis shall be presented to the Procurement Officer at the same time as the bid, proposal, offer, specification or protest.

- 11.2. An entire bid, proposal, offer, specification, or protest shall not be identified as confidential; only those very limited and distinct portions which are considered by the Offeror as confidential may be identified as such.
 - 11.3. In the event that AHCCCS receives a request for disclosure of the information, AHCCCS will disclose the information in accordance with law. Prior to disclosure, AHCCCS will inform the Offeror of such request and provide the Offeror a period of time to take action it deems appropriate to support non-disclosure. The Offeror shall be responsible for any and all costs associated with the nondisclosure of the information.
 - 11.4. If any pieces of your proposal are being requested to be kept confidential, and withheld from public viewing, please submit an additional redacted copy of the proposal, clearly listed as REDACTED in the file name. This will ensure that our office is crystal clear on which version of your proposal is acceptable for public viewing.
 - 11.5. Regardless of a determination issued by the procurement officer, all portions of the Offeror's proposal, even pages that are proprietary, may be provided to CMS or other state or federal oversight agencies.
12. **REJECTION of a PROPOSAL - Responsibility, Responsiveness, Susceptibility, and Best Interest**
In accordance with applicable procurement regulations and best practices, at any time during the evaluation, AHCCCS may reject an Offer based upon a determination that Offeror is not responsible, or that the proposal is not responsive or not susceptible for award. AHCCCS may reject the Offer if doing so is in the best interest of the State. When rejecting a proposal, AHCCCS may consider any of the following:
- 12.1. Whether the Offeror has had a contract within the last five (5) years that was terminated for cause due to breach or similar failure to comply with the terms of the contract;
 - 12.2. Whether the Offeror has had a Contract that was terminated by AHCCCS for any reason;
 - 12.3. Whether the Offeror's record of performance includes factual evidence of failure to satisfy the terms of the Offeror's agreements with any party to a contract. Factual evidence may consist of documented vendor performance reports, customer complaints, and/or negative references;
 - 12.4. Whether the Offeror is legally qualified to contract with the State and the Offeror's financial, business, personnel, or other resources, including sub-contractors;
 - 12.4.1. Legally qualified includes if the vendor or if key personnel have been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to being disapproved as a subcontractor of any public procurement unit or other governmental body.
 - 12.5. Whether the Offeror promptly supplied all requested information concerning its responsibility;

SPECIAL INSTRUCTIONS TO OFFERORS

- 12.6. Whether the Offer was sufficient to permit evaluation by the State, in accordance with the evaluation criteria identified in this Solicitation or other necessary offer components. Necessary offer components include: attachments, documents or forms to be submitted with the offer, an indication of the intent to be bound, reasonable or acceptable approach to perform the Scope of Work, acknowledged Solicitation Amendments, references to include experience verification, adequacy of financial/business/personal or other resources to include a performance bond and stability including subcontractors and any other data specifically requested in the Solicitation;
- 12.7. Whether the Offer was in conformance with the requirements contained in the Scope of Work, Terms and Conditions, and Instructions for the Solicitation including its Amendments and all documents incorporated by reference;
- 12.8. Whether the Offer limits the rights of the State;
- 12.9. Whether the Offer includes, or is subject to, unreasonable conditions, to include conditions upon the State necessary for successful Contract performance. The State shall be the sole determiner as to the reasonableness of a condition;
- 12.10. Whether the Offer materially changes the contents set forth in the Solicitation, which includes the Scope of Work, Terms and Conditions, or Instructions;
- 12.11. Whether the Offeror provides misleading or inaccurate information;
- 12.12. Whether the Offer fails to meet the minimum mandatory requirements of the RFP;
- 12.13. Whether the Offer satisfies the requirements of the RFP in a cost effective manner, as determined by AHCCCS;
- 12.14. Whether the Offeror's pricing is unrealistic, or unreasonably or higher than can be substantiated; or
- 12.15. Any other criteria deemed appropriate by AHCCCS to determine if the Offer is in the best interest of the State.

UNIFORM TERMS AND CONDITIONS

Version 10

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 Removed
- 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 Parol Evidence. This Contract is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms used in this document and no other understanding either oral or in writing shall be binding.
- 2.7 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 any and all Data and other "records" relating to the acquisition and performance of the Contract for a period of five (5) years after the completion of the Contract. All records shall be subject to inspection and audit by the State at reasonable times. Upon request, the Contractor shall produce a legible copy of any or all such records.
- 3.2 Non-Discrimination. The Contractor shall comply with State Executive Order No. 2009-09 and any and all other applicable Federal and State laws, rules and regulations, including the Americans with Disabilities Act.
- 3.3 Audit. Pursuant to A.R.S. § 35-214, at any time during the term of this Contract and five (5) years thereafter, the Contractor's or any Subcontractor's books and records shall be subject to audit by the State and, where applicable, the Federal Government, to the extent that the books and records relate to the performance of the Contract or Subcontract.
- 3.4 Facilities Inspection and Materials Testing. The Contractor agrees to permit access to its facilities, Subcontractor facilities, and the Contractor's processes or services, at reasonable times for inspection of the facilities or Materials covered under this Contract as required under A.R.S. § 41-2547. The State shall also have the right to test, at its own cost, the Materials to be supplied under this Contract. Neither inspection of the Contractor's facilities nor Materials testing shall constitute final acceptance of the Materials or Services. If the State determines non-compliance of the Materials, the Contractor shall be responsible for the payment of all costs incurred by the State for testing and inspection.
- 3.5 Notices. Notices to the Contractor required by this Contract shall be made by the State to the person indicated on the Offer and Acceptance form submitted by the Contractor unless otherwise stated in the Contract. Notices to the State required by the Contract shall be made by the Contractor to the Solicitation Contact Person indicated on the Solicitation, stated in the Contract, or listed on the State's eProcurement system. An authorized Procurement Officer and an authorized Contractor representative

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may change their respective person to whom notice shall be given by written notice to the other and an amendment to the Contract shall not be necessary.

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

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subparagraph 3.9.1 above, and will remain the exclusive property of Contractor, provided that:

- 3.9.5.1 any derivative works of such pre-existing Materials or elements thereof that are created pursuant to the Contract are part of that work product;
- 3.9.5.2 any elements of derivative work of such pre-existing Materials that was not created pursuant to the Contract are not part of that work product; and
- 3.9.5.3 except as expressly stated otherwise, nothing in the Contract is to be construed to interfere or diminish Contractor's or its affiliates' ownership of such pre-existing Materials.
- 3.9.6 Developments Outside Of Contract. Unless expressly stated otherwise in the Contract, this Section does not preclude Contractor from developing competing Materials outside the Contract, irrespective of any similarity to Materials delivered or to be delivered to State hereunder.
- 3.10 Property of the State. If there are any materials that are not covered by Section 3.9 above created under this Contract, including but not limited to, reports and other deliverables, these materials are the sole property of the State. The Contractor is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. The Contractor shall not use or release these materials without the prior written consent of the State.
- 3.11 Federal Immigration and Nationality Act. Contractor shall comply with all federal, state and local immigration laws and regulations relating to the immigration status of their employees during the term of the contract. Further, Contractor shall flow down this requirement to all Subcontractors utilized during the term of the contract. The State shall retain the right to perform random audits of Contractor and Subcontractor records or to inspect papers of any employee thereof to ensure compliance. Should the State determine that the Contractor or any Subcontractors be found noncompliant, the State may pursue all remedies allowed by law, including, but not limited to: suspension of work, termination of the contract for default and suspension or debarment of the contractor.
- 3.12 E-Verify Requirements. In accordance with A.R.S. § 41-4401, Contractor warrants compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with Section A.R.S. § 23- 214, Subsection A.
- 3.13 Offshore Performance of Work involving Data is Prohibited. Any Services that are described in the specifications or scope of work that directly serve the State of Arizona or its clients and involve access to Data shall be performed within the defined territories of the United States.
- 3.14 Certifications Required by State Law.
 - 3.14.1 If Contractor is a Company as defined in A.R.S. § 35-393, Contractor certifies that it is not currently engaged in a boycott of Israel as described in A.R.S. §§ 35-393 et seq. and will refrain from any such boycott for the duration of this Contract.
 - 3.14.2 Contractor further certifies that it shall comply with A.R.S. § 35-394, regarding use of the forced labor of ethnic Uyghurs, as applicable.

4. Costs and Payments

- 4.1 Payments. Payments shall comply with the requirements of A.R.S. Titles 35 and 41, Net 30 days. Upon receipt and acceptance of Materials or Services, the Contractor shall submit a complete and accurate invoice for payment from the State within thirty (30) days.
- 4.2 Delivery. Unless stated otherwise in the Contract, per A.R.S. § 47-2319, all prices shall be F.O.B. ("free on board") Destination and shall include all freight delivery and unloading at the destination.

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- 4.3 Firm, Fixed Price. Unless stated otherwise in the Special Terms and Conditions of the Contract, all prices shall be firm-fixed-prices.
- 4.4 Applicable Taxes
- 4.4.1 Payment of Taxes. The Contractor shall be responsible for paying all applicable taxes.
- 4.4.2 State and Local Transaction Privilege Taxes. The State of Arizona is subject to all applicable state and local transaction privilege taxes. Transaction privilege taxes apply to the sale and are the responsibility of the seller to remit. Failure to collect such taxes from the buyer does not relieve the seller from its obligation to remit taxes.
- 4.4.3 Tax Indemnification. Contractor and all Subcontractors shall pay all Federal, state and local taxes applicable to its operation and any persons employed by the Contractor. Contractor shall, and require all Subcontractors to hold the State harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under Federal, and/or state and local laws and regulations and any other costs including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.
- 4.4.4 IRS W9 Form. In order to receive payment the Contractor shall have a current I.R.S. W9 Form on file with the State of Arizona, unless not required by law.
- 4.5 Availability of Funds for the Next State Fiscal Year. Funds may not presently be available for performance under this Contract beyond the current State Fiscal Year. No legal liability on the part of the State for any payment may arise under this Contract beyond the current State Fiscal Year until funds are made available for performance of this Contract.
- 4.6 Availability of Funds for the Current State Fiscal Year. Should the State Legislature enter back into session and reduce the appropriations or for any reason and these Materials or Services are not funded, the State may take any of the following actions:
- 4.6.1 Accept a decrease in price offered by the Contractor;
- 4.6.2 Cancel the Contract; or
- 4.6.3 Cancel the Contract and re-solicit the requirements.

5. Contract Changes

- 5.1 Amendments. This Contract is issued under the authority of the Procurement Officer who signed this Contract. The Contract may be modified only through a Contract Amendment within the scope of the Contract. Changes to the Contract, including the addition of Services or Materials, the revision of payment terms, or the substitution of Services or Materials, directed by a person who is not specifically authorized by the Procurement Officer in writing or made unilaterally by the Contractor are violations of the Contract and of applicable law. Such changes, including unauthorized written Contract Amendments shall be void and without effect, and the Contractor shall not be entitled to any claim under this Contract based on those changes.
- 5.2 Subcontracts. The Contractor shall not enter into any Subcontract under this Contract for the performance of this Contract without the advance written approval of the Procurement Officer as described in Arizona State Procurement Office Standard Procedure 002. The Contractor shall clearly list any proposed Subcontractors and the Subcontractor's proposed responsibilities. The Subcontract shall incorporate by reference the terms and conditions of this Contract.
- 5.3 Assignment and Delegation. The Contractor shall not assign any right nor delegate any duty under this Contract without the prior written approval of the Procurement Officer. The State shall not unreasonably withhold approval.

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6. Risk and Liability

- 6.1 Risk of Loss. The Contractor shall bear all loss of conforming Materials covered under this Contract until received by authorized personnel at the location designated in the purchase order or Contract. Mere receipt does not constitute final acceptance. The risk of loss for nonconforming Materials shall remain with the Contractor regardless of receipt.
- 6.2 Indemnification
- 6.2.1 Contractor/Vendor Indemnification (Not Public Agency). To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees (hereinafter referred to as "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 Insurance and Indemnification Guidelines for State of Arizona Contracts Professional Service Contracts against the State of Arizona, its officers, officials, agents, and employees for losses arising from the work performed by the Contractor for the State of Arizona. This indemnity shall not apply if the Contractor or Subcontractor(s) is/are an agency, board, commission or university of the State of Arizona.
- 6.2.2 Public Agency Language Only. Each party (as 'indemnitor') agrees to indemnify, defend, and hold harmless the other party (as 'indemnitee') from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as 'claims') arising out of bodily injury of any person (including death) or property damage but only to the extent that such claims which result in vicarious/derivative liability to the indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the indemnitor, its officers, officials, agents, employees, or volunteers.
- 6.3 Indemnification - Patent and Copyright. The Contractor shall indemnify and hold harmless the State against any liability, including costs and expenses, for infringement of any patent, trademark or copyright arising out of Contract performance or use by the State of Materials furnished or work performed under this Contract. The State shall reasonably notify the Contractor of any claim for which it may be liable under this paragraph. If the Contractor is insured pursuant to A.R.S. § 41-621 and § 35-154, this paragraph shall not apply.
- 6.4 Force Majeure.
- 6.4.1 Except for payment of sums due, neither the Contractor nor State shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes: acts of God, acts of the

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public enemy, war, riots, strikes, mobilization, labor disputes, civil disorders, fire, flood, lockouts, injunctions-intervention-acts, failures or refusals to act by government authority, and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence.

6.4.2 Force Majeure shall not include the following occurrences:

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

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

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

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

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

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

7. Warranties

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

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

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

7.2.2 Fit for the intended purposes for which the Materials are used;

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

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

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

7.3 Conformity to Requirements.

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

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

7.3.1.2 Be free from defects of material and workmanship;

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

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

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- 7.10.3 A request from the State related to this paragraph 7.10 does not necessarily indicate that there has been an occurrence of force majeure, and the Contractor will not be entitled to any additional compensation or extension of time by virtue of having to implement a plan.
- 7.10.4 Failure to have or implement an appropriate plan will be a material breach of contract.
- 7.11 Lobbying
- 7.11.1 Prohibition. Contractor warrants that it will not engage in lobbying activities, as defined in 40 Code of Federal Regulations (CFR) part 34 and A.R.S. § 41-1231, et seq., using monies awarded under the Contract, provided that, the foregoing does not intend to constrain Contractor's use of its own monies or property, including without limitation any net proceeds duly realized under the Contract or any value thereafter derived from those proceeds; and upon award of the Contract, it will disclose all lobbying activities to State to the extent they are an actual or potential conflict of interest or where such activities could create an appearance of impropriety. Contractor shall implement and maintain adequate controls to assure compliance with above. Contractor shall obtain an equivalent warranty from all Subcontractors and shall include an equivalent no-lobbying provision in all Subcontracts.
- 7.11.2 Exception. This paragraph 7.11 does not apply to the extent that the Services are defined in the Contract as being lobbying for State's benefit or on State's behalf.
- 7.12 Covered Telecommunications or Services. Contractor warrants that the Materials and Services rendered under this Agreement will not require Contractor to use for the State, or provide to the State to use, "covered telecommunications equipment or Services" as a substantial or essential component of any system, or as critical technology as part of any system, within the meaning of Federal Acquisition Regulation ("FAR") Section 52.204-25.
- 7.13 Debarment, Suspension, U.S. Government Restricted Party Lists. Contractor warrants that it is not, and its Subcontractors are not, on the U.S. government's Denied Parties List, the Unverified List, the Entities List, the Specially Designated Nationals and Blocked Parties List, and neither the Contractor nor any Subcontractors are presently debarred, suspended, proposed for debarment or otherwise declared ineligible for award of federal contracts or participation in federal assistance programs or activities.
- 7.14 False Statements. Contractor represents and warrants that all statements and information Contractor prepared and submitted in response to the Solicitation or as part of the Contract documents are current, complete, true, and accurate. If the Procurement Officer determines that Contractor submitted an Offer or Bid with a false statement, or makes material misrepresentations during the performance of the Contract, the Procurement Officer may determine that Contractor has materially breached the Contract and may void the submitted Offer or Bid and any resulting Contract.
- 7.15 Survival of Rights and Obligations after Contract Expiration or Termination.
- 7.15.1 Survival of Warranty. All representations and warranties made by Contractor under the Contract will survive the expiration or earlier termination of the Contract.
- 7.15.2 Contractor's Representations and Warranties. All representations and warranties made by the Contractor under this Contract shall survive the expiration or termination hereof. In addition, the parties hereto acknowledge that pursuant to A.R.S. § 12-510, except as provided in A.R.S. § 12- 529, the State is not subject to or barred by any limitations of actions prescribed in A.R.S., Title 12, Chapter 5.
- 7.15.3 Purchase Orders. The Contractor shall, in accordance with all terms and conditions of the Contract, fully perform and shall be obligated to comply with all purchase orders received by the Contractor prior to the expiration or termination hereof, unless otherwise directed in writing by the Procurement Officer, including, without limitation, all purchase orders received prior to but not fully performed and satisfied at the expiration or termination of this Contract.

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8. State's Contractual Remedies

- 8.1 Right to Assurance. If the State in good faith has reason to believe that the Contractor does not intend to, or is unable to perform or continue performing under this Contract, the Procurement Officer may demand in writing that the Contractor give a written assurance of intent to perform. Failure by the Contractor to provide written assurance within the number of Days specified in the demand may, at the State's option, be the basis for terminating the Contract under the Uniform Terms and Conditions or other rights and remedies available by law or provided by the contract.
- 8.2 Stop Work Order.
- 8.2.1 The State may, at any time, by written order to the Contractor, require the Contractor to stop all or any part of the work called for by this Contract for period(s) of days indicated by the State after the order is delivered to the Contractor. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage.
- 8.2.2 If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the Contractor shall resume work. The Procurement Officer shall make an equitable adjustment in the delivery schedule or Contract price, or both, and the Contract shall be amended in writing accordingly.
- 8.3 Non-exclusive Remedies. The rights and the remedies of the State under this Contract are not exclusive.
- 8.4 Nonconforming Tender. Materials or Services supplied under this Contract shall fully comply with the Contract. The delivery of Materials or Services or a portion of the Materials or Services that do not fully comply constitutes a breach of contract. On delivery of nonconforming Materials or Services, the State may terminate the Contract for default under applicable termination clauses in the Contract, exercise any of its rights and remedies under the Uniform Commercial Code, or pursue any other right or remedy available to it.
- 8.5 Right of Offset. The State shall be entitled to offset against any sums due the Contractor, any expenses or costs incurred by the State, or damages assessed by the State concerning the Contractor's non-conforming performance or failure to perform the Contract, including expenses, costs and damages described in the Uniform Terms and Conditions.

9. Contract Termination

- 9.1 Cancellation for Conflict of Interest. Pursuant to A.R.S. § 38-511, the State may cancel this Contract within three (3) years after Contract execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of the State is or becomes at any time while the Contract or an extension of the Contract is in effect an employee of or a consultant to any other party to this Contract with respect to the subject matter of the Contract. The cancellation shall be effective when the Contractor receives written notice of the cancellation unless the notice specifies a later time. If the Contractor is a political subdivision of the State, it may also cancel this Contract as provided in A.R.S. § 38-511.
- 9.2 Gratuities. The State may, by written notice, terminate this Contract, in whole or in part, if the State determines that employment or a Gratuity was offered or made by the Contractor or a representative of the Contractor to any officer or employee of the State with the purpose of influencing the outcome of the procurement or securing the Contract, an amendment to the Contract, or favorable treatment concerning the Contract, including the making of any determination or decision about contract performance. The State, in addition to any other rights or remedies, shall be entitled to recover

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exemplary damages in the amount of three (3) times the value of the Gratuity offered by the Contractor.

- 9.3 Suspension or Debarment. The State may, by written notice to the Contractor, immediately terminate this Contract if the State determines that the Contractor has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a Subcontractor of any public procurement unit or other governmental body. Submittal of an offer or execution of a contract shall attest that the Contractor is not currently suspended or debarred. If the Contractor becomes suspended or debarred, the Contractor shall immediately notify the State.
- 9.4 Termination for Convenience. The State reserves the right to terminate the Contract, in whole or in part at any time when in the best interest of the State, without penalty or recourse. Upon receipt of the written notice, the Contractor shall stop all work, as directed in the notice, notify all Subcontractors of the effective date of the termination and minimize all further costs to the State. In the event of termination under this paragraph, all documents, Data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the State upon demand. The Contractor shall be entitled to receive just and equitable compensation for work in progress, work completed, and Materials or Services accepted before the effective date of the termination. The cost principles and procedures provided in A.R.S. § 41-2543 and A.A.C. Title 2, Chapter 7, Article 7, shall apply.
- 9.5 Termination for Default.
- 9.5.1 In addition to the rights reserved in the contract, the State may terminate the Contract in whole or in part due to the failure of the Contractor to comply with any term or condition of the Contract, to acquire and maintain all required insurance policies, bonds, licenses and permits, or to make satisfactory progress in performing the Contract. The Procurement Officer shall provide written notice of the termination and the reasons for it to the Contractor.
- 9.5.2 Upon termination under this paragraph, all goods, Materials, documents, Data, and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the State on demand.
- 9.5.3 The State may, upon termination of this Contract, procure, on terms and in the manner that it deems appropriate, Materials or Services to replace those under this Contract. The Contractor shall be liable to the State for any excess costs incurred by the State in procuring Materials or Services in substitution for those due from the Contractor.
- 9.6 Continuation of Performance Through Termination. The Contractor shall continue to perform, in accordance with the requirements of the Contract, up to the date of termination, as directed in the termination notice.

10. Contract Claims

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

11. Arbitration

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

SPECIAL TERMS AND CONDITIONS

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

SPECIAL TERMS AND CONDITIONS

- 5.3 The Contractor fails to complete the work required or furnish the materials required within the time stipulated by the contract;
 - 5.4 The Contractor fails to make progress in the performance of the contract and/or gives the Procurement officer reason to believe that the Contractor will not or cannot perform to the requirements of the contract;
 - 5.5 Upon receipt of the written notice of concern, the Contractor shall have a minimum of ten (10) days (Procurement officer may determine a longer period) to provide a satisfactory response to the Procurement officer. Failure on the part of the Contractor to adequately address all issues of concern may result in the Procurement officer resorting to any single or combinations of the following remedies.
 - 5.5.1 Cancel any contract;
 - 5.5.2 Reserve all rights or claims to damage for breach of any covenant of the contract;
 - 5.5.3 Perform any test or analysis on materials for compliance with the specifications of the contract. If the result of any test confirms a material no-compliance with the specifications, any reasonable expense of testing shall be borne by the Contractor;
 - 5.5.4 In case of default, the Procurement officer reserves the right to purchase materials, or to complete the required work in accordance with the Arizona Procurement Code. The Procurement officer may recover reasonable excess costs from the Contractor by;
 - 5.5.4.1 Deduction from an unpaid balance;
 - 5.5.4.2 Collection against the bid and/or performance bond; or
 - 5.5.4.3 Any combination of the above or any other remedies as provided by law.
6. **Contract Disputes:** Contract disputes arising under A.R.S. § Title 36, Chapter 29 shall be adjudicated in accordance with AHCCCS Rules.
7. **Confidentiality of Records and Disclosure of Confidential Information:**
- 7.1 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.
 - 7.2 The Contractor shall establish and maintain written policies procedures and controls, approved by AHCCCS, governing access to, duplication of, and dissemination of all such information for the purpose of assuring that no information contained in its records or obtained from AHCCCS or others carrying out its functions under the contract, is used or disclosed by it, its agents, officers or employees, except as required to efficiently perform duties under the contract. Persons requesting such information shall be referred to AHCCCS. The Contractor's data safeguard program shall further conform to the data confidentiality and security requirements of AHCCCS policy and procedures, and all-relevant state and federal requirements, including HIPAA standards.
 - 7.3 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.
 - 7.4 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.

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8. **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.
9. **RFP and Contract Order of Precedence:**
The parties to this contract shall be bound by all terms and conditions contained herein. For interpreting such terms and conditions the following sources shall have precedence in descending order: The Constitution and laws of the United States and applicable Federal regulations; the terms of the CMS Section 1115 waiver for the State of Arizona; the Arizona State Plan; the Constitution and laws of Arizona, and applicable State Rules; the terms of this Contract which consists of the RFP, the Proposal of the Successful Offeror, and any Best and Final Offer including any attachments, executed amendments and modifications; and AHCCCS policies and procedures.
- 9.1 The RFP consists of the following, in order of Precedence:
- 9.1.1 HIPAA Business Associates Agreement or Addendum (if included)
 - 9.1.2 Special Terms and Conditions;
 - 9.1.3 Uniform Terms and Conditions;
 - 9.1.4 Statement or Scope of Work;
 - 9.1.5 Specifications;
 - 9.1.6 Attachments;
 - 9.1.7 Exhibits;
 - 9.1.8 Documents referenced or included in the Solicitation.
 - 9.1.9 AHCCCS policies and procedures incorporated by reference.
- 9.2 The awarded Contract between AHCCCS and the Contractor consist of the following in order of Precedence:
- 9.2.1 All Contract Amendments issued after award in descending order,
 - 9.2.2 The Request for Proposal (RFP) as described above; and
 - 9.2.3 The proposal submitted by the Contractor in response to the RFP including any Best and Final Offers.
- 9.3 In the event of a conflict in language between the Offeror’s proposal (including any Best and Final Offers) and the RFP (including AHCCCS policies and procedures incorporated by reference), the provisions and requirements set forth and/or referenced in the RFP (including AHCCCS policies and procedures incorporated by reference) shall govern.
- 9.4 The contract shall be construed according to the laws of the State of Arizona. The State of Arizona is not obligated for the expenditures under the contract until funds have been encumbered.
10. **Administrative Changes**
The Procurement Officer, or authorized designee, reserves the right to correct any obvious clerical, typographical or grammatical errors, as well as errors in party contact information (collectively, “Administrative Changes”), prior to or after the final execution of a Contract or Contract Amendment. Administrative Changes subject to permissible corrections include: misspellings, grammar errors, incorrect addresses, incorrect Contract Amendment numbers, pagination and citation errors, mistakes in the labeling of the rate as either extended or unit, and calendar date errors that are illogical due to typographical error. The Procurement Office shall subsequently notice the Contractor of corrections to administrative errors in a written confirmation letter with a copy of the corrected Administrative Change attached.

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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.

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. **Ownership of Information and Data:**

- 14.1 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.
- 14.2 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.
- 14.3 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

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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.

15. Records:

- 15.1 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. Records shall include, but not be limited to, financial statements, case files (both hard copy and stored data), and other records specified by AHCCCS.
- 15.2 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.
- 15.3 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:
 - 15.3.1 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.
 - 15.3.2 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.
 - 15.3.3 Completed case files shall be scheduled for archive shipment to AHCCCS, as defined by AHCCCS Policy and Procedures.

16. **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.

17. **Staff Background Checks**

If not already required by the licensing authority, any staff or individual who comes into contact with members shall be subject to this requirement, unless otherwise indicated in writing by AHCCCS. For the purposes of this requirement, "Staff" is defined as any individual who is an employee, independent contractor, volunteers, consultant or subcontractor of the Contractor and who during their course of work on this Contract will have contact with residents/members:

- 17.1 The Contractor shall, at its own expense, complete a background check on all Staff.
- 17.2 The background check shall be completed via a recognized law enforcement agency or qualified third party within thirty (30) days of assignment of Staff, and annually thereafter or as agreed to in writing by AHCCCS.
- 17.3 At minimum, the background check shall include criminal record information, and employment history. Staff may not be permitted to perform work under this contract without clearance of their background check, unless otherwise agreed to in writing by AHCCCS.

SPECIAL TERMS AND CONDITIONS

- 17.4 The Contractor shall not allow any Staff to have access to the system or data after thirty (30) days of assignment without clearance of their background check, unless otherwise agreed to in writing by AHCCCS.
- 17.5 The Contractor shall submit written confirmation to the AHCCCS on an annual basis of all Staff who have been background checked and approved to work on the Contract.

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Insurance Requirements

1. Insurance Requirements

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.

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. Minimum Scope and Limits of Insurance

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

2.1. Commercial General Liability (CGL) – Occurrence Form

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

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

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

2.2. 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.

SPECIAL TERMS AND CONDITIONS

Insurance Requirements

2.3. Workers' Compensation and Employers' Liability

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

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

2.4 Professional Liability (Errors and Omissions Liability)

- Each Claim \$2,000.000
- Annual Aggregate \$2,000.000

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

Additional Insurance Requirements

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

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).

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

3. Notice of Cancellation

Applicable to all insurance policies required within the Insurance Requirements of this Contract, Contractor's insurance shall not be permitted to expire, be suspended, be canceled, or be materially changed for any reason without thirty (30) days prior written notice to the State of Arizona. Within two (2) business days of receipt, Contractor shall 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 mailed, emailed, hand delivered or sent by facsimile transmission to AHCCCS.

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Insurance Requirements

4. Acceptability of Insurers

Contractor's insurance shall be placed with companies licensed in the State of Arizona or hold approved non-admitted status on the Arizona Department of Insurance List of Qualified Unauthorized Insurers. Insurers shall have an "A.M. Best" rating of not less than A- VII. The State of Arizona in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

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

5. 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.

All such certificates of insurance and policy endorsements shall 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.

Each insurance policy required by this Contract shall 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.

All certificates required by this Contract shall be sent directly to AHCCCS. 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.

6. 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.

7. 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.

8. 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

BUSINESS ASSOCIATE 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;

HIPAA BUSINESS ASSOCIATES ADDENDUM

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

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

- 2.3.2. Mitigation. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of the Contract.
- 2.3.3. Sanctions. Business Associate shall have and apply appropriate sanctions against any employee, subcontractor or agent who uses or discloses AHCCCS PHI in violation of this Addendum or applicable law.
- 2.4. In accordance with 45 CFR §164.502(e)(1)(ii) and §164.308(b)(2), if applicable, ensure that any subcontractors that create, receive, maintain or transmit PHI on behalf of the Business Associate agree to the same restrictions, conditions and requirements that apply to the Business Associate with respect to such information;
- 2.5. Make available PHI in a designated record set to AHCCCS as necessary to satisfy AHCCCS' obligations under 45 CFR §164.524;
- 2.6. Make any amendment(s) to PHI in a designated record set as directed or agreed to by AHCCCS pursuant to 45 CFR §164.526, or take other measures as necessary to satisfy AHCCCS' obligations under 45 CFR §164.526;
- 2.7. Maintain and make available the information required to provide an Accounting of Disclosures to AHCCCS as necessary to satisfy AHCCCS' obligations under 45 CFR §164.528;
- 2.8. To the extent Business Associate is to carry out one of more of AHCCCS' obligations under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to AHCCCS in the performance of such obligation(s); and
- 2.9. Make its internal practices, books and records available to AHCCCS and the Secretary for purposes of determining compliance with the HIPAA rules.

HIPAA BUSINESS ASSOCIATES ADDENDUM

3. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE

- 3.1. Business Associate may only use or disclosure PHI as necessary to perform the services and obligations set forth in the underlying Contract;
- 3.2. Business Associate may use or disclose protected health information as required by law;
- 3.3. Business Associate agrees to make uses and disclosures and requests for protected health information consistent with Minimum Necessary, as required at 45 § CFR 164.502(b) and 164.514(d).
- 3.4. Business Associate may not use or disclose protected health information in a manner that would violate Subpart E of 45 CFR Part 164 if done by AHCCCS, except for the specific uses and disclosures set forth below in (3.5 and 3.6);
- 3.5. Business Associate may use protected health information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate; and
- 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.

HIPAA BUSINESS ASSOCIATES ADDENDUM

- 5.3. Obligations of Business Associate Upon Termination: Upon termination, cancellation, expiration or other conclusion of the Contract, Business Associate, with respect to PHI received from AHCCCS, or created, maintained, or received by Business Associate on behalf of AHCCCS, shall:
- 5.3.1. Retain only that PHI which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities;
 - 5.3.2. Destroy or return to AHCCCS all remaining PHI that the Business Associate still maintains in any form;
 - 5.3.3. Continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic PHI to prevent use or disclosure of the PHI, other than as provided for in this Section, for as long as Business Associate retains the PHI;
 - 5.3.4. Not use or disclose the PHI retained by Business Associate other than for the purposes for which such protected health information was retained and subject to the same conditions set out in this Addendum that applied prior to termination; and
 - 5.3.5. Destroy or return to AHCCCS the PHI retained by Business Associate when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal and contractual responsibilities.
- 5.4. Survival: The obligations of Business Associate under this Section shall survive the termination of the Contract.

6. INDEMNIFICATION AND MISCELLANEOUS

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

END OF SOLICITATION

Intentionally left blank.