



Request for Proposal Notice Page

Arizona Department of Administration
State Procurement Office
100 N 15th Avenue
Phoenix, AZ 85007

Solicitation Number:

BPM003836

Description:

Healthcare Analytics and Reporting Tool (HART)

Solicitation Due Date and Time:

As indicated in the Arizona Procurement Portal (APP)

Pre-Offer Conference:

A Pre-Offer Conference will be conducted as indicated in the Arizona Procurement Portal (APP).

You must register in advance for the Pre-Offer Conference. Please see link in APP to register.


Proposals will only be accepted online in “The State’s e-Procurement System” at <https://app.az.gov> until the “Bid/Offer Due Date” indicated in “The State’s e-Procurement System” for the Solicitation No. shown at the top of this page. Proposals must be in the State Procurement Office’s possession online no later than that deadline.

Submit technical inquiries about navigating and/or submitting proposals in the State’s e-Procurement System to the State’s e-Procurement System Help Desk by phone at (602) 542-7600, option 2; or by email to app@azdoa.gov

LATE PROPOSALS WILL NOT BE CONSIDERED. No extension or grace period will be given for delays or incomplete proposals caused by internet connectivity problems, file uploading difficulties, or misunderstanding of the requirements or procedures for online submission in “The State’s e-Procurement System”.

It is the responsibility of the supplier/offeror to routinely check the APP website for Solicitation Amendments. Additional instructions for preparing an Offer are included in this solicitation.

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 for the accommodation.

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Solicitation Summary
Request for Proposal
Solicitation No. BPM003836
Healthcare Analytics and Reporting Tool (HART)

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State Procurement Office
100 N 15th Avenue
Phoenix, AZ 85007

1. What the State is Soliciting?

The Arizona Department of Administration, State Procurement Office (the State), on behalf of the Arizona Department of Administration, Benefit Service Division as authorized under A.R.S. § 41-2501, is seeking to establish one or more contracts to provide "Healthcare Analytics and Reporting Tool (HART)" in conformance with state and federal law.

The State anticipates awarding contract(s) with the intent to secure service coverage statewide. Whether or not it actually enters into any contracts, how many contracts it enters into, and how the work is awarded between those contracts are all at the State's discretion. Furthermore, the State will use any awarded contracts on an as-needed basis, with no guarantee as to its actual spending under them.

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

2. What is in the Solicitation?

2.1. At the time of publication, the following documents are included in the Solicitation:

2.1.1. Attachment: BPM003836 Solicitation Requirements

- 2.1.1.1. Notice / Cover Page
- 2.1.1.2. Table of Contents
- 2.1.1.3. Scope of Work
- 2.1.1.4. Special Terms and Conditions
- 2.1.1.5. Uniform Terms and Conditions
- 2.1.1.6. Exhibits (as applicable)

2.1.2. Attachment: BPM003836 Solicitation Instructions

- 2.1.2.1. Special Instructions to Offerors
- 2.1.2.2. Uniform Instructions to Offerors

2.1.3. Solicitation Attachments:

- 2.1.3.1. Attachment 1 - BPM003836 Offer and Acceptance Form
- 2.1.3.2. Attachment 2 - BPM003836 Boycott of Israel Disclosure
- 2.1.3.3. Attachment 3 - BPM003836 Confidential Information
- 2.1.3.4. Attachment 4 - BPM003836 Conformance Statements and Supplements
- 2.1.3.5. Attachment 5 - Omitted
- 2.1.3.6. Attachment 6 - BPM003836 Letter of Insurability
- 2.1.3.7. Attachment 7 - Omitted
- 2.1.3.8. Attachment 8 - Omitted
- 2.1.3.9. Attachment 9 - Omitted
- 2.1.3.10. Attachment 10 - Omitted
- 2.1.3.11. Attachment 11 - BPM003836 BAA




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- 2.1.3.12. Attachment 12 - BPM003836 Offeror Questionnaire
- 2.1.3.13. Attachment 13 - BPM003836 Offeror Affirmative Statement
- 2.1.3.14. Attachment 14 - Arizona_Baseline_Security_Controls_Spreadsheet_-_Level_1

- 2.2. The State may issue a Solicitation Amendment at any time after solicitation publication, and before the proposal due date. It is the responsibility of the supplier/Offeror to routinely check the APP website for any Solicitation Amendments and revised documents.


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1. INTRODUCTION & BACKGROUND

- 1.1. The Arizona Department of Administration, on behalf of the State of Arizona (hereinafter referred to as “ADOA” or the “State”) is responsible for administering the Benefit Options Plan (hereinafter, the “Health Plan”) for all State agencies, universities, boards, and commissions. The Health Plan is self-funded for all eligible participants under Arizona Revised Statutes (A.R.S.) § 38-651. Currently, the Health Plan is comprised of medical coverage offered by Blue Cross Blue Shield of Arizona, and UnitedHealthcare, with pharmacy benefits provided by MedImpact. Dental coverage consists of both a self-funded indemnity/PPO product, offered by Delta Dental; and a fully-funded, prepaid DHMO product offered by Cigna Health Care. Vision coverage consists of both a fully-funded and a discount program provided by Avesis. Short Term and Long Term Disability benefit plans offered by MetLife and Basic and Optional Life Insurance benefits are offered by Securian. The wellness component of the Health Plan is comprised of health screenings through Mobile Onsite Mammography, Prostate Onsite Projects, and Healthwaves; health portal, assessment and coaching through Virgin Pulse. Also, an Employee Assistance Program offered by ComPsync.
- 1.2. A historic summary detail of the Benefit Options Plan can be found in the 2019 Annual Report (see Exhibit A: Annual Report).

2. Goals & Purpose

- 2.1. Through this solicitation (hereinafter the “Solicitation”) ADOA formally requests proposals from vendors that can provide the State with a Healthcare Analytics and Reporting Tool (hereinafter, “HART” or the “Tool”). Specifically, ADOA wishes to use the HART to analyze several aspects of the Health Plan, such as: efficiency and quality; financial strengths and weaknesses; and performance. At a minimum, ADOA requests that the HART convert and aggregate claims data received from ADOA’s vendors into aggregated Health Plan reports (via trends, dashboards, executive reports, and/or ad-hoc reports) as well as incorporate predictive modeling for the medical, dental, and pharmacy plans.
- 2.2. ADOA requests that the HART convert and aggregate claims data received from ADOA’s vendors into aggregated Health Plan reports (via trends, dashboards, executive reports, and/or ad-hoc reports) as well as incorporate predictive modeling for the medical, dental, and pharmacy plans.
- 2.3. ADOA seeks a Contractor that will collaborate with ADOA and ADOA-contracted vendors including, but not limited to, vendors for ADOA’s: medical, pharmacy, dental, vision, and wellness plans to achieve the aforementioned enhanced aggregate reporting capabilities.

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- 2.4. Contractor shall provide standard analytic methodologies to support population health reporting and shall partner with ADOA to create custom, ADOA-specific measurements as needed.

3. ACCOUNT MANAGEMENT

- 3.1. Contractor shall provide to ADOA a dedicated team of professionals responsible for ensuring that all Contract requirements and service deliverables are timely and adequately met. Specifically, Contractor shall provide an Account Management Team that has experience with the HART and is knowledgeable regarding ADOA's Health Plan. Team members shall ensure that the HART meets the strategic objectives of ADOA and shall advocate for progress and/or related needs when applicable. The Account Management Team shall include the following individuals:
 - 3.1.1. Executive Sponsor – This individual shall partner with ADOA and shall be responsible for providing strategic recommendations to ADOA senior management.
 - 3.1.2. Account Manager – This individual shall be the single, day-to-day contact for ADOA with primary responsibility for: responding to all emergent issues, coordinating efforts to resolve issues, and overseeing all aspects of project management including, but not limited to, the initial implementation and ongoing program management. The Account Manager shall have a minimum of two (2) years of experience within the Contractor's organization or a similar industry
 - 3.1.3. IT System Manager – This individual shall be the primary contact for providing technical assistance to ADOA regarding the HART, and shall be responsible for resolving all IT-related issues that arise for the duration of the Contract.

4. COST / BILLING

- 4.1. Unless otherwise agreed to in writing by ADOA and Contractor, ADOA shall remit payments due to Contractor by way of Automated Clearinghouse (ACH). Forms and instructions for setting up such payments with the State can be found at:
http://www.gao.az.gov/Vendor/payment_options_home.asp
- 4.2. Contractor shall notify ADOA in writing of any payment discrepancies within ninety (90) days of receipt of payment. Discrepancies resulting in variances of less than five percent (5%) shall be accepted by the Contractor without dispute. Failure to provide written notification of a payment discrepancy within ninety (90) days shall


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mean that Contractor accepts ADOA's calculations, records, and payments without dispute. Contractor shall not assess late fees, penalties, interest, or other charges on disputed amounts for up to sixty (60) days while the dispute is being resolved.


- 4.3. Contractor shall submit to ADOA, in writing, any request for a change in remittance at least ten (10) business days in advance of ADOA's implementation of the requested change.
- 4.4. Contractor shall have the right to audit appropriate ADOA records, at Contractor's expense, to determine the accuracy of fees paid to Contractor.

5. DATA & SYSTEMS


- 5.1. The Contractor shall complete file transfers for the core vendors as indicated in Exhibit B: Data Sources and shall integrate this data into the HART. Contractor shall establish a schedule for delivery and integration of such files and notify ADOA if any scheduled transfers are late, absent or have failed data quality validation.
- 5.2. Contractor shall provide clear documentation to ADOA and ADOA's vendors which clearly states all required fields to support robust eligibility, medical, pharmacy, dental reporting within the HART. Contractor shall document and notify ADOA of any critical fields missing from the file layouts that will have an analytic impact on ADOA's reporting capabilities within the HART.
- 5.3. Contractor, together with ADOA subject matter experts, shall establish data quality criteria and data quality thresholds for each required field, as well as procedures for profiling incoming data to ensure that those thresholds are met before data is integrated into the data repository.
- 5.4. Contractor may be required in the future to accommodate the additional file feeds from wellness, dental, and vision vendors.
- 5.5. Contractor shall confirm system readiness for ICD-10 code sets. In addition, Contractor shall establish a schedule for periodic updates to master ICD-10, CPT, Pharmaceutical classes and other code sets to ensure that the master data is synchronized with versions of those code sets used in the Data Sources.
- 5.6. All data shall be owned by ADOA, without exception, and ADOA shall have access to all data when requested, both at regular reporting intervals and on an ad-hoc basis, as part of the base administrative fees and at no additional cost to ADOA. The Tool shall provide access to this data.

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- 5.7. ADOA shall determine the security and access rights of ADOA-designated users for the HART and shall have the ability to assign, modify, or terminate security and access assignments directly.
- 5.8. The Tool shall be kept up-to-date and shall meet industry best practices and comply with all federal regulations. Any ADOA mapping and/or customizations shall be preserved whenever system upgrades occur.
- 5.9. Contractor shall keep ADOA's data separate from all other customer data.
- 5.10. Contractor shall ensure the confidentiality and integrity of all Health Plan data.
- 5.11. Contractor shall provide 24/7 access to the HART for all ADOA-designated users.
- 5.12. The HART shall contain metadata that is comprehensive and easily accessible. Metadata shall include all information necessary for users to understand the meaning of the data, including, without limitation, data source, validation criteria, data quality criteria, business description of each element, physical format and attributes, and required precision.
- 5.13. Contractor shall provide to ADOA additional sources of any/all HART metadata (including data dictionaries in industry-standard format, with crosswalks; codes; definitions; data sets or subsets; and/or any other information ADOA requires to facilitate the use of the HART) within ten (10) days of ADOA's request.
- 5.14. All ADOA-related data obtained by Contractor shall be provided to ADOA at the termination of the Contract. In addition, Contractor shall maintain this data for no less than seven (7) years from termination of the Contract. Data shall be readily available and accessible to ADOA upon request, indefinitely or until such time as ADOA approves otherwise.
- 5.15. Contractor shall receive eligibility files from all ADOA-contracted vendors who provide such files. These files shall be in an ANSI 834 format (or a modified format as agreed upon between ADOA and Contractor) that meets ADOA's specific file layout requirements at no additional cost to ADOA. Contractor shall ensure that data integration processes for eligibility do not create duplicates in the data.
- 5.16. Contractor shall establish appropriate secure FTP site(s) to exchange eligibility and claims data, on a monthly basis or agreed upon frequency, with ADOA and ADOA-contracted vendors at no additional cost to ADOA.

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- 5.17. Contractor shall conduct reconciliation and trend tests on each data feed with each update cycle and shall work with the appropriate ADOA-contracted vendors to keep data accurate and consistent among all parties as part of the base administrative fees and at no additional cost to ADOA.
- 5.18. Contractor shall reconcile ADOA's monthly eligibility files (as well as any other files identified by ADOA as being time-sensitive) within twenty-four (24) hours of receipt.
- 5.19. Contractor shall match Claims data unambiguously to related eligibility data. Contractor shall notify ADOA of Claims that cannot be matched to eligibility data.
- 5.20. To comply with ADOA's monthly reporting and analytics cycle, the eligibility and claims data for each month shall be loaded, integrated and reconciled within the HART system by the 15th of the following month.
- 5.21. Contractor shall provide to ADOA fifteen (15) user IDs to access the web-enabled Tool as part of the base administrative fees and at no additional cost to ADOA.
- 5.22. Contractor shall offer to ADOA's staff comprehensive onsite or web-based training for the HART as part of the base administrative fees and with no additional cost to ADOA.
- 5.23. Contractor shall provide ADOA staff with technical support for the Tool as part of the base administrative fees and at no additional cost to ADOA.
- 5.24. Contractor shall provide technical assistance to ADOA and/or its contracted vendors as it relates to organizing, supplying, processing, reporting or interpreting data via the HART on a monthly basis.
- 5.25. Upon identification and determination of system problems, programming problems, or transfer problems, Contractor shall notify ADOA of the issue immediately. Contractor shall make every effort necessary to correct such problems as soon as possible including, but not limited to working nights, weekends, and holidays, to minimize any negative impact to ADOA employees, and to maintain continual operation of the Health Plan at no additional cost to ADOA.
- 5.26. Contractor shall not disclose data based on ADOA's participants, in detail or in aggregate, to any other party without ADOA's prior written approval.
- 5.27. Contractor may have limited consulting engagement projects with the Contractor's in-house Subject Matter Experts (SMEs) within the scope of the HART tool. Engagements would be on a case-by-case basis with a not to exceed cost.
- 5.28. Contractor recognizes that Arizona state procurement regulations require contracts to be re-bid at specific intervals and shall cooperate fully with a successor contractor

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to ensure a smooth transition of data and knowledge at the end of this contract, at no additional cost.

6. GENERAL REQUIREMENTS


- 6.1. Upon implementation of the Contract, Contractor shall provide ADOA with access to self-funded claims for medical, pharmacy, and dental plans within the HART. ADOA reserves the right to add additional ADOA- contracted vendors to the Tool in the future, as agreed upon in Attachment III, Pricing Sheet.
- 6.2. Contractor's services shall, at all times, comply with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and its subsequent amendments and changes. Any known or suspected HIPAA violation that pertains to or affects the Contract or services provided herein shall be reported to ADOA immediately, in writing. Contractor shall also notify ADOA of any and all actions taken as a result of such a violation.
- 6.3. Contractor shall, at all times, communicate through HIPAA-compliant electronic sites when exchanging data between itself and ADOA, or any other ADOA-contracted vendor, as requested by ADOA and at no additional cost.
- 6.4. Contractor shall have the capability and requisite experience and expertise to manage the HART for ADOA in accordance with the provisions and requirements set forth herein.
- 6.5. At a minimum, Contractor shall have:
 - 6.5.1. One (1) government-related client with a minimum of ten thousand (10,000) lives;
 - 6.5.2. Three (3) clients with a minimum of five thousand (5,000) lives; and
 - 6.5.3. At least five (5) years of business experience.
- 6.6. Contractor shall not have had any "significant" HIPAA breaches within the past five (5) years. (A significant breach is defined as one affecting five hundred (500) or more individuals and which was posted on the hhs.gov website, as required by § 13402(e)(4) of the HITECH Act.)
- 6.7. Contractor shall notify ADOA within thirty (30) days of any change in its ownership, partners, or control affecting a ten percent (10%) or greater interest; any acquisition by it of a ten percent (10%) or greater interest in any subsidiary; and/or any new agreement with, by, or between it and any affiliates that is relevant to this Contract.

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- 6.8. Contractor shall disclose to ADOA all subcontractors that provide the services requested in this Solicitation. Contractor shall notify ADOA at least ninety (90) days prior to the effective date of any change to subcontractors.
- 6.9. Contractor shall advise ADOA immediately upon notification of any potential litigation affecting, relating to, or involving: Contractor, ADOA, and/or any subcontractor regarding the services offered and/or provided under this Contract.
- 6.10. Neither Contractor nor its subcontractors shall provide any offshore sourced services to ADOA.
- 6.11. Contractor shall never physically locate, or in any way access, Health Plan data from anywhere outside the United States of America.
- 6.12. All services provided under this Contract shall be quality services, meeting or exceeding industry standards as well as ADOA approval. Upon failure to meet industry standards, or when standards are inappropriate, undesirable, and/or of poor quality as identified by ADOA, Contractor shall take immediate, corrective action and provide to ADOA a written corrective action plan (upon request or within 14 days of identifying the faulty service) that clearly outlines the corrective steps to be taken and the timeframes for their completion. The resources needed to correct services that do not meet industry and/or ADOA-quality standards shall be provided at no additional cost to ADOA. Further, no fees shall be charged for the recovery or reimbursement of any funds identified in an audit finding.
- 6.13. Per Solicitation Item 6.12, should Contractor or ADOA identify any deficiencies in the performance of the Contract, including missed performance guarantees, or audit findings, Contractor shall address the deficiency immediately and provide to ADOA a written corrective action plan (Exhibit C: Corrective Action Plan Template) of its anticipated, remedial process. The corrective action plan shall include, at a minimum, the following elements:
 - 6.13.1. Identification of the specific error or finding;
 - 6.13.2. The causal factor(s) for the error or finding;
 - 6.13.3. The name and title of the person accountable for implementing and overseeing the corrective action plan;
 - 6.13.4. Specific deliverables for correcting the error or finding;
 - 6.13.5. The anticipated completion date(s) of the deliverables;
 - 6.13.6. The metrics used to measure the success of each deliverable;

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- 6.13.7. The member notification process, if applicable; and
- 6.13.8. The anticipated date of notification to ADOA once issue resolution is complete.
- 6.14. Contractor shall obtain written approval from ADOA prior to implementing any new programs and/or modifying any existing programs that relate to or affect the Contract, HART, or services provided herein.
- 6.15. All eligibility is determined by ADOA, pursuant to A.R.S. § 38-651, § 38-651.01, § 38-782, and Arizona Administrative Code (A.A.C.) R2-6-301. Eligibility shall also conform to federal regulations, including 26 U.S. Code 125, the Internal Revenue Code of 1986, the Patient Protection and Affordable Care Act (PPACA), the Consolidated Omnibus Budget Reconciliation Act (COBRA), the Family Medical Leave Act (FMLA), Medicare, Medicaid, and the Uniformed Services Employment and Reemployment Rights Act (USERRA). ADOA shall be the final authority in deciding eligibility of members.
- 6.16. Contractor shall accept eligibility records from the eligibility files supplied by ADOA or an ADOA-contracted medical, pharmacy or dental network provider. Specifically, ADOA will provide Contractor with a monthly eligibility file in an electronic format (Exhibit D: Eligibility File Layout). ADOA may determine it is beneficial to change the format at some future time and reserves the right to do so at no charge to ADOA.
- 7. HART / TOOL REQUIREMENTS
 - 7.1. The Tool shall be organized in a logical and intuitive manner which allows for easy navigation by all ADOA users. All reporting types (i.e., dashboards, standard reports, ad-hoc reports, etc.) shall be accessible from the same portal and seem unified as a single reporting platform (i.e., the user should not feel as if there is movement to another application when going from one reporting type to another.)
 - 7.2. The Tool shall maintain consistent performance in terms of data-entry capability, system updates, report viewing, report creation, report return times, and report export times, when the claims and encounter data indicated in Data Sources table are entered and stored on the Tool by ADOA.
 - 7.3. The performance of the HART shall not diminish as more data is added over time.
 - 7.4. The Tool shall define 'risk' in a manner that is applicable to the ADOA Health Plan population, and shall allow for the identification of 'high-risk' ADOA Health Plan groups and members.

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- 7.5. The Tool shall have dashboard reports. Pre-existing reports shall address questions posed to and received from ADOA. The Tool shall allow for the development of unique dashboards for different departments within ADOA's Benefit Services Division (e.g., Plan Administration, Audit, Finance, and/or Contracts). Reports shall contain appropriate metadata that reflect any edits made to the report by a previous end user. Reports shall be equipped with filter functions that allow easy editing of values on key fields by the end user. There should be an ability to "drill down" into greater specificity from higher level, graphical summaries. Contractor shall have in place a process to evaluate and update existing reports when modifications are made to any analytic measures.
- 7.6. The Tool shall have standard reports. Pre-existing reports shall address questions posed to and received from ADOA. It shall have the ability to copy existing, standard reports and modify them to create new reports, unique to, and appropriate for, ADOA. Reports shall be equipped with filter functions that allow for easy editing of values on key fields by the end user, including the ability to aggregate and disaggregate the values by various characteristics (e.g., demographics, eligibility status, or plan type).
- 7.7. Contractor shall have a process to evaluate and update existing standard reports when modifications are made to any analytical measures. Reports shall ensure that key business statistics are addressed and presented in an organized and logical manner.
- 7.8. The Tool shall be equipped with a method to develop ad-hoc reports. The process to do so should be easily understood by someone with average-level spreadsheet skills. Reports shall contain appropriate metadata that reflect any edits made to the report by the end user.
- 7.9. The Tool shall contain a predictive modeling component and shall identify special needs and at-risk populations for potential interventions in a manner that is applicable to the ADOA Health Plan population. Further, it shall be capable of identifying and predicting members who have or will disengage from ADOA's Health Plan and/or programs for reasons other than meeting eligibility requirements. The Tool's predictive modeling shall indicate eligibility and enrollment opportunities. Additionally, the Tool shall have capability to analyze prior predicted results against actual reported results and quantify the differences.
- 7.10. The Tool shall analyze cost. The approaches used shall be applicable to ADOA's Health Plan and advance the State's objectives and mission, as it pertains to the Health Plan. At minimum, the Tool shall measure Per Member Per Month (PMPM) against the following dimensions: category of service, care setting, population, risk-adjusted population, and payor.


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- 7.11. The Tool shall standardize cost analyses across different service types including: hospital, outpatient, dental, prenatal, long-term care, durable medical equipment, transportation, and pharmacy. It shall have the capability of performing complex cost-savings analyses. It shall account for adjusted payments, and shall handle cost and payment structures beyond traditional claims and encounter data (e.g., Medicare phase-down contribution payments to managed care entities and/or provider assessments payments.)
- 7.12. The Tool shall include NCQA HEDIS Quality of Care (QoC) measurements and capabilities applicable to the ADOA Health Plan population. Contractor shall update these measurements routinely.
- 7.13. The Tool shall include benchmarks that are applicable to the ADOA Health Plan population. The benchmarks shall easily configure into new reports and combined with existing, standard reports.
- 7.14. The Tool shall summarize service utilization. At a minimum, trend analyses shall be available by 'per thousand' members, by category of service, by care setting, and by population. Analysis should allow for clear assessment of under- and over-service utilization. Utilization measures shall identify opportunities to improve care and lower costs.
- 7.15. The quality and timeliness of encounter data shall remain a high priority for Contractor. The HART shall have a method to test both encounter and claims data for completeness, validity, and reasonableness at the time such data are uploaded from ADOA's file onto the Tool.
- 7.16. The Tool shall allow for stratification profiling in all of its reporting approaches (i.e., dashboards, standard reports, ad-hoc reports, etc.). At minimum, the Tool shall allow for the categorization of members by age, sex, geography, enrollment status, and coordinated/managed care program. Additionally, the Tool shall have the capability to report multiple member attributes when stratification analyses are performed.
- 7.17. The Tool shall allow for varied and comprehensive analyses of pharmacy data. Specifically, it should have existing methods for identifying cost-savings and over/under utilization in pharmacy service. The Tool shall allow for easy identification and analysis of Specialty drugs. The Tool shall have capability to identify prescription drug utilization by plan (i.e., EPO, PPO) and by medical program vendor.
- 7.18. The Tool shall enable ADOA to track utilization and costs related to unique groupings of drugs defined by the State (e.g., ADOA's Preferred Drug List). The Tool shall allow for the analysis of different types of pharmacies, including: hospital, outpatient, dental, prenatal, and long-term care. And it shall be able to categorize Pharmacy data by:

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clinical condition, recipient age, sex, geography (region and county), enrollment status, and coordinated/managed care program.

- 7.19. The Tool shall provide for rolling up/down data across different reporting and shall allow users to easily move from “big picture” to member-level analyses. The ability to “drill down” shall be a security right, so that some users will be restricted from certain views. Assigning and editing such rights shall be available to ADOA at the report level.
- 7.20. The Tool shall allow users to export reports to commonly-used formats, including PDF and Microsoft Excel. There should be consistency for exporting data across reporting types. Metadata shall transfer with the data.
- 7.21. The Tool shall provide for Comprehensive claims’ auditing functionality and reporting that allows parameters to be added or removed. The Contractor’s auditing module may include an Artificial Intelligence (AI) engine.
- 7.22. The tool may have the capability to define unique member identification criteria (rule) by user.
- 7.23. The Tool shall have the capability to upload a user’s list of dimensional data into the system to perform ad-hoc queries and reporting; for example: members’ IDs or claim IDs.
- 7.24. The Tool shall have the ability to calculate retrospective and prospective Risk Adjustment factors applicable to the ADOA Health Plan population; based on a member(s) medical and pharmacy claim data.
- 7.25. The Tool shall include a dashboard enumerating all data feeds that make up the underlying data set, the last date each was updated, and a flag indicating whether the data is up-to-date based on the schedule for each data source.
8. PUBLIC INFORMATION REQUESTS, MEDIA REQUEST, PRESS RELEASES OR OTHER PUBLIC COMMUNICATIONS
 - 8.1. Contractor shall notify the ADOA Benefits Services Division within twenty-four (24) hours of receiving a written public information request, written media request, or other public inquiry regarding the Health Plan. Contractor agrees that ADOA shall approve all responses prior to their release.
 - 8.2. Contractor shall transfer all telephonic inquiries for public information to ADOA for response and resolution.

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- 8.3. Contractor shall submit copies to ADOA of all press releases pertaining to, or having an impact on, ADOA or the Health Plan. All such releases shall be approved in writing by ADOA prior to their submission or response.

9. REPORTING

- 9.1. Contractor shall provide to ADOA a comprehensive reporting package in standard formats (Word, PDF, xls, cvs) that includes, but is not limited to, the following reports. Such reporting shall be based on aggregate vendor claims data as well as individual vendor claims data.
 - 9.1.1. Financial;
 - 9.1.2. Utilization;
 - 9.1.3. Dashboard;
 - 9.1.4. Executive Summary;
 - 9.1.5. Ad-Hoc Reporting; and
 - 9.1.6. Benchmarking.

10. SECURITY/ AZRAMP

- 10.1. Contractor and the HART shall operate using the highest security standards at all times. Security policies and procedures for Contractor and the HART shall be clearly documented, regularly updated, and in compliance with all applicable laws and regulations.
- 10.2. Contractor shall submit to a third-party security audit once per calendar year, share results and remediation plans with the State CIO and CISO.
- 10.3. Contractor's data centers shall be auditable by State and federal auditors.
- 10.4. Contractor shall submit to, and must pass, an annual SSAE16 Type II audit as part of its existing security plan.
- 10.5. Contractor shall have a Disaster Recovery Plan that is audited by a third-party auditor. Contractor shall make the Disaster Recovery Plan and/or the corresponding audit report available to ADOA upon request.
- 10.6. If the solution being proposed requires data to be stored in the cloud, Contractor shall respond to the Arizona Security Controls Spreadsheet to identify and verify security best practices are being followed. This is a post award activity.



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1. Compensation method

Contractor will be compensated based on the final detailed written quote approved by the Customer. Pricing shall not exceed the labor rates indicated on the Pricing Document.

Contractor will be compensated based on the final detailed written quote approved by the Eligible Agency.

2. Pricing

2.1. Contractor's Best Pricing. Supplier warrants that, for the term of the Contract, the prices and discounts set out in Attachments titled Pricing, including any subsequent agreed amendment to it (the "Contract Pricing"), will be equal to or better than the lowest prices and largest discounts, both separately and in combination, at which Contractor sells equivalent services, items of equipment and materials.

2.1.1. That price-plus-discount equivalence ("Contractor's Best Pricing") is intended to be irrespective of whether or not those other sales have special purchase terms, conditions, rebates or allowances.

2.1.2. If Contractor's Best Pricing for equivalent services, items of equipment and materials is better than the Contract Pricing, then Contractor agrees to adjust the Contract Pricing to match the Contractor's Best Pricing for all sales related to the Contractor made after the date when the Contractor's Best Pricing was first better than the Contract Pricing.

2.1.3. For clarification of intent, that date is intended to be the date when the difference first occurred, which might have been before the difference was first identified. If it was before, then Supplier agrees to charge at less than the Contract Pricing until the extended difference that would have been realized (i.e., if the Contractor's Best Pricing had been applied when it should have been) has been settled.

2.2. Pricing is all-inclusive, including any ancillary fees and costs required to accomplish the Scope of Work and all aspects of Contractor's offer as accepted by State. Details of service not explicitly stated in the Scope of Work or in Contractor's Offer, but necessarily a part of, are deemed to be understood by Contractor and included herein. All administrative, reporting, or other requirements, all overhead costs and profit and any other costs toward the accomplishment of the requirements in the Contract are included in the pricing provided.

2.3. Price Increase. The State may review a fully documented request for a price increase. The requested increase shall be in writing and be based upon a cost increase to the contractor that was clearly unpredictable at the time of the offer and is directly correlated to the price



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of the product concerned. Contractor must provide conclusive evidence of a need for any price increases such as being substantiated by the Producer Price Index, Consumer Price Index, or similar pricing guide.

2.3.1. Initial Contract prices will be honored for one year after award of Contract.

2.3.2. All written requests for price adjustments made by the contractor shall be initiated thirty (30) days in advance of any desired price increase to allow the State sufficient time to make a fair and equitable determination to any such requests. This may be waived upon proper documentation demonstrating the urgency of the request.

2.3.3. All price adjustments will be implemented by a formal contract amendment. State shall determine whether the requested price increase or an alternate option is in the best interest of State.

2.4. Price Reductions. Price reductions shall be immediately passed along to State and may be submitted in writing to State for consideration at any time during the Contract period. The contractor shall offer State a price reduction on the Contract product(s) concurrent with a published price reduction made to other customers. The State at its own discretion may accept a price reduction. The price reduction request shall be in writing and include documentation showing the actual reduction of cost. Sales promotions requests shall include difference in pricing, begin, and end date of promotion along with the products covered.

2.5. Additional Charges. Any charges or fees not delineated in the Contract may not be added, billed, or invoiced under the Contract.

2.6. Travel. Contractor shall get written approval prior to any travel under the Contract in which reimbursement of expenses will be requested. Contractor will be reimbursed for actual expenses incurred in accordance with the current rates specified in the State's Travel Policy. Contractor shall itemize all per diem and lodging charges. State Travel Policy, including State rates, may be located at <https://gao.az.gov/travel> . The Eligible Entity / Customer shall reject any claim for travel reimbursement without prior written approval.

3. Funding

No particular funding considerations apart from Uniform Terms and Conditions paragraph 4.4 [*Availability of Funds for the Next State fiscal year*] and 4.5 [*Availability of Funds for the current State fiscal year*] have been identified as of the Solicitation date.

4. Invoicing

4.1. Invoices Go To Buying Entity. Contractor shall submit all billing notices or invoices to the ordering Eligible Entity/Customer (e.g. Eligible Agency or Co-Op Buyer) at the address



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indicated on the applicable Order document or by utilizing the Buying Entity's purchasing tool/process.

4.2. Minimum Invoice Requirements. Every invoice must include the following information:

- Bill-to name and address
- Contractor name and contact information
- Remit-to address
- Invoice number and date
- State contract number
- Order number (APP PO number)co-op
- Date the services performed
- Applicable payment terms
- Material or Service description (Itemized)
- Quantity delivered or performed
- Line item unit of measure
- Item price
- Extended pricing
- Taxes (as a separate invoice line item)
- Mailing fees (if applicable)
- Total invoice amount due

4.3. No Invoice Without Authorization. Contractor shall not seek payment for any:

- 4.3.1. Materials or Services that have not been authorized on an acknowledged Order;
- 4.3.2. Expediting, overtime, premiums, or upcharges absent State's express prior approval; or
- 4.3.3. Materials or Services that are the subject of a Contract Amendment that has not been fully signed.

4.4. Submitting Invoices. Contractor shall submit an invoice to the ordering Eligible Agency or Co-Op Buyer using the form and/or process provided or required by the ordering Eligible Entity/Customer (Eligible Agency or Co-Op Buyer). Every invoice must be signed by Contractor's authorized representative and accompanied by all supporting information and documentation required by the Contract and applicable laws.

4.5. Defective Invoices. Without prejudice to its other rights under the Contract or further obligation to Contractor, the ordering Eligible Entity/Customer (Eligible Agency or Co-Op Buyer) may, at its discretion, reject any materially defective invoice.

- 4.5.1. The ordering Authorize Entity/Customer (Eligible Agency or Co-Op Buyer) shall notify the Contractor within 5 (five) business days after receipt if it determines an invoice to be materially defective.

4.5.2. Invoices will be deemed automatically rejected upon delivery if they:

- 4.5.2.1. are sent to an incorrect address;



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- 4.5.2.2. do not reference the correct State contract or APP Order number; or
- 4.5.2.3. are payable to any Person other than the Contractor.

- 4.5.3. The ordering Eligible Entity/Customer (Eligible Agency or Co-Op Buyer) will have no obligation to pay against a defective invoice unless and until Contractor has re-submitted it free of defects.

5. Payments

- 5.1. **PAYMENT.** The applicable Eligible Agency or Co-Op Buyer shall pay undisputed amounts due to Contractor within the time period specified in Section 4.0 Costs and Payments of the Uniform Terms and Conditions
- 5.2. **JOINT CHECKS OR DIRECT PAY.** applicable Eligible Agency or Co-Op Buyer may, but is under no obligation to, pay by joint check or to pay directly to any Subcontractor or other creditor to whom any portion of Contractor's requested payment is owed.
- 5.3. **RECOVERY OF OVERPAYMENT.** If applicable, Eligible Agency or Co-Op Buyer determines that an over-payment has been made to Contractor on any prior invoice, it shall inform Contractor of the amount and date of the overpayment and may deduct the overpaid amount from amounts then or thereafter due to Contractor.
- 5.4. **PAYMENTS TO SUBCONTRACTORS.** Contractor shall make payment of all undisputed amounts due to Subcontractors within thirty (30) days of receipt of funds from applicable Eligible Agency or Co-Op Buyer applicable to their services.
- 5.5. **PURCHASING CARD.** Applicable Eligible Agency or Co-Op Buyer may pay invoices for some or all Orders using a purchasing card. Any and all fees related to payment using a Purchasing Card are the responsibility of Contractor. Unless otherwise stated in the Contract there will be no additional fees or increase in prices associated with this method of payment.
- 5.6. **AUTOMATED CLEARING HOUSE.** Applicable Eligible Agency or Co-Op Buyer may pay invoices for some or all Orders through an Automated Clearing House (ACH). In order to receive payments in this manner from Eligible Agencies, Contractor must complete an ACH Vendor Authorization Form (form GAO-618) within 30 (thirty) days after the effective date of the Contract. The form is available online at: <https://gao.az.gov/afis/vendor-information>

6. Exhibits to the Pricing Document

BPM003836_Pricing_Document.xls – Located in APP.



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Special Terms and Conditions

The Special Terms and Conditions modify the Uniform Terms and Conditions and its Appendices. It can modify them by replacing, deleting, appending to, or revising the text of an existing provision or by inserting a new paragraph into an existing article. No other document modifies or adds to the Uniform Terms and Conditions, except as may subsequently be otherwise and expressly agreed and incorporated by Contract Amendment.

- 1. Definition of Terms:** As used in the Contract, the terms listed below are defined as follows:
 - 1.1. Acceptance: The document titled "Offer and Acceptance Form" bearing the State contract number once Procurement Officer has signed it to signify (1) State's formal acceptance of the Accepted Offer and (2) the formation of the Contract. For clarity of intent, the foregoing is not to be confused with the term "acceptance" used throughout the Contract in the context of delivery, inspection, etc., with respect to Materials or Services.
 - 1.2. Accepted Offer
 - 1.2.1. If State did not request a Revised Offer, then "Accepted Offer" means the Initial Offer.
 - 1.2.2. If State requested a Revised Offer but not a Best and Final Offer, then "Accepted Offer" means the latest Revised Offer.
 - 1.2.3. If State requested a Best and Final Offer, then "Accepted Offer" means the Best and Final Offer.
 - 1.3. Arizona Procurement Code A.R.S.; A.A.C.: "Arizona Procurement Code, "A.R.S.," and "A.A.C." are each defined in the Instructions to Offerors.
 - 1.4. Arizona TPT Arizona Transaction Privilege Tax: For information, refer to the Arizona Department of Revenue (DOR) website at: <https://www.azdor.gov/business/transactionprivilegetax.aspx>
 - 1.5. Attachment. Any item that:
 - 1.5.1. The Solicitation required Offeror to submit as part of the Offer (e.g., Initial Offer, Revised Offer, or Best and Final Offer);
 - 1.5.2. Was attached to an Offer when submitted; and
 - 1.5.3. Was included in the Accepted Offer.



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- 1.6. Pricing Document. Section Pricing Document of the Solicitation Requirements document of the Solicitation Documents, provided that, if there is no such Section in the Contract, then "Pricing Document" is to be construed as referring to whatever item in the Contract contains the contracted pricing and payment provisions.
- 1.7. Contract Amendment. A document signed by the Procurement Officer that has been issued for the purpose of making changes to the Contract after execution.
- 1.8. Contract Terms and Conditions. The Special Terms and Conditions and the Uniform Terms and Conditions taken collectively.
- 1.9. Contractor. The Person identified on the Accepted Offer who has entered into the Contract with the State.
- 1.10. Contractor Indemnitor. Contractor or any of its owners, officers, directors, agents, employees, or Subcontractors.
- 1.11. Co-Op Buyer. A member of the State Purchasing Cooperative that has entered into a "Cooperative Purchasing Agreement" with the Arizona Department of Administration State Procurement Office under A.R.S. §41-2632. Unless there is an applicable Cooperative Purchasing Agreement in effect at the time, a State Purchasing Cooperative member cannot be a Co-Op Buyer. For reference, "Co-Op Buyer" is to be construed as encompassing an "eligible procurement unit" under A.A.C. R2-7-101(23).

NOTE: Membership in the State Purchasing Cooperative is open to all Arizona political subdivisions, including cities, counties, school districts, and special districts. Membership is also available to non-profit organizations, other state governments, the federal government and tribal nations. For reference, "non-profit organizations" are defined in A.R.S. § 41-2631(4) as any nonprofit corporation as designated by the IRS under Section 501(c)(3) through 501(c)(6) of the tax code.

- 1.12. Eligible Agency. If the Special Terms and Conditions indicate that the Contract is a "single-agency" contract, then "Eligible Agency" means the particular State of Arizona agency, university, commission, or board identified therein. If the Special Terms and Conditions indicate that the Contract is a "statewide" contract, then "Eligible Agency" means any State of Arizona department, agency, university, commission, or board.
- 1.13. Indemnified Basic Claims. "Indemnified Basic Claims" means any and all claims, actions, liabilities, damages, losses, or expenses, including court costs, attorneys' fees, costs of claim processing, investigation and litigation for bodily injury or personal injury, including death, or loss or damage to any real or tangible or intangible personal property, collectively.



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- 1.14. Instructions to Offerors. "Instructions to Offerors" means the Solicitation Instructions document of the Solicitation.
- 1.15. Order. The instrument by which the State authorizes a Contractor to perform some or all of the Work. Whether the Contract will have one Order or many Orders depends on the scope of the Contract and how the State will use it. The Special Terms and Conditions provide that information. Any of the following are construed as being an "Order":
- 1.15.1. "Release" or "Release Purchase Order: in The State's e-Procurement System;
- 1.15.2. "task order," "service order," or "job order" when a Release Purchase Order for Services has already been created in The State's e-Procurement System; or
- 1.15.3. "purchase order" for buying by Co-Op Buyers, if co-op buying applies.
- 1.16. The State's e-Procurement System. The State's official electronic procurement system, established pursuant to A.A.C. R2-7-201 as set forth in the Arizona Department of Administration State Procurement Office policy document *Technical Bulletin No. 020, The State's e-Procurement System – The Official State eProcurement System*. Technical Bulletin No. 020 is available online at:
https://spo.az.gov/sites/default/files/documents/files/TB_020_APP_20181024.pdf
- 1.17. State. The State of Arizona and its department, agency, university, commission, or board that has executed the Contract. With respect to administration or rights, remedies, obligations and duties under the Contract for a given Order, "State" means each Eligible Agency or Co-Op Buyer who has issued the Order.
- 1.18. State Indemnitees. Collectively, the State of Arizona, its departments, agencies, universities, commissions, and boards and, and their respective officers, agents, and employees.
- 1.19. Subcontractor. A.R.S. §41-2503(38), which, for convenience of reference only, is "... a person who contracts to perform Work or render service to ... [C]ontractor or to another [S]ubcontractor as a part of a contract with a state governmental unit . . ." The Contract is to be construed as "a contract with a state governmental unit" for purposes of the definition. For clarity of intent, a Person carrying out any element of the Work is a Subcontractor from the moment they first carry out that element of the Work regardless of whether or not a Subcontract exists then or subsequently.
- 1.20. Work. The totality of the Materials and the Services and all the acts of administration, creation, production, and performance necessary to fulfill and incidental to fulfilling all of Contractor's obligations and duties under the Contract in conformance with the Contract and applicable laws.

2. Contract Interpretations



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2.1. Usage. Where the Contract:

- 2.1.1. assigns obligations to Contractor, any reference to “Contractor” is to be construed to be a reference to the Contractor and all Subcontractors, whether they are first-tier subcontractors, sub-subcontractors, suppliers, sub-suppliers, consultants, or sub-consultants, as well as all of Contractor’s and the Subcontractor’s respective agents, representatives, and employees in every instance unless the context plainly requires that it is a reference only to Contractor as apart from Subcontractors.
- 2.1.2. uses the permissive “may” with respect to a party’s actions, determinations, etc., the terms is to be interpreted as in A.A.C. R2-7-101(31) [*Definitions*]. For clarity of intent, any right given to State using “State may” or a like construction denotes discretion and freedom to act so far as any regulatory or operative constraints permit in the relevant circumstances, provided that: (a) where written “may, at its discretion,” the discretion extends to whatever is most advantageous to State; and (b) where written only as “may,” the discretion is constrained by 1. what is fair, reasonable, and as accommodating of the respective best interests of both parties as practicable under the circumstances;
- 2.1.3. uses the imperative “shall” with respect to a party’s actions, duties, etc., the term is to be interpreted as in A.A.C. R2-7-101(43) [*Definitions*]. Conversely, the phrase “shall not” is to be interpreted as an imperative prohibition.
- 2.1.4. uses the term “must” with respect to a requirement, criterion, etc., the term is to be interpreted as conveying compulsion or strict necessity, and is to be read as though written *“must, if [the subject] is to be entitled to have [the object] considered or credited as being compliant with, conforming to, or satisfying [the requirement, criterion, constraint, etc.], otherwise, [the object] will be considered or debited as being non-compliant, non-conforming, or unsatisfactory for its Contract-related purposes”* in every instance;
- 2.1.5. uses the term “might” with respect to an event, outcome, action, etc., the term is to be interpreted as conveying contingency or non-discretionary conditionality; and
- 2.1.6. uses the term “will” or the phrases “is to be” or “are to be” with respect to an event, outcome, action, etc., the term or phrase is to be interpreted as conveying such certainty or imperativeness that “shall” is either unnecessary or irrelevant in that instance.

2.2. Contract Order of Precedence

- 2.2.1. Complementary Documents. All of the documents forming the Contract are complementary. If certain work, requirements, obligations, or duties are set out only in one but not in another, Contractor shall carry out the Work as though the relevant Work,



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requirements, obligations, or duties had been fully described in all, consistent with the other documents forming the Contract and as is reasonably inferable from them as being necessary to produce complete results.

2.2.2. Conflicts. In case of any inconsistency, conflict, or ambiguity among the documents forming the Contract and their provisions, they are to prevail in the following order, descending from most dominate to most subordinate, provided that, among categories of documents or provisions having the same rank, the document or provision with the latest date prevails. Information being identified in one document but not in another is not to be considered a conflict or inconsistency.

2.2.2.1. Contract Amendments;

2.2.2.2. The final Solicitation Documents, in the following order:

- (1) Special Terms and Conditions;
- (2) Exhibits to the Special Terms and Conditions;
- (3) Uniform Terms and Conditions;
- (4) Scope of Work;
- (5) Exhibits to the Scope of Work;
- (6) Pricing Document;
- (7) Exhibits to the Pricing Document;
- (8) Specifications; and
- (9) Any other documents referenced or included in the Solicitation;

2.2.2.3. Orders, in reverse chronological order; and

2.2.2.4. Accepted Offer.

2.2.3. Attachments and Exhibits. For clarity of intent, if an item was an Attachment in the Solicitation Documents or an Offer (either Initial, Revised, Best and Final, or Accepted) and was subsequently made into an Exhibit, or its content was incorporated into one of the other Contract documents, then that Attachment no longer exists contractually as an "Attachment" since it has at that point been made into some other Contract document. In every other case, an Attachment and the Offeror data therein remain part of the Accepted Offer for purposes of precedence and contractual effect.



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- 2.3. Independent Contractor. Contractor is an independent contractor and shall act in an independent capacity in performance under the Contract. Neither party is or is to be construed as being the employee or agent of the other party, and no action, inaction, event, or circumstance will be grounds for deeming it to be so.
- 2.4. Complete Integration. The Contract, including any documents incorporated into the Contract by reference, is intended by the parties as a final and complete expression of their agreement. There are no prior, contemporaneous, or additional agreements, either oral or in writing, pertaining to the Contract.

3. Contract Administration and Operation

- 3.1. The Contract between the State of Arizona and the Contractor shall consist of the Solicitation as amended, any request for clarifications and/or best and final Offers, the proposal submitted by the Contractor, their responses to any requests for clarifications and/or their best and final Offer. In the event of a conflict in language between the documents referenced above, the provisions and requirements set forth and/or referenced in the Solicitation as amended shall govern. However, the State reserves the right to clarify any contractual requirement in writing, and such written clarification shall govern in case of conflict with the applicable requirements stated in the Solicitation as amended or the Contractor's proposal. In all other matters not affected by the written clarification, if any, the Solicitation shall govern.
- 3.2. The State's primary contact is identified in the State's e-Procurement System for this solicitation and resultant contract(s).
- 3.3. Contract Restructure. The State may clarify any Contract following award. This clarification shall not substantially alter the contents of the Contract, but shall only edit and reformat the Contract in a manner that will facilitate ease of use, contract administration, and concurrence of the Parties.
- 3.4. Term of Contract. The term of the Contract will commence on the date indicated on the Acceptance and continue for twelve (12) months unless cancelled, terminated, or permissibly extended.
- 3.5. Contract Extensions. State may at its discretion extend the initial Contract term in increments of one or more months and do so one or more times, provided that the maximum aggregate term of the Contract including extensions cannot exceed the maximum aggregate term of five (5) years.
- 3.6. Contract Type
- This shall be a Firm Fixed-Price Contract
- 3.7. Notices and Correspondence



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3.7.1. TO CONTRACTOR. State shall: address all Contract correspondence other than formal notices to the email address indicated as "Default for Type" for "General Mailing Address" in Contractor's corresponding State's e-Procurement System Vendor Profile; and address any required notices to Contractor to the "Contact Name and Title" at the "Mailing Address" indicated on the Accepted Offer, as that address might have been amended during the term of the Contract.

3.7.2. TO STATE. Contractor shall: address all Contract correspondence other than format notices to the email address indicated in "Contact Instructions" in the The State's e-Procurement System Summary for State; and address any required notices to State to the Procurement Officer identified as "Purchaser" in the State's e-Procurement System Summary at the following mailing address:

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3.7.3. CHANGES. State may change the designated Procurement Officer, update contact information, or change the applicable mailing address.

3.8. Signing of Contract Amendments. Contractor's counter-signature – or "approval" in The State's e-Procurement System, in the case of an amendment, – is not required to give effect if the Contract Amendment only covers either:

3.8.1. extension of the term of the Contract within the maximum aggregate term;

3.8.2. revision to Procurement Officer appointment or contact information; or

3.8.3. modifications of a clerical nature that have no effect on terms, conditions, price, scope, or other material aspect of the Contract.

In every case other than those listed in (1), (2), and (3) above, both parties' signatures – or "approval" in The State's e-Procurement System, in the case of an Amendment – are required to give it effect.

3.9. Click Through Terms and Conditions. If either party uses a web-based ordering system, an electronic purchase order system, an electronic order acknowledgement, a form of an electronic acceptance, or any software based ordering system with respect to the Contract (each an "Electronic Ordering System"), the parties acknowledge and agree that an Electronic Ordering System is for ease of administration only, and Contractor is hereby given notice that the persons using Electronic Ordering



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Systems on behalf of State do not have any actual or apparent authority to create legally binding obligations that vary from the terms and conditions of the Contract. Accordingly, where an authorized State user is required to “click through” or otherwise accept or be made subject to any terms and conditions in using an Electronic Ordering Systems, any such terms and conditions are deemed void upon presentation. Additionally, where an authorized State user is required to accept or be made subject to any terms and conditions in accessing or employing any Materials or Services, those terms and conditions will also be void.

3.10. Books and Records

- 3.10.1. **RETAIN RECORDS.** By A.R.S. §41-2548(B), Contractor shall retain and shall contractually require each Subcontractor to retain books and records relating to any cost and pricing data submitted in satisfaction of § 41-2543 for the period specified in the statute
- 3.10.2. **RIGHT TO AUDIT.** The retained books and records are subject to audit by State during that period. By A.R.S. §41-2548(B), Contractor shall retain and shall contractually require each Subcontractor to retain books and records relating to performance under the Contract for the period specified in the statute and those retained books and records are subject to audit by State during that period.
- 3.10.3. **AUDITING.** Contractor or Subcontractor shall either make all such books and records under subparagraphs 3.6.1 and 3.6.2 available to State at all reasonable times or produce the records at a designated State office on State’s demand, the choice of which being at State’s discretion. For the purpose of this paragraph, “reasonable times” are during normal business hours and in such a manner so as to not unreasonably interfere with normal business activities.

3.11. **Contractor Licenses:** Contractor shall maintain current federal, state and local licenses and permits required for the operation of its business in general, for its operations under the Contract, and for the Work itself.

3.12. **Inspection and Testing** By A.R.S. §41-2547, State may at reasonable times inspect the part of Contractor’s or Subcontractors’ plant or places of business related to performance under the Contract. Accordingly, Contractor agrees to permit (for itself) and ensure (for Subcontractors) access for inspection at any reasonable time to its facilities, processes, and services. State may inspect or test, at its own cost, any finished goods, work-in-progress, components, or unfinished materials that are to be supplied under the Contract or that will be incorporated into something to be supplied under the Contract. If the inspection or testing shows non-conformance or defects, then Contractor will owe State reimbursement or payment of all costs it incurred in carrying out or contracting for the inspection and testing, as well as for any re-inspection or re-testing that might be necessary. Neither inspection



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of facilities nor testing of goods, work, components, or unfinished materials will of itself constitute acceptance by State of those things.

3.13. Ownership of Intellectual Property

3.13.1. 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.

3.13.2. "Government Purpose Rights" are:

- 3.13.2.1.** 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;
- 3.13.2.2.** the right to release or disclose that work product to third parties for any State government purpose; and
- 3.13.2.3.** 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.

"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.

3.13.3. JOINT DEVELOPMENTS. The parties 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.

3.13.4. 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



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

- 3.13.4.1. any derivative works of such pre-existing material or elements thereof that are created pursuant to the Contract are part of that work product;
 - 3.13.4.2. any elements of derivative work of such pre-existing material that was not created pursuant to the Contract are not part of that work product; and
 - 3.13.4.3. 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.
- 3.13.5. DEVELOPMENTS OUTSIDE OF CONTRACT. Unless expressly stated otherwise in the Contract, 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.

3.14. Subcontract

- 3.14.1. INITIAL LIST. At the time of Contract execution, Contractor's candidate Subcontractors were identified in Attachment Proposed Subcontractors to the Accepted Offer [Proposed Subcontractors]. Agreeing to them being included in the Accepted Offer signified Procurement Officer's advance consent for Contractor to enter into a Subcontract with each candidate, which Contractor shall do as promptly as necessary to ensure its ability to carry out the Work in a timely manner.
- 3.14.2. Contractor shall not enter into a Subcontract without first obtaining Procurement Officer's written consent with any prospective Subcontractor that (a) was not listed on the Attachment Proposed Subcontractors at time of Contract execution or (b) is for any Materials or Services categories other than the ones for which they were previously consented. For either case (a) or (b), Contractor shall submit a written request sufficiently in advance of the need date for those materials or services so that performance under the Contract is not impaired. Procurement Officer may request any additional information he or she determines is necessary to assess the submittal, and may withhold consent pending it.
- 3.14.3. FLOW-DOWN. Contractor shall incorporate the provisions, terms, and conditions of the Contract into every Subcontract by inclusion or by reference, as appropriate. When making any post-execution consent requests, Contractor shall include its warrant that it will do the same for the pending Subcontracts covered by the request. Entering into Subcontracts will not relieve Contractor of any of its obligations or duties under the Contract, including, among other things, the duty to supervise and coordinate the work of Subcontractors. Nothing



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contained in any Subcontract will create or is to be construed as creating any contractual relationship between State and the Subcontractor.

3.15. KEY PERSONNEL

Contractor shall provide an adequate number of appropriately qualified and authorized individuals dedicated to the successful performance of the Contract. Contractor shall at a minimum, designate those specific Key Personnel required by the State, along with all other Key Personnel who will support Contractor's performance of the services described herein. Contractor shall maintain a list of all such Key Personnel and their respective information and keep this list and the State updated in this regard throughout the Term of the contract. Should the actions or inactions of Contractor's Key Personnel delay, compromise, aggravate or otherwise prove to be disharmonious to the Contractor's successful performance of the required Services, at the State's reasonable request Contractor agrees to take actions to address the State's concerns including, but not requiring, replacing or reassigning such Key Personnel. Any replacement Key Personnel shall be of comparable knowledge, skills and abilities as the previous Key Personnel. All replacement Key Personnel shall be presented to the State for review and approval.

3.16. Offshore Performance of Certain Work Prohibited. Contractor shall only perform those portions of the Services that directly serve the State or its clients and involve access to secure or sensitive data or personal client data within the defined territories of the United States. Unless specifically stated otherwise in the Scope of Work, this paragraph does not apply to indirect or overhead services, redundant back-up services, or services that are incidental to performance under the Contract. This provision applies to work performed by Subcontractors at all tiers.

3.17. Orders

3.17.1. ORDER SUFFICIENCY. The Contract was awarded in accordance with the Arizona Procurement Code; the transactions and procedures required by the code for competitive source selection have been met. An Order issued that cites the correct State contract number will suffice to authorize the Contractor to provide the Materials and perform the Services covered by that Order.

3.17.2. ORDER TERMS. All Orders are subject to the Contract Terms and Conditions; an Order cannot modify the Contract Terms and Conditions.

3.17.3. ORDERS ARE OBLIGATORY. Until the expiration or earlier termination of the Contract, State may issue and Contractor shall accept Orders that make proper reference to the Contract and are permissible hereunder, provided that, Contractor is not obliged to accept any Order that is not consistent with the then-current pricing, lead times, specifications, or payment provisions of the Contract. Contractor shall fulfill and complete any Orders that are



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begun but not yet completed as of expiration or earlier termination of the Contract unless State instructs otherwise at the time.

3.17.4. **SPECIAL CASE.** In the special case where both the following conditions are true, Procurement Officer's signature on the Acceptance is Contractor's authorization to perform and therefore no Order is required: (a) the Contract is identified as being a "single-agency/single-project" contract and (b) the Contract was created in The State's e-Procurement System as something other than a "Master/ Blanket" type.

3.17.5. **NO MINIMUMS OR COMMITMENTS.** (a) Contractor shall not impose any minimum dollar amount, item count, services volume, or services duration on Orders; (b) State makes no commitment of any kind concerning the quantity or monetary value of activity actually initiated or completed during the term of the Contract; (c) Contractor shall only deliver or perform as authorized by Orders; and (d) State is not limited as to the number of Orders it may issue for the Contract. For clarity of intent, the foregoing applies equally whether an Eligible Agency issues the Order or, if applicable, a Co-Op Buyer issues it.

3.17.6. **NON-CONTRACTED MATERIALS OR SERVICES.** Any attempt to knowingly represent for sales, marketing, or related purposes that goods or services not specifically awarded are under a State contract is a violation of the Contract and law.

3.18. **Eligible Agencies:**

This contract will be for the exclusive use of the Arizona Department of Administration, Benefits Services Division.

3.19. **Other Contractors.** State may undertake with its own forces or award other contracts to the same or other vendors for additional or related work. In such cases, Contractor shall cooperate fully with State's employees and such other vendors 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, services, or records to State or the other vendors. Contractor shall not commit or permit any act that interferes with the State's or other vendors' performance of their work, provided that, State shall enforce the foregoing section equitably among all its vendors so as not to impose an unreasonable burden on any one of them.

3.20. **Work on State Premises**

3.20.1. **COMPLIANCE WITH RULES.** Contractor is responsible for ensuring that its personnel comply with State's rules, regulations, policies, documented practices, and documented operating procedures while delivering or installing Materials or performing Services on State's grounds or in its facilities. For clarity of intent, the foregoing means that if Contractor



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is required to comply with certain security requirements in order to deliver, install, or perform at that particular location, then it shall do so nonetheless and without entitlement to any additional compensation or additional time for performance if those particular requirements are not expressly stated in the Contract. Contractor is reminded that violation of the prohibition under A.R.S. § 13-1502 against possession of weapons on State's property by anyone for whom Contractor is responsible is a material breach of contract and grounds for termination for default.

- 3.20.2. PROTECTION OF GROUNDS AND FACILITIES. Contractor shall deliver or install the Materials and perform the Services without damaging any State grounds or facilities. Contractor shall repair or replace any damage it does cause promptly and at its own expense, subject to whatever instructions and restrictions State needs to make to prevent inconvenience or disruption of operations. If Contractor fails to make the necessary repairs or replacements in a timely manner, State will be entitled to exercise its remedies under paragraph 8.5 of the Uniform Terms and Conditions[Right of Offset].

4. Costs and Payments

4.1. Payments

- 4.1.1. PAYMENT DEADLINE. State shall make payments in compliance with Arizona Revised Statutes Titles 35 and 41. Unless and then only to the extent expressly stated otherwise in the Pricing Document, State shall make payment in full for Materials that have been delivered and accepted and Services that have been performed and accepted within the time specified in A.R.S. § 35-342 after both of the following become true: (a) all of the Materials being invoiced have been delivered or installed (as applicable) and accepted and all of the Services being invoiced have been performed and accepted; and (b) Contractor has provided a complete and accurate invoice in the form and manner called for in the Pricing Document, provided that, State will not make or be liable for any payments to Contractor until Contractor has registered properly in The State's e-Procurement System and provided a current IRS Form W-9 to State unless excused by law from providing one.
- 4.1.2. PAYMENTS ONLY TO CONTRACTOR. Unless compelled otherwise by operation of law or order of a court of competent jurisdiction, State will only make payment to Contractor under the federal tax identifier indicated on the Accepted Offer.

4.2. Applicable Taxes

- 4.2.1. CONTRACTOR TO PAY ALL TAXES. State is subject to Arizona TPT. Therefore, Arizona TPT applies to all sales under the Contract and Arizona TPT is Contractor's responsibility (as seller) to remit. Contractor's failure to collect Arizona TPT or any other applicable sales



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or use taxes from an Eligible Agency or Co-Op Buyer (as buyer) will not relieve the Contractor of any obligation to remit sales or use taxes that are due under the Contract or laws. Unless stated otherwise in the Pricing Document, all prices therein include Arizona TPT as well as every other manner of transaction privilege or sales/use tax that is due to a municipality or another state or its political subdivisions. Contractor shall pay all federal, state, and local taxes applicable to its operations and personnel.

- 4.2.2. TAX INDEMNITY. Contractor shall hold State harmless from any responsibility for taxes or contributions, including any applicable damages and interest, that are due to federal, state, and local authorities with respect to the Work and the Contract, as well as any related costs; the foregoing expressly includes Arizona TPT, unemployment compensation insurance, social security, and workers' compensation insurance.

5. Contract Changes

- 5.1. Contract Amendments The Contract is issued for State under the authority of Procurement Officer. Only a Contract Amendment can modify the Contract, and then only if it does not change the Contract's general scope. Purported changes to the Contract by a person not expressly authorized by Procurement Officer or made unilaterally by Contractor will be void and without effect; Contractor will not be entitled to any claim made under the Contract based on any such purported changes.

5.2. Assignment and Delegation.

- 5.2.1. IN WHOLE. Contractor shall not assign in whole its rights or delegate in whole its duties under the Contract without Procurement Officer's prior written consent, which consent Procurement Officer may withhold at his or her discretion. If Contractor's proposed assignment or delegation stems from a split, sale, acquisition, or other non-merger change in control, then no such consent will be given in any event without the assignee or delegate giving State satisfactory and equivalent evidence or assurance of its financial soundness, competency, capacity, and qualification to perform as that which Contractor possessed when State first awarded it the Contract.

- 5.2.2. IN PART. Subject to paragraph 3.10 [Subcontracts] with respect to subcontracting, Contractor may assign particular rights or delegate particular duties under the Contract, but shall obtain Procurement Officer's written consent before doing so. Procurement Officer shall not unreasonably withhold consent so long as the proposed assignment or delegation does not attempt to modify the Contract in any way or to alter or impair State's rights or remedies under the Contract or laws.

6. Risk and Liability



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6.1. Risk of Loss. Contractor shall bear all risk of loss to Materials while in pre-production, production, storage, transit, staging, assembly, installation, testing, and commissioning, if and as those duties are within the scope of the Work, until they have been accepted as conforming by State in the particular location and situation specified in the Order, or as specified generally elsewhere in the Contract if the Order does not provide particulars, provided that, risk of loss for nonconforming Materials will remain with Contractor notwithstanding acceptance to the extent the loss stems from the nonconformance.

6.2. Indemnification Clause

To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless the State of Arizona, and its departments, agencies, boards, commissions, universities, and any jurisdiction or agency issuing permits for any work included in the project, and their respective directors, officers, officials, agents and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, costs, losses, or expenses, (including reasonable attorney's fees), (hereinafter collectively referred to as "Claims") arising out of actual or alleged bodily injury or personal injury of any person (including death) or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Contractor or any of Contractor's directors, officers, agents, employees, volunteers or subcontractors. This indemnity includes any claim or amount arising or recovered under the Workers' Compensation Law or arising out of the failure of Contractor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Contractor from and against any and all Claims. It is agreed that Contractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. This indemnification will survive the termination of the above listed contract with the Contractor.

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

6.3. Insurance Requirements:

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



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

6.3.3. **MINIMUM SCOPE AND LIMITS OF INSURANCE:** Contractor shall provide coverage with limits of liability not less than those stated below.

6.3.3.1. Commercial General Liability (CGL) – Occurrence Form

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

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

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.

6.3.3.2. Business Automobile Liability

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

• Combined Single Limit (CSL)	\$1,000,000
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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.

6.3.3.3. Workers' Compensation and Employers' Liability

Workers' Compensation

Statutory

• Employers' Liability

- | | |
|---------------------------|-------------|
| ○ Each Accident | \$1,000,000 |
| ○ Disease – Each Employee | \$1,000,000 |
| ○ Disease – Policy Limit | \$1,000,000 |

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

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

6.3.3.4. Technology Error & Omissions Insurance

- | | |
|--------------------|-------------|
| • Each Claim | \$2,000,000 |
| • Annual Aggregate | \$2,000,000 |

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

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



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c. In the event that the Tech E&O insurance required by this Contract is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of this Contract and, either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years, beginning at the time work under this Contract is completed.

6.3.3.5. Network Security (Cyber) and Privacy Liability

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

a. Such insurance shall include, but not be limited to, coverage for third party claims and losses with respect to network risks (such as data breaches, unauthorized access or use, ID theft, theft of data) and invasion of privacy regardless of the type of media involved in the loss of private information, crisis management and identity theft response costs. This should also include breach notification costs, credit remediation and credit monitoring, defense and claims expenses, regulatory defense costs plus fines and penalties, cyber extortion, computer program and electronic data restoration expenses coverage (data asset protection), network business interruption, computer fraud coverage, and funds transfer loss.

b. In the event that the Network Security and Privacy Liability insurance required by this Contract is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of this Contract and, either continuous coverage will be maintained, or an extended discovery period will be exercised for a period of two (2) years beginning at the time work under this Contract is completed.

c. The policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to vicarious liability of the insured arising out of the activities performed by or on behalf of the Contractor.

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

6.4. Additional Insurance Requirements



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

- 6.4.1. The Contractor's policies, as applicable, shall stipulate that the insurance afforded the Contractor shall be primary and that any insurance carried by the Department, its agents, officials, employees or the State of Arizona shall be excess and not contributory insurance, as provided by A.R.S. § 41-621 (E).
- 6.4.2. Insurance provided by the Contractor shall not limit the Contractor's liability assumed under the indemnification provisions of this Contract.

6.5. Notice of Cancellation

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

6.6. Acceptability of Insurers

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

6.7. Verification of Coverage

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

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



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- 6.7.2. Each insurance policy required by this Contract must be in effect at, or prior to, commencement of work under this Contract. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.
- 6.7.3. All certificates required by this Contract shall be sent directly to the Department. The State of Arizona project/contract number and project description shall be noted on the certificate of insurance. The State of Arizona reserves the right to require complete copies of all insurance policies required by this Contract at any time.

6.8. Subcontractors

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

6.9. Approval and Modifications

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

6.10. Exceptions

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

- 6.11. Patent and Copyright Indemnification. CONTRACTOR/VENDOR (NOT PUBLIC AGENCY).** With respect to Materials or Services provided or proposed by a Contractor Indemnitor for performance under the Contract, Contractor shall indemnify, defend and hold harmless State Indemnitees against any third-party claims for liability, costs, and expenses, including, but not limited to reasonable attorneys' fees, for infringement or violation of any patent, trademark, copyright, or trade secret by the Materials and the Services. With respect to the defense and payment of claims under this subparagraph:



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- 6.11.1. State shall provide reasonable and timely notification to Contractor of any claim for which Contractor may be liable under this paragraph;
- 6.11.2. Contractor, with reasonable consultation from State, shall have control of the defense of any action on an indemnified claim including all negotiations for its settlement or compromise;
- 6.11.3. State may elect to participate in such action at its own expense; and
- 6.11.4. State may approve or disapprove any settlement or compromise, provided that, (i) State shall not unreasonably withhold or delay such approval or disapproval and (ii) State shall cooperate in the defense and in any related settlement negotiations.

If Contractor is a public agency, this paragraph 6.4 does not apply.

6.12. Force Majeure

- 6.12.1. DEFINITION. For this paragraph, "force majeure" means an occurrence that is
 - 6.12.1.1. beyond the control of the affected party,
 - 6.12.1.2. occurred without the party's fault or negligence, and
 - 6.12.1.3. something the party was unable to prevent by exercising reasonable diligence. Without limiting the generality of the foregoing, force majeure expressly includes acts of God, acts of the public enemy, war, riots, strikes, mobilization, labor disputes, civil disorders, fire, flood, lockouts, injunctions-intervention-acts, failures or refusals to act by government authorities, and, subject to paragraph 7.6 [Performance in Public Health Emergency], declared public health emergencies. Force majeure expressly does not include late delivery caused by congestion at a manufacturer's plant or elsewhere, an oversold condition of the market, late performance by a Subcontractor unless the delay arises out of an occurrence of force majeure, or inability of either Contractor or any Subcontractor to acquire or maintain any required insurance, bonds, licenses, or permits.
- 6.12.2. RELIEF FROM PERFORMANCE. Except for payment of sums due, the parties are not liable to each other if an occurrence of force majeure prevents its performance under the Contract. If either party is delayed at any time in the progress of their respective performance under the Contract by an occurrence of force majeure, the delayed party shall notify the other no later than the following working day after the occurrence, or as soon as it could reasonably have been expected to recognize that the occurrence had effect in cases where the effects were not readily apparent. In any event, the notice must make specific reference to this paragraph specifying the causes of the delay in the notice and, if the effects of the



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occurrence are on-going, provide an initial notification and thereafter the delayed party shall provide regular updates until such time as the effects are fully known. To the extent it is able, the delayed party shall cause the delay to cease promptly and notify the other party when it has done so. The parties shall extend the time of completion by Contract Amendment for a period equal to the time that the results or effects of the delay prevented the delayed party from performing.

6.12.3. EXCUSABLE DELAY IS NOT DEFAULT. Failure in performance by either party will not constitute default hereunder or give rise to any claim for damages or loss of anticipated profits if and to the extent that such failure was or is being caused by an occurrence of force majeure.

6.12.4. DEFAULT DIMINISHES RELIEF. Entitlement to relief from the effects of an occurrence of force majeure is diminished to the extent that the delay did or will result from the affected party's default unrelated to the occurrence, in which case and to that extent the other party's normal remedies and the affected party's obligations would apply undiminished.

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

7. Warranties

7.1. Conformity to Requirements. Contractor warrants that, unless expressly provided otherwise elsewhere in the Contract, the Materials and Services will for 1 (one) year after acceptance and in each instance: (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 Contractor affirmations included as part of the Contract; (2) be free from defects of material and workmanship; (3) conform to or perform in a manner consistent with current industry standards; and (4) be fit for the intended purpose or use described in the Contract. Mere delivery or performance does not substitute for express acceptance by State. Where inspection, testing, or other acceptance assessment of Materials or Services cannot be done until after installation, the forgoing warranty will not begin until State's acceptance.

7.2. 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 certifications relevant to their work, and Contractor shall provide individual evidence of certification to State's authorized representatives upon request.



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- 7.3. 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.
- 7.4. Licenses and Permits Contractor warrants that it will maintain all licenses required under paragraph 3.7 [Contractor Licenses] and all required permits valid and in force.
- 7.5. 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 [Assignment and Delegation] that expressly recognizes the event.
- 7.6. Performance in Public Health Emergency Contractor warrants that it will:
- 7.6.1. 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:
 - 7.6.1.1. identification of response personnel by name;
 - 7.6.1.2. key succession and performance responses in the event of sudden and significant decrease in workforce; and
 - 7.6.1.3. alternative avenues to keep sufficient product on hand or in the supply chain; and
 - 7.6.2. provide a copy of its current plan to State within 3 (three) business days after State's written request. If Contractor claims relief under paragraph 6.5 [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. For clarification of intent, being obliged to implement the plan is not of itself an occurrence of force majeure, and Contractor will not be entitled to any additional compensation or extension of time by virtue of having to implement it. Furthermore, failure to have or implement an appropriate plan will be a material breach of contract.
- 7.7. Lobbying
- 7.7.1. 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



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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 (a) above. Contractor shall obtain an equivalent warranty from all Subcontractors and shall include an equivalent no-lobbying provision in all Subcontracts.

7.7.2. EXCEPTION. This paragraph 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.

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

8. State's Contractual Remedies

No modifications to this section of the Uniform Terms and Conditions.

9. Contract Termination

No modifications to this section of the Uniform Terms and Conditions.

10. Contract Claims

10.1. Claim Resolution. Notwithstanding any law to the contrary, all contract claims or controversies under the Contract are to be resolved according to Arizona Revised Statutes Title 41, Chapter 23, Article 9, and rules adopted thereunder, including judicial review under A.R.S. §12-1518.

10.2. Mandatory Arbitration. In compliance with A.R.S. §12-1518, the parties agree to comply in a judicial review proceeding with any applicable, mandatory arbitration requirements.

11. RESERVED General Provisions for Materials

12. General Provisions for Services

12.1. **Applicability.** Article 12 applies to the extent the Work is or includes Services.

12.2. **Comprehensive Services.** Contractor shall provide the comprehensive range of services for which a price is established Offering in the Pricing Document for ordering by Eligible Agencies and Co-Op Buyers, if co-op buying applies.



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- 12.3. **Additional Services.** State at its discretion may modify the scope of the Contract by Contract Amendment to include additional services or service categories that are within the general scope of the ones originally covered by the Contract if it determines that doing so is in its best interest. Once the Contract Amendment is fully executed, Contractor shall then update all applicable price lists and make them available to all affected entities at no additional cost. Either party may make the request to add services to the Contract; regardless of who makes the request, the parties shall negotiate in good faith a fair price for any additional services, but State may elect not to add some or all of the services in question if no agreement is reached on pricing in a timely manner. Contractor's request or proposal in response to State's request must include documentation demonstrating that the proposed price for the additional services is both fair and reasonable and comparable to the original ones.
- 12.4. **Off-Contract Services.** Contractor shall ensure that the design and/or procedures for the Services ordering method prevents Orders for off-contract or excluded services. Notwithstanding that State might have its own internal administrative rules regarding off-contract or excluded service ordering, and endeavors to prevent such orders from occurring, Contractor is responsible for not accepting any such Orders. State may, at its discretion, cancel any such Order without obligation. As used above, "off-contract service" refers to any service not included in the scope of the Contract and for which no price or compensation has been established contractually, and "excluded service" refers to any service expressly excluded from the scope of the Contract.
- 12.5. **Removal of Personnel.** Notwithstanding that Contractor is in every circumstance responsible for hiring, assigning, directing, managing, training, disciplining, and rewarding its personnel, State may at its discretion and without the obligation to demonstrate cause instruct Contractor to remove any of its personnel from State's facilities or from further assignment under the Contract. In such cases, Contractor shall promptly replace them with other personnel having equivalent qualifications, experience, and capabilities.
- 12.6. **Transitions.** During commencement, Contractor shall attend transition meetings with any outgoing vendors to coordinate and ease the transition so that the effect on State's operations is kept to a minimum. State may elect to have outgoing vendors complete some or all of their work or orders in progress to ease the transition as is safest and most efficient in each instance, even if that scope is covered under the Contract. Conversely, State anticipates having a continued need for the same materials and services upon expiration or earlier termination of the Contract. Accordingly, Contractor shall work closely with any new (incoming) vendor and State to ensure as smooth and complete a transfer as is practicable. State's representative shall coordinate all transition activities and facilitate joint development of a comprehensive transition plan by both Contractor and the incoming vendor. As with the incoming transition, State may permit Contractor (outgoing) to complete work or orders in progress to ease the transition as is safest and most efficient in each instance.



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- 12.7. **Accuracy of Work.** Contractor is responsible for the accuracy of the Services, and shall promptly make all necessary revisions or corrections resulting from errors and omissions on its part without additional compensation. Acceptance by State will not relieve Contractor of responsibility for correction of any errors discovered subsequently or necessary clarification of any ambiguities.
- 12.8. **Requirements at Services.** Contractor personnel shall perform their assigned portions of the Services at the specific location indicated in the Order (if applicable). Contractor acknowledges that the location might be inside an industrial building, institutional building, or one of various office types and classes. Additionally, if performing the Services requires Contractor personnel to work inside a secured perimeter at certain institutional facilities such as prisons where prior clearances are required, Contractor shall contact the facility directly to confirm its most-current security clearance procedures, allowable hours for work, visitor dress code, and other applicable rules. State will neither allow extra charges for wait time, comebacks, or the like nor excuse late performance if Contractor has failed to make the confirmation or comply with the applicable conditions.
- 12.9. **Services Acceptance.** State has the right to make acceptance of Services subject to acceptance criteria. State may apply acceptance criteria conformity to the Contract, accuracy, completeness, or other indicators of quality or other matter for which the Contract or law states a requirement, whether stated directly or by reference to another document, standard, reference specification, etc. State will not owe Contractor any payment for unaccepted Services; and State may, at its discretion, withhold or make partial payment for any rejected Services if Contractor is still in the process of re-performing or otherwise curing the grounds for State's rejection.
- 12.10. **Corrective Action Required.** Notwithstanding any other guarantees, general warranties, or particular warranties Contractor has given under the Contract, if Contractor fails to perform any material portion of the Services, including failing to complete any contractual deliverable, or if its performance fails to meet agreed-upon service levels or service standards set out in or referred to in the Contract, then Contractor shall perform a root-cause analysis to identify the source of the failure and use all commercially reasonable efforts to correct the failure and meet the Contract requirements as promptly as is practicable.
- 12.10.1. Contractor shall provide to State a report detailing the identified cause and setting out its detailed corrective action plan promptly after the date the failure occurred (or the date when the failure first became apparent, if it was not apparent immediately after occurrence).
- 12.10.2. State may demand to review and approve Contractor's analysis and plans, and Contractor shall make any corrections State instructs and adopt State's recommendations so far as is commercially practicable, provided that State may insist on any measures it determines within reason to be necessary for safety or protecting property and the environment.



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- 12.10.3. Contractor shall take the necessary action(s) to avoid any like failure in the future if doing so is appropriate and practicable under the circumstances

13. Data and Information Handling

- 13.1. **Applicability.** Article 13 applies to the extent the Work includes handling of any (1) State's proprietary and sensitive data or (2) confidential or access-restricted information obtained from State or from others at State's behest.
- 13.2. **Data Protection and Confidentiality of Information.** Contractor warrants that it will establish and maintain procedures and controls acceptable to State for ensuring that State's proprietary and sensitive data is protected from unauthorized access and information obtained from State or others in performance of its contractual duties is not mishandled, misused, or inappropriately released or disclosed. For purposes of this paragraph, all data created by Contractor in any way related to the Contract, provided to Contractor by State, or prepared by others for State are proprietary to State, and all information by those same avenues is State's confidential information. To comply with the foregoing warrant:
- 13.2.1. Contractor shall: (a) notify State immediately of any unauthorized access or inappropriate disclosures, whether stemming from an external security breach, internal breach, system failure, or procedural lapse; (b) cooperate with State to identify the source or cause and respond to each unauthorized access or inappropriate disclosure; and (c) notify State promptly of any security threat that could result in unauthorized access or inappropriate disclosures; and
- 13.2.2. Contractor shall not: (a) release any such data or allow it to be released or divulge any such information to anyone other than its employees or officers as needed for each person's individual performance of his or her duties under the Contract, unless State has agreed otherwise in advance and in writing; or (b) respond to any requests it receives from a third party for such data or information, and instead route all such requests to State's designated representative.
- 13.3. **Personally Identifiable Information** Without limiting the generality of paragraph 13.2, Contractor warrants that it will protect any personally identifiable information ("PII") belonging to State's employees or other contractors or members of the general public that it receives from State or otherwise acquires in its performance under the Contract. For purposes of this paragraph:
- 13.3.1. PII has the meaning given in the [federal] Office of Management and Budget (OMB) *Memorandum M-17-12 Preparing for and Responding to a Breach of Personally Identifiable Information, January 3, 2017*; and



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- 13.3.2. “protect” means taking measures to safeguard personally identifiable information and prevent its breach that are functionally equivalent to those called for in that OMB memorandum and elaborated on in the [federal] General Services Administration (GSA) *Directive CIO P 2180.1 GSA Rules of Behavior for Handling Personally Identifiable Information*.

NOTE (1): For convenience of reference only, the OMB memorandum is available at:

<https://dpcl.d.defense.gov/Privacy/Authorities-and-Guidance/>

NOTE (2): For convenience of reference only, the GSA directive is available at:

[https://www.gsa.gov/directive/gsa-rules-of-behavior-for-handling-personally-identifiable-information-\(pii\)-](https://www.gsa.gov/directive/gsa-rules-of-behavior-for-handling-personally-identifiable-information-(pii)-)

- 13.4. **Protected Health Information** Contractor warrants that, to the extent performance under Contract involves individually identifiable health information (referred to hereinafter as protected health information (“PHI”) and electronic PHI (“ePHI”) as defined in the Privacy Rule referred to below), it:

- 13.4.1. is familiar with and will comply with the applicable aspects of the following collective regulatory requirements regarding patient information privacy protection: (a) the “Privacy Rule” in CFR 45 Part 160 and Part 164 pursuant to the Health Insurance Portability and Accountability Act (“HIPAA”) of 1996; (b) Arizona laws, rules, and regulations applicable to PHI/ePHI that are not preempted by CFR45-160(B) or the Employee Retirement Income Security Act of 1974 (“ERISA”) as amended; and (c) State’s current and published PHI/ePHI privacy and security policies and procedures;
- 13.4.2. will cooperate with State in the course of performing under the Contract so that both State and Contractor stay in compliance with the requirements in (1) above; and
- 13.4.3. will sign any documents that are reasonably necessary to keep both State and Contractor in compliance with the requirements in (1) above, in particular “Business Associate Agreements” in accordance with the Privacy Rule.

NOTE: For convenience of reference only, the Privacy Rule is available at:

<http://www.hhs.gov/hipaa/for-professionals/privacy/index.html>

- 13.5. **HIPAA** The State of Arizona and Business Associate agree to 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 (CFR). In the event of conflicting terms or conditions as they pertain to HIPAA compliance only, this Addendum shall supersede the Contract. In all other respects, the underlying Contract shall be superior.



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- 13.5.1. Definitions. Capitalized terms not otherwise defined in the Contract shall have the meanings given to them in Title 45, Parts 160 and 164 of the CFR and are incorporated herein by reference.
- 13.5.2. Use and Disclosure of PHI/ePHI. Business Associate shall use and/or disclose PHI/ePHI only to the extent necessary to satisfy Business Associate's obligations under the Contract.
- 13.5.3. Prohibition on Unauthorized Use or Disclosure of PHI/ePHI. Business Associate shall not use or disclose any PHI/ePHI received from or on behalf of the State, except as permitted or required by the Contract, as required by law, or as otherwise authorized in writing by the State. Business Associate shall comply with the applicable provisions of:
- 13.5.3.1. Title 45, Part 164 of the CFR;
- 13.5.3.2. State laws, rules, and regulations applicable to PHI/ePHI and not preempted by Title 45, Part 160, Subpart B of the CFR or the Employee Retirement Income Security Act of 1974 (ERISA) as amended; and
- 13.5.3.3. The State's health information privacy and security policies and procedures, as provided to the Business Associate by the State.
- 13.5.4. Business Associate's Operations. Business Associate may use PHI it creates or receives for or from the State only to the extent necessary for Business Associate's proper management and administration or to carry out Business Associate's legal responsibilities. Business Associate may disclose such PHI as necessary for Business Associate's proper management and administration or to carry out Business Associate's legal responsibilities only if:
- 13.5.4.1. The disclosure is required by law; or
- 13.5.4.2. Business Associate obtains reasonable assurances from any person or organization to which Business Associate shall disclose such PHI/ePHI that such person or organization shall:
- 13.5.4.2.1. Hold such PHI/ePHI in confidence and use or further disclose it only for the purpose for which Business Associate disclosed it to the person or organization or as required by law; and
- 13.5.4.2.2. Notify Business Associate (who shall in turn promptly notify the State) of any instance of which the person or organization becomes aware in which the confidentiality of such PHI/ePHI was breached.



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- 13.5.5. Data Aggregation Services and Deidentification. Business Associate may use PHI/ePHI to provide Data Aggregation Services related to State of Arizona's Health Care Operations. Business Associate deidentify PHI in accordance with the requirements of the Privacy Rule; provided that all identifiers are destroyed or returned in accordance with this Agreement.
- 13.5.6. PHI Safeguards. Business Associate shall develop, implement, maintain, and use appropriate safeguards to prevent the improper use or disclosure of any PHI/ePHI received from or on behalf of the State.
- 13.5.7. Electronic Health Information Security and Integrity. Business Associate shall develop, implement, maintain, and use appropriate administrative, technical, and physical security measures in compliance with Section 1173(d) of the Social Security Act, Title 42, Section 1320d-2(d) of the United States Code and Title 45, Part 164.314 (a) (2) of the CFR to preserve the integrity and confidentiality of all electronically maintained or transmitted PHI/ePHI received from or on behalf of the State pertaining to an Individual. Business Associate shall document and keep these security measures current.
- 13.5.8. Protection of Exchanged Information in Electronic Transactions. If Business Associate conducts any Standard Transaction for or on behalf of the State, Business Associate shall comply, and shall require any Subcontractor or agent conducting such Standard Transaction to comply, with each applicable requirement of Title 45, Part 162 of the CFR.
- 13.5.9. Subcontractors and Agents. Business Associate shall require each of its Subcontractors or agents to whom Business Associate may provide PHI/ePHI received from, or created or received by Business Associate on behalf of the State to agree to substantially similar obligations to protect such PHI/ePHI as are imposed on Business Associate by the Contract.
- 13.5.10. Access to PHI/ePHI. To the extent Business Associate maintains a Designated Record Set, it shall provide access, at the request of the State, to PHI/ePHI in such Designated Record Set, to the State or as directed by the State, to an individual to meet the requirements under Title 45, Part 164, Subpart E, Section 164.524 of the CFR and applicable State law. Business Associate shall provide access in a reasonable time and manner consistent with the time and manner set forth in the State's health information privacy and security policies and procedures.
- 13.5.11. Amending PHI/ePHI. Business Associate shall make any amendment(s) to PHI/ePHI maintained by Business Associate in a Designated Record Set that the State directs or



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agrees to pursuant to Title 45, Part 164, Subpart E, Section 164.526 of the CFR at the request of the State or an Individual, and in a reasonable time and manner consistent with the time and manner set forth in the State's health information privacy and security policies and procedures.

- 13.5.12. Accounting of Disclosures of PHI/ePHI. To the extend disclosre of PHI/ePHI by Business Associate are not excepted from the disclosure accounting requirements Business Associate shall document such disclosures of PHI/ePHI and information related to such disclosures as would be required for the State to respond to a request by an Individual for an accounting of disclosures of PHI/ePHI in accordance with Title 45, Part 164, Subpart E, Section 164.528 of the CFR.

Business Associate agrees to provide the State or an Individual, in a reasonable time and manner consistent with the time and manner set forth in the State's health information privacy and security policies and procedures, information hereunder, to permit the State to respond to a request by an Individual for an accounting of disclosures of PHI/ePHI in accordance with Title 45, Part 164, Subpart E, Section 164.528 of the CFR.

- 13.5.13. Access to Books and Records. Business Associate shall make its internal practices, books, and records relating to the use and disclosure of PHI/ePHI received from or on behalf of State of Arizona available to the Department of Health and Human Services (DHHS) or its designee for the purpose of DHHS determining the State's compliance with the Privacy Rule.
- 13.5.14. Reporting. Business Associate shall report to the State any use or disclosure of PHI/ePHI not authorized by the Contract, by law, or in writing by the State of which it becomes aware. Business Associate shall make the report to the State's Privacy Official within twenty-four (24) hours after Business Associate learns of such unauthorized use or disclosure. Business Associate's report shall at least:
- 13.5.14.1. Identify the nature of the unauthorized use or disclosure;
 - 13.5.14.2. Identify the PHI/ePHI used or disclosed;
 - 13.5.14.3. Identify who made the unauthorized use or received the unauthorized disclosure;
 - 13.5.14.4. Identify what Business Associate has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure;



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- 13.5.14.5. Identify what corrective action Business Associate has taken or shall take to prevent future similar unauthorized use or disclosure; and
- 13.5.14.6. Provide such other information as reasonably requested by the State's Privacy Official.
- 13.5.15. 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/ePHI by Business Associate in violation of the requirements of the Contract.
- 13.5.16. Termination for Cause. Upon the State's knowledge of a material breach by Business Associate of the terms of this Addendum, the State shall:
- 13.5.16.1. Provide an opportunity for Business Associate to cure the breach or end the violation and terminate if Business Associate does not cure the breach or end the violation within the time specified by the State;
- 13.5.16.2. Immediately terminate the Contract if Business Associate has breached a material term of the Contract and cure is not possible; and
- 13.5.16.3. If neither termination nor cure is feasible, the State shall report the violation to DHHS.
- 13.5.17. Return or Destruction of Health Information. Except as provided below, upon termination, cancellation, expiration, or other conclusion of the Contract, Business Associate shall return to the State or destroy all PHI/ePHI received from the State, or created or received by Business Associate on behalf of the State.
- This provision shall apply to PHI/ePHI that is in the possession of Subcontractors or agents of Business Associate. Except as provided below, Business Associate shall retain no copies of the PHI/ePHI.
- In the event that Business Associate reasonably determines that returning or destroying the PHI/ePHI is not feasible, Business Associate shall extend the protections of the Contract to such PHI/ePHI and limit further uses and disclosure of PHI/ePHI to those purposes that make the return or destruction not feasible, for so long as Business Associate maintains such PHI/ePHI.
- 13.5.18. Obligations of State of Arizona.



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- 13.5.18.1. The State shall provide Business Associate with the notice of privacy practices that the State produces in accordance with Title 45, Part 164, Subpart E, Section 164.520, as well as any changes to that notice.
- 13.5.18.2. The State shall provide Business Associate with any changes in, or revocation of, permission by an Individual to use or disclose PHI/ePHI if such changes affect Business Associate's permitted or required uses and disclosures.
- 13.5.18.3. The State shall notify Business Associate, in writing, of any restriction to the use of disclosure of PHI/ePHI that the State has agreed to in accordance with Title 45, Part 164, Subpart E, Section 164.522.
- 13.5.18.4. The State acknowledges that it shall provide to, or request from, Business Associate only the minimum PHI/ePHI necessary for Business Associate to perform or fulfill a specific function required or permitted hereunder. hereunder and shall conspicuously designate all such PHI/ePHI before disclosing the same to Business Associate
- 13.5.18.5. The State acknowledges and agrees that no agreement between the parties requires Business Associate to make any disclosure for which an accounting would be required under HIPAA. The State further agrees that it shall be solely responsible for tracking and providing Individuals an accounting of any disclosures made by the State to Business Associate.
- 13.5.19. Automatic Amendment. Upon the effective date of any amendment to the regulations promulgated by HHS with respect to PHI, the Contract shall automatically amend such that the obligations imposed on Business Associate as a Business Associate remain in compliance with such regulations.
- 13.5.20. HIPAA Business Associate Addendum. As protected health information, defined in Title 45, Part 160, Section 160.103 of the C.F.R. may be made available to the selected vendor, this Addendum, labeled Exhibit F, is part of the Contract.
- 13.5.21. Assistance Upon Termination. When the Contract Term ends or in the event the Contract is terminated with or without cause, the Contractor, whenever determined appropriate by the State, shall assist the State in the transition of services to other Contractors or the State at the sole cost and expense of the State. The fees charged to the State in connection with the provision of the service contemplated in this Section will not exceed one hundred thousand dollars (\$100,000).Such assistance and coordination shall include but not be limited to the forwarding of Contract works,



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electronic files, and other records to assure the smoothest possible transition and continuity of services. The cost of reproducing and forwarding such records and other materials shall be borne by the Contractor; provided, however the State acknowledges and agrees that any such records and other materials will be provided in the format they are maintained in the ordinary course of Business Associate's operations. The Contractor must make provisions for continuing all performance under this Contract, to include management/administrative services, until the transition of services is complete and all other requirements of this Contract are satisfied.

14. Information Technology Work

- 14.1. **Applicability** Article 14 applies to any Invitation for Bids, Request for Proposals, or Request for Quotations for "Information Technology," as defined In A.R.S. §18-101 -6 "...all computerized and auxiliary automated information processing, telecommunications and related technology, including hardware, software, vendor support and related services, equipment and projects," if and to the extent that the Work is or includes Information Technology.
- 14.2. **Background Checks** Each Contractor's personnel who is an applicant for an information technology position must undergo the security clearance and background check procedure, which includes fingerprinting, as required by A.R.S. §41-710. Contractor shall obtain and pay for the security clearance and background check. Contractor personnel who will have administrator privileges on a State network must additionally provide identity and address verification and undergo State-specified training for unescorted access, confidentiality, privacy, and data security
- 14.3. **Information Access**
- 14.3.1. **SYSTEM MEASURES.** Contractor shall employ appropriate system management and maintenance, fraud prevention and detection, and encryption application and tools to any systems or networks containing or transmitting State's proprietary data or confidential information.
- 14.3.2. **INDIVIDUAL MEASURES.** Contractor personnel shall comply with applicable State policies and procedures regarding data access, privacy, and security, including prohibitions on remote access and obtaining and maintaining access identifications (IDs) and passwords. Contractor is responsible to State for ensuring that any State access IDs and passwords are used only by the person to whom they were issued. Contractor shall ensure that personnel are only provided the minimum only such level of access necessary to perform his or duties. Contractor shall on request, provide a current register of the access IDs and passwords and corresponding access levels currently assigned to its personnel.



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- 14.3.3. **ACCESS CONTROL.** Contractor is responsible to State for ensuring that hardware, software, data, information, and that has been provided by State or belongs to or is in the custody of State and is accessed or accessible by Contractor personnel is only used in connection with carrying out the Work and is never commercially exploited in any manner whatsoever not expressly permitted under the Contract. State may restrict access of Contractor personnel, or instruct Contractor to restrict their access, if in its determination the requirements of this subparagraph are not being met.

14.4. Pass-Through Indemnity

- 14.4.1. **INDEMNITY FROM THIRD PARTY.** For computer hardware or software included in the Work as discrete units that were manufactured or developed solely by a third party, Contractor may satisfy its indemnification obligations under the Contract by, to the extent permissible by law, passing through to State such indemnity as it receives from the third-party source (each a "Pass-Through Indemnity") and cooperating with State in enforcing that indemnity. If the third party fails to honor its Pass-Through Indemnity, or if a Pass-Through Indemnity is insufficient to indemnify State Indemnitees to the extent and degree, Contractor is required to do by the Uniform Terms and Conditions, then Contractor shall indemnify, defend and hold harmless State Indemnitees to the extent the Pass-Through Indemnity does not.

- 14.4.2. **NOTIFY OF CLAIMS.** State shall notify Contractor promptly of any claim to which a Pass-Through Indemnity might apply. Contractor, with reasonable consultation from State, shall control of the defense of any action on any claim to which a Pass-Through Indemnity applies, including negotiations for settlement or compromise, provided that:

- 14.4.2.1. State reserves the right to elect to participate in the action at its own expense;
- 14.4.2.2. State reserves the right to approve or reject any settlement or compromise on reasonable grounds and if done so timely; and
- 14.4.2.3. State shall in any case cooperate in the defense and any related settlement negotiations.

- 14.5. **Systems and Controls** In consideration for State having agreed to permit Pass-Through Indemnities in lieu of direct indemnity, Contractor agrees to establish and keep in place systems and controls appropriate to ensure that State funds under this Contract are not knowingly used for the acquisition, operation, or maintenance of Materials or Services in violation of intellectual property laws or a third party's intellectual property rights.

14.6. Redress of Infringement



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- 14.6.1. REPLACE, LICENSE, OR MODIFY. If Contractor becomes aware that any Materials or Services infringe, or are likely to be infringing, on any third party's intellectual property rights, then Contractor shall, at its sole cost and expense and in consultation with State, either:
- 14.6.1.1. replace any infringing items with non-infringing ones;
 - 14.6.1.2. obtain for State the right to continue using the infringing items; or
 - 14.6.1.3. modify the infringing items so that they become non-infringing, so long as they continue to function as specified following the modification.
- 14.6.2. CANCELLATION OPTION. In every case under 14.6.1, if none of those options can reasonably be accomplished, or if the continued use of the infringing items is impracticable, State may cancel the relevant Order or terminate the Contract, and Contractor shall take back the infringing items. If State does cancel the Order or terminate the Contract, Contractor shall refund to State:
- 14.6.2.1. for any software created for State under the Contract, the amount State paid to Contractor for creating it;
 - 14.6.2.2. for all other Materials, the net book value of the product provided according to generally accepted accounting principles; and
 - 14.6.2.3. for Services, the amount paid by State or an amount equal to 12 (twelve) months of charges, whichever is less.
- 14.6.3. EXCEPTIONS. Contractor will not be liable for any claim of infringement based solely on any of the following by a State Indemnitee:
- 14.6.3.1. modification or use of Materials other than as contemplated by the Contract or expressly authorized or proposed by a Contractor Indemnitor;
 - 14.6.3.2. operation of Materials with any operating software other than that supplied by Contractor or authorized or proposed by a Contractor Indemnitor; or
 - 14.6.3.3. combination or use with other products in a manner not contemplated by the Contract or expressly authorized or proposed by a Contractor Indemnitor.

14.7. First Party Liability Limitation

- 14.7.1. LIMIT. Subject to the provisos that follow below and unless stated otherwise in the Special Terms and Conditions, State's and Contractor's respective first party liability arising from or related to the Contract is limited to the greater of \$1,000,000 (one million



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dollars) or 3 (three) times the purchase price of the specific Materials or Services giving rise to the claim.

14.7.2. **PROVISOS.** This paragraph limits liability for first party direct, indirect, incidental, special, punitive, and consequential damages relating to the Work regardless of the legal theory under which the liability is asserted. This paragraph does not limit liability arising from any:

14.7.2.1. Indemnified Claim against which Contractor has indemnified State Indemnitees under paragraph 6.3;

14.7.2.2. claim against which Contractor has indemnified State Indemnitees under paragraph 6.4; or

14.7.2.3. provision of the Contract calling for liquidated damages or specifying amounts or percentages as being at-risk or subject to deduction for performance deficiencies.

14.7.3. **PURCHASE PRICE DETERMINATION.** If the Contract is for a single-agency and a single Order (or if no Order applies), then "purchase price" in Subparagraph 14.7.1 above means the aggregate Contract price current at the time of Contract expiration or earlier termination, including all Contract Amendments having an effect on the aggregate price through that date. In all other cases, "purchase price" above means the total price of the Order for the specific equipment, software, or services giving rise to the claim, and therefore a separate limit will apply to each Order.

14.7.4. **NO EFFECT ON INSURANCE.** This paragraph does not modify the required coverage limits, terms, and conditions of, or any insured's ability to claim against any insurance that Contractor is required by the Contract to provide, and Contractor shall obtain express endorsements that it does not.

14.8. Information Technology Warranty

14.8.1. **SPECIFIED DESIGN.** Where the Scope of Work for information technology, Work provides a detailed design specification or sets out specific performance requirements, Contractor warrants that the Work will provide all functionality material to the intended use stated in the Contract, provided that, the foregoing warranty does not extend to any portions of the Materials that are:

14.8.1.1. modified or altered by anyone not authorized by Contractor to do so;

14.8.1.2. maintained in a way inconsistent to any applicable manufacturer recommendations; or



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14.8.1.3. operated in a manner not within its intended use or environment.

14.8.2. COTS SOFTWARE. With respect to Materials provided under the Contract that are commercial-off-the-shelf (COTS) software, Contractor warrants that:

14.8.2.1. to the extent possible, it will test the software before delivery using commercially available virus detection software conforming to current industry standards;

14.8.2.2. the COTS software will, to the best of its knowledge, at the time of delivery be free of viruses, backdoors, worms, spyware, malware, and other malicious code that could hamper performance, collect unlawfully any personally identifiable information, or prevent products from performing as required by the Contract; and

14.8.2.3. it will provide a new or clean install of any COTS software that State has reason to believe contains harmful code.

14.8.3. PAYMENT HAS NO EFFECT. The warranties in this paragraph are not affected by State's inspection, testing, or payment.

14.9. **Specific Remedies.** Unless expressly stated otherwise elsewhere in the Contract, State's remedy for breach of warranty under paragraph 14.8 includes, at State's discretion, re-performance, repair, replacement, or refund of any amounts paid by State for the nonconforming Work, plus (in every case) Contractor's payment of State's additional, documented, and reasonable costs to procure materials or services equivalent in function, capability, and performance that was first called for. For clarification of intent, the foregoing obligations are limited by the limitation of liability in paragraph 14.7. If none of the foregoing options can reasonably be effected, or if the use of the materials by State is made impractical by the nonconformance, then State may seek any remedy available to it under law.

14.10. DATA SECURITY / SECURITY

14.10.1. Data Privacy/Security Incident Management.

Contractor and its agents shall cooperate and collaborate with appropriate State personnel to identify and respond to an information security or data privacy incident, including a security breach.

14.10.1.1. Threat of Security Breach

Contractor(s) agrees to notify the State's Chief Information Officer (CIO), the Customer's Chief Information Security Officer (CISO) and other key personnel as identified by the Customer of any perceived threats placing the



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supported infrastructure and/or applications in danger of breach of security. The speed of notice shall be at least commensurate with the level of threat, as perceived by the Contractor(s). Customer shall agree to provide contact information for the CNO, the CIO, the CISO and key personnel to the Contractor if applicable.

14.10.1.2. Discovery of Security Breach

Contractor agrees to promptly notify the State's CIO, and the CISO and key personnel as identified by the State of a discovered breach of security. Customer shall agree to provide contact information for the CNO, the CIO, the CISO and key personnel to the Contractor if applicable.

14.10.2. Security Requirements for Contractor Personnel.

Each individual proposed to provide services through this Contract on behalf of Contractor will be required to pass Contractor's standard background check. The results of the individual's background check procedures must meet all applicable HIPAA and law enforcement requirements. Contractor is responsible for all costs to obtain security clearance for their consultants providing services through this contract. Contractor personnel, agents or sub-contractors that have administrative access to the State's networks may be subject to any additional security requirements of ADOA-ASET as may be required for the performance of the contract. The Contractor, its agents and sub-contractors shall provide documentation to ADOA-ASET confirming compliance with all such additional security requirements for performance of the contract. Additional security requirements include but are not limited to the following:

14.10.2.1. Identity and Address Verification – that verifies the individual is who he or she claims to be including verification of the candidate's present and previous addresses;

14.10.2.2. UNAX/confidentiality Training;

14.10.2.3. HIPAA Privacy and Security Training; and

14.10.2.4. Information Security Training.

14.10.3. Information Access. The Contractor shall, where applicable, implement and/or use network management and maintenance applications and tools and appropriate fraud prevention and detection and encryption technologies. The Contractor and its employees, agents and Subcontractors shall comply with all policies and procedures of



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State regarding data access, privacy and security, including those prohibiting or restricting remote access to the State's systems and data. The State shall authorize, and the Contractor shall issue, any necessary information-access mechanisms, including access IDs and passwords, and the Contractor agrees that the same shall be used only by the personnel to whom they are issued. The Contractor shall provide to such personnel only such level of access as is minimally necessary to perform the tasks and functions for which such personnel are responsible. The Contractor shall from time-to-time, upon request from the State, but in the absence of any request from the State at least quarterly, provide the State with an updated list of the Contractor personnel having access to the State's systems, software, and data, and the level of such access. Computer data and software, including the States Data, provided by the State or accessed (or accessible) by the Contractor personnel or the Contractor's Subcontractor personnel, shall be used by such personnel only in connection with the obligations provided hereunder, and shall not be commercially exploited by the Contractor or its Subcontractors in any manner whatsoever. Failure of the Contractor or the Contractor's Subcontractors to comply with the provisions of this Contract may result in the State restricting offending personnel from access to the State computer systems or the State Data or immediate termination of this Contract. It shall be the Contractor's obligation to maintain and ensure the confidentiality and security of the State Data in its possession or on its systems.

14.10.4. Information Disclosure. The Contractor shall establish and maintain procedures and controls for the purpose of assuring that no information contained in its records or obtained from the state or from others in carrying out its functions under the contract shall be used or disclosed by it, its agents, officers, or employees, except as required to efficiently perform duties under the Contract. Persons requesting such information should be referred to the State. The Contractor also agrees that any information pertaining to individual persons shall not be divulged other than to employees or officers of the Contractor as needed for the performance of duties under the Contract, unless otherwise agreed to in writing by the State.

14.10.5. Building Access.

14.10.5.1. Contractor access to Customer facilities and resources shall be properly authorized by Customer personnel, based on business need and will be restricted to least possible privilege. Upon approval of access privileges, the Contractor shall maintain strict adherence to all policies, standards, and procedures. Policies / Standards, ADOA/ASET Policies / Procedures, and



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Arizona Revised Statutes (ARS) 28-447, 28-449, 28-450, 38-421, 13-2408, 13-2316, 41-770).

14.10.5.2. Failure of the Contractor, its agents or subcontractors to comply with policies, standards, and procedures including any person who commits an unlawful breach or harmful access (physical or virtual) will be subject to prosecution under all applicable state and / or federal laws. Any and all recovery or reconstruction costs or other liabilities associated with an unlawful breach or harmful access shall be paid by the Contractor.

14.11. **Section 508 Compliance.** Unless specifically authorized in the Contract, any electronic or information technology offered to the State of Arizona under this Contract shall comply with A.R.S. §18-131 and §18-132 and Section 508 of the Rehabilitation Act of 1973, which requires that employees and members of the public shall have access to and use of information technology that is comparable to the access and use by employees and members of the public who are not individuals with disabilities.

14.12. **Cloud Applications** The following are required for Contractor of any cloud solution that hosts State data outside of the State's network or transmits and/or receives State data.

14.12.1. Submit a completed Arizona Baseline Infrastructure Security Controls assessment spreadsheet as found at: <https://aset.az.gov/resources/policies-standards-and-procedures>, and mitigate or install compensating controls for any issues of concern identified by State. Contractor is required to provide any requested documentation supporting the review of the assessment. The assessment shall be re-validated on a minimum annual basis.

14.12.2. State reserves the right to conduct penetration tests or hire a third party to conduct penetration tests of the Contractor's application. Contractor will be alerted in advance and arrangements made for an agreeable time. Contractor shall respond to all serious flaws discovered by providing an acceptable timeframe to resolve the issue and/or implement a compensating control.

14.12.3. Contractor must submit a copy of system logs from the cloud system to the State of Arizona security team on a regular basis to be added to the State SIEM (Security Information Event Monitor) or IDS (Intrusion Detection System).

14.12.4. Contractor must employ a government-rated cloud compartment to better protect sensitive or regulated State data.

14.13. **SECURITY FRAMEWORK.** The State of Arizona and its contractors are mandated to develop and implement a Cyber Security Framework (CSF) in accordance with National Institute of



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standards and Technology (NIST) guidance. To ensure State and contractors meet these mandates, all contractors responding to State solicitations will be evaluated based on NIST Special Publication (SP) 800-53 Rev. 4 Security and Privacy Controls. Contractor understands and agrees no other forms of Security Frameworks, Trust Documents, Self Attestations, to include; ISO/IEC, SOC 2 & 3, PCI, or HIPAA reports of compliance are recognized nor accepted by State. NIST SP 800-53 Rev. 4 guidelines can be located at:
<https://csrc.nist.gov/publications/detail/sp/800-53/rev-4/final>

Contractor shall comply with all applicable security requirements including but not limited to:

- Arizona Risk and Authorization Management Program (AZRamp) assessment.
- In accordance with Instructions to Offerors 5.2 Responsiveness and Acceptability, submission of a completed [AZRamp 35 Arizona Baseline Security Controls Pre-requisite.xls](#) assessment spreadsheet is a mandatory requirement of every RFP response, as is Offeror's plan to mitigate gaps or install compensating controls for any issues of concern identified by the State. Contractor is required to provide any requested documentation to include System Security Plan (SSP), policies and procedures supporting the review of the assessment. The assessment shall be re-validated on a minimum annual basis.
- In accordance with the Instructions to Offerors 7.6 AZRamp Certification, a prerequisite to contract award will be the successful completion and approval of the [AZRamp 325 Moderate \(Classified, PII, or PHI\) Impact Control Baseline spreadsheet](#), approval to be determined by the Enterprise Security, Privacy & Risk Compliance team. Moderate Impact controls are marked as "Required" in column F of the spreadsheet.
- State reserves the right to conduct risk assessments, vulnerability assessments, black-box penetration tests or hire a third party to conduct risk assessments, vulnerability assessments, and black-box penetration tests of the Contractor's environment. Contractor will be alerted in advance and arrangements made for an agreeable time. Contractor shall respond to all serious flaws discovered by providing an acceptable timeframe to resolve the issue and/or implement a compensating control.
- Contractor will submit copy of system logs from Contractor's environment to State of AZ security team on a regular basis to be added to the State SIEM (Security Information Event Monitor) or IDS (Intrusion Detection System).

Contractor shall comply with all applicable State and Federal laws and regulations, including, but not limited to;

- Federal Information Security Management Act of 2002 (FISMA)



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- Federal Information Security Modernization Act of 2014 (FISMA)
- OMB Circular A-130
- Health Portability and Accountability Act (HIPAA) including Business Associate Agreement/ Health Information Technology for Economic and Clinical Health Act(HITECH)



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- Tax Information Security Guidelines For Federal, State and Local Agencies: Safeguards for Protecting Federal Tax Returns and Return Information (IRS Publication 1075)
- A.R.S. 18-104 - Arizona Department of Administration, Arizona Strategic Enterprise Technology (ADOA-ASET), Powers and duties of the agency
- A.R.S. 18-105 - Statewide information security and privacy office (SISPO)
- A.R.S. 18-552 - Notification of security system breaches; requirements; enforcement; civil penalty; preemption; exceptions
- Arizona Executive Order 2008-10 – Mitigating Cyber Security Threats
- State of Arizona statewide policies, standards and practices
- SIPC Memorandum of Understanding (MOU)
- State Environmental policies
- Family Education Rights Privacy Act (FERPA)
- Driver's Privacy Protection Act (DPPA)
- Incident Response Reporting program and system
- Privacy Incident Reporting policy and standards
- AZNET/SISPO escalation MOU and notification workflow/templates
- State of Arizona Library, Archives and Public Records, Records Management Division, General Retention Schedules <http://www.lib.az.us/records/documents/pdf/State%20-%20management.pdf>
- Payment Card Industry (PCI) Security Standards including but not limited to Supplemental Documents, Information Supplements and Validation Requirements –See: https://www.pcisecuritystandards.org/security_standards/documents.php?document=pci_dss_v2-0#pci_dss_v2-0

15. IMPLEMENTATION

Contractor shall begin the implementation process within ten (10) business days of Contract execution. Contractor shall provide a detailed Implementation Plan for ADOA to review and approve six (6) months prior to the effective, "go-live" date of October 1, 2016. The Implementation Plan shall include at minimum, the following components:

- 15.1. A detailed transition-of-care plan that outlines the processes to occur prior to, during, and immediately following the Contract effective date:
 - 15.1.1.1. A review of existing ADOA metadata, manuals, policies, and procedures applicable to this Contract and/or the HART;
 - 15.1.1.2. An interview of ADOA subject-matter experts and staff about existing data models and related policies and procedures; and
 - 15.1.1.3. A thorough analysis of existing data models and data structures.



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- 15.1.2. Contractor shall provide to ADOA a team of individuals dedicated to implementing the provisions of this Contract upon award. The Implementation Team shall include, but not be limited to: programmers; data analysts; a project manager; and an account manager.
- 15.1.3. Contractor shall facilitate and accept the transfer of forty-eight (48) months of ADOA's historical medical claims, pharmacy claims, and dental history in an agreed-upon format.
- 15.1.4. Contractor shall perform comprehensive system testing and quality assurance audits, with results reported to ADOA prior to the Contract effective date, as part of the base fees and at no additional cost to ADOA. System testing should include, but is not limited to, the following elements:
 - 15.1.4.1. File transfer;
 - 15.1.4.2. File load;
 - 15.1.4.3. User access; and
 - 15.1.4.4. Reporting.
- 15.1.5. Contractor shall offer a separate, one-time implementation performance guarantee that incorporates five (5) key milestones, outlined below, to ensure an accurate and timely implementation.
 - 15.1.5.1. File transfer process programming and testing completed by July 1, 2016;
 - 15.1.5.2. Eligibility file load prior to August 1, 2016;
 - 15.1.5.3. System access and user training completed within two (2) weeks of implementation completion;
 - 15.1.5.4. Access to HART online tool will be accessible to ADOA in production environment by October 1, 2016; and
 - 15.1.5.5. Forty-eight (48) months of historical claims load completed within ninety (90) days following receipt of usable data.
- 15.1.6. Contractor shall provide ADOA with an instruction manual for the HART that defines and explains all information necessary for ADOA staff to operate and utilize the Tool. The manual shall be provided at the time of implementation, and shall be updated regularly by the Contractor's Account Management Team. This manual shall be provided as part of the base administrative fees and with no additional cost to ADOA.
- 15.1.7. The aforementioned instruction manual (Special Term and Condition, Section 12.6) shall be in a mutually agreed-upon format and shall include, but not be limited to, the following information:



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- 15.1.7.1. Account management structure and contact information;
- 15.1.7.2. Eligibility file layouts and exchanges;
- 15.1.7.3. Claim file extracts and exchanges;
- 15.1.7.4. Billing and payment process;
- 15.1.7.5. System testing and documentation; and
- 15.1.7.6. A catalog for reporting tools.
- 15.1.8. The designated Implementation Manager shall continue to support ADOA for a minimum of forty-five (45) days after the effective date of October 1, 2016. Such support includes, but is not limited to: weekly calls with ADOA and Contractor's Account Management Team; maintenance of issue-tracking logs; and issue resolution. This support must be provided as part of the base administrative fees and at no additional cost to ADOA.
- 15.1.9. Contractor shall keep an implementation tracking log (Exhibit E: Implementation Tracking Log) that includes documentation of all Contract or implementation issues. The log shall be updated and shared with ADOA daily.
- 15.1.10. Contractor shall provide HART training manual and conduct training to all identified ADOA personnel, as requested by ADOA and at no additional cost.
- 15.1.11. Contractor shall provide staffing, as appropriate, to perform administrative work for the Contract, as determined by ADOA.

16. PERFORMANCE GUARANTEES

Contractor shall offer competitive implementation and aggregate performance guarantees in which Contractor takes full financial risk for unsatisfied guarantees.

- 16.1. Contractor agrees to the minimum performance guarantees as listed below:



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#	Measure	Target	Reporting Method ¹	Frequency ²	Fees at Risk
Data and File Transfer					6%
1	Eligibility files shall be loaded and reconciled by Contractor within (24) hours of receipt.	Pass/Fail	Client-specific turnaround time reporting	Annually	
2	Vendor claim and data extracts shall be loaded by Contractor within (48) hours of receipt.	Pass/Fail	Client-specific turnaround time reporting	Monthly, Quarterly, Semi-Annually, and Annually	
3	Contractor will perform quality testing each month in accordance with an agreed upon test plan, track open issues on a issues log, and report any analytic impact to ADOA upon identification. Contractor shall identify and resolve ongoing data issues within the next monthly update if replacement data is not required or within two monthly updates if replacement data is required.	Pass/Fail	Monthly project tracking log	Monthly	
Reporting					15%
4	Ad-Hoc Reports: Ad-hoc reports shall be submitted in acceptable formats (i.e. Excel or Word and by secure delivery) within agreed upon timeframes.	Pass/Fail	Vendor report and supporting documentation and ad-hoc report request	Monthly	
5	Timely Reporting: Agreed upon reporting packages shall be submitted within stated timeframes: A) Annually within 60 calendar days of end of year. B) Quarterly within 45 calendar days of end of quarter. C) Monthly within 30 calendar days of end of month.	Pass/Fail	Vendor report and supporting documentation.	Annually, Quarterly, and Monthly	
6	At least 99% of the time the internal on-line tool is available, during Business Hours (as defined in the MedInsight Software as a Services Terms of Use).	Pass/Fail	Monthly IT system downtime reporting including date, time, and duration.	Monthly	
Customer Satisfaction					1%
7	Survey – Account Management: The overall rating of the survey shall indicate a ninety percent (90%) satisfaction rate by Account Management of Contractor's services.	≥90%	Vendor shall conduct an annual survey to measure overall satisfaction of Contractor and its services.	Annually	
Contract Implementation, One Time Guarantee					20%
8	Successful Contract Implementation: Contractor shall ensure successful implementation of contract including all of the following: A) File transfer process programing and testing completed by July 1, 2016; B) Eligibility file loaded in production prior to August 1, 2016 C) System access and user training completed within two (2) weeks of implementation completion D) Access to HART online tool will be accessible to ADOA in production environment by October 1, 2016 E) Forty-eight (48) months of historical claims load completed within ninety (90) days following receipt of usable data F) Vendor will provide quality test documents to ADOA in a mutually agreeable format during implementation. The data available for reporting in the production database will match the data reviewed during implementation as part of the quality and testing plans.	Pass/Fail	Detailed client account service log containing statistics and implementation dates, distributed materials, and/or supporting documentation, and weekly vendor log.	Annually	

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- 16.2. ADOA may request the inclusion of additional performance measurements annually. Any additional performance measurements shall be mutually agreed upon through a written Contract amendment.
- 16.3. Contractor shall measure all performance standards and provide to ADOA any supporting reports as ADOA-specific. Reports shall show actual results for the current period versus: (1) prior periods; and (2) the guaranteed standard. ADOA shall not be responsible for requesting reports.
- 16.4. Performance penalties will be calculated at the same frequency with which performance guarantees are reported, as shown on Attachment IV, Performance Guarantees, (monthly guarantees are calculated as 1/12 of annual fees at risk, and quarterly measures are 1/4 of annual fees at risk). At no time will quarterly or monthly measurements be re-averaged to alter results.
- 16.5. Penalties associated with performance guarantees shall be settled annually within ninety (90) calendar days of the end of the Contract year, depending on the guarantee.

17. CONTRACT TERMINATION / DISENTANGLEMENT


- 17.1. Prior to Contract termination, Contractor shall furnish to ADOA the name, title, and phone number of one (1) individual who will coordinate and assure prompt resolution of transitional issues for the Contract. ADOA shall be notified with any changes to this information within twenty-four (24) hours of any update.
- 17.2. Contractor shall submit to ADOA, within thirty (30) days of the beginning of the final Contract year (i.e. maximum Contract extension date), a Contract Transition Plan. The Transition Plan shall detail the activities that must occur in order to close out the Contract and transition all State-owned resources back to ADOA and/or to a new contractor. The Contract Transition Plan shall include, at a minimum:
 - 17.2.1. A timeline for conducting close-out activities and the sequence of planned events;
 - 17.2.2. Identification of key personnel, by position or title, who will manage and facilitate the close-out process;
 - 17.2.3. Contractor's method for identifying all State Health Plan data that must be transitioned to either ADOA or a new contractor (as determined by ADOA);
 - 17.2.4. The format and media type that will be used to transition all State Health Plan data to ADOA or a new contractor (as determined by ADOA); and
 - 17.2.5. The methodology and processes Contractor shall use to ensure that no State data remains anywhere other than as ADOA directs above, to include Contractor's or subcontractors servers, storage devices, removable media, or hardcopy media once Contract transition is complete.

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- 17.3. Contractor shall provide ADOA with any communications, resources, data, and/or file transfers, upon completion of any Contract term, to support a successful transition to a new contractor, if required, at no additional cost to ADOA. The fees charged to ADOA in connection with the provision of the service contemplated in this Section 14.3 will not exceed one hundred thousand dollars (\$100,000).
- 17.4. Upon completion of the Contract term, Contractor must provide claims data to the succeeding contractor or to ADOA, as directed and at no additional cost to ADOA. Contractor shall provide files to any new contractor selected by ADOA upon termination of the Contract. These files shall be delivered to the aforementioned parties within thirty (30) days of request and in the HIPAA compliant format such files are maintained by Contractor.

18. TRAVEL

Any travel or per diem by the Contractor to carry out its obligations under the Contract shall be at the Contractor's expense.

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1. Definition of Terms: As used in this Solicitation and any resulting Contract, the terms listed below are defined as follows:
 - 1.1. "Attachment" means any item the Solicitation requires the Offeror to submit as part of the Offer.
 - 1.2. "Contract" means the combination of the Solicitation, including the Uniform and Special Instructions to Offerors, the Uniform and Special Terms and Conditions, and the Specifications and Statement or Scope of Work; the Offer and any Best and Final Offers; and any Solicitation Amendments or Contract Amendments.
 - 1.3. "Contract Amendment" means a written document signed by the Procurement Officer that is issued for the purpose of making changes in the Contract.
 - 1.4. "Contractor" means any person who has a Contract with the State.
 - 1.5. "Days" means calendar days unless otherwise specified.
 - 1.6. "Exhibit" means any item labeled as an Exhibit in the Solicitation or placed in the Exhibits section of the Solicitation.
 - 1.7. "Gratuity" means a payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.
 - 1.8. "Materials" means all property, including equipment, supplies, printing, insurance and leases of property but does not include land, a permanent interest in land or real property or leasing space.
 - 1.9. "Procurement Officer" means the person, or his or her designee, duly authorized by the State to enter into and administer Contracts and make written determinations with respect to the Contract.
 - 1.10. "Services" means the furnishing of labor, time or effort by a contractor or subcontractor which does not involve the delivery of a specific end product other than required reports and performance, but does not include employment agreements or collective bargaining agreements.
 - 1.11. "Subcontract" means any Contract, express or implied, between the Contractor and another party or between a subcontractor and another party delegating or assigning, in whole or in part, the making or furnishing of any material or any service required for the performance of the Contract.
 - 1.12. "State" means the State of Arizona and Department or Agency of the State that executes the Contract.
 - 1.13. "State Fiscal Year" means the period beginning with July 1 and ending June 30.
2. Contract Interpretation
 - 2.1. Arizona Law. The Arizona law applies to this Contract including, where applicable, the Uniform Commercial Code as adopted by the State of Arizona and the Arizona Procurement Code, Arizona Revised Statutes (A.R.S.) Title 41, Chapter 23, and its implementing rules, Arizona Administrative Code (A.A.C.) Title 2, Chapter 7.
 - 2.2. Implied Contract Terms. Each provision of law and any terms required by law to be in this Contract are a part of this Contract as if fully stated in it.

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2.3. Contract Order of Precedence. In the event of a conflict in the provisions of the Contract, as accepted by the State and as they may be amended, the following shall prevail in the order set forth below:

- 2.3.1. Special Terms and Conditions;
- 2.3.2. Uniform Terms and Conditions;
- 2.3.3. Statement or Scope of Work;
- 2.3.4. Specifications;
- 2.3.5. Attachments;
- 2.3.6. Exhibits;
- 2.3.7. Documents referenced or included in the Solicitation.

2.4. Relationship of Parties. The Contractor under this Contract is an independent Contractor. Neither party to this Contract shall be deemed to be the employee or agent of the other party to the Contract.

2.5. Severability. The provisions of this Contract are severable. Any term or condition deemed illegal or invalid shall not affect any other term or condition of the Contract.

2.6. No Parole Evidence. This Contract is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms used in this document and no other understanding either oral or in writing shall be binding.

2.7. No Waiver. Either party's failure to insist on strict performance of any term or condition of the Contract shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.

3. Contract Administration and Operation

3.1. Records. Under A.R.S. § 35-214 and § 35-215, the Contractor shall retain and shall contractually require each subcontractor to retain all data and other "records" relating to the acquisition and performance of the Contract for a period of five years after the completion of the Contract. All records shall be subject to inspection and audit by the State at reasonable times. Upon request, the Contractor shall produce a legible copy of any or all such records.

3.2. Non-Discrimination. The Contractor shall comply with State Executive Order No. 2009-09 and all other applicable Federal and State laws, rules and regulations, including the Americans with Disabilities Act.

3.3. Audit. Pursuant to ARS § 35-214, at any time during the term of this Contract and five (5) years thereafter, the Contractor's or any subcontractor's books and records shall be subject to audit by the State and, where applicable, the Federal Government, to the extent that the books and records relate to the performance of the Contract or Subcontract.

3.4. Facilities Inspection and Materials Testing. The Contractor agrees to permit access to its facilities, subcontractor facilities and the Contractor's processes or services, at reasonable times for inspection of the facilities or materials covered under this Contract. The State shall also have the right to test, at its own cost, the materials to be supplied under this Contract. Neither inspection of the Contractor's facilities nor materials testing shall constitute final acceptance of the materials




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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 cover sheet, unless otherwise stated in the Contract. An authorized Procurement Officer and an authorized Contractor representative may change their respective person to whom notice shall be given by written notice to the other and an amendment to the Contract shall not be necessary.
- 3.6. Advertising, Publishing and Promotion of Contract. The Contractor shall not use, advertise or promote information for commercial benefit concerning this Contract without the prior written approval of the Procurement Officer.
- 3.7. Property of the State. Any materials, including reports, computer programs and other deliverables, created under this Contract are the sole property of the State. The Contractor is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. The Contractor shall not use or release these materials without the prior written consent of the State.
- 3.8. Ownership of Intellectual Property. Any and all intellectual property, including but not limited to copyright, invention, trademark, trade name, service mark, and/or trade secrets created or conceived pursuant to or as a result of this contract and any related subcontract ("Intellectual Property"), shall be work made for hire and the State shall be considered the creator of such Intellectual Property. The agency, department, division, board or commission of the State of Arizona requesting the issuance of this contract shall own (for and on behalf of the State) the entire right, title and interest to the Intellectual Property throughout the world. Contractor shall notify the State, within thirty (30) days, of the creation of any Intellectual Property by it or its subcontractor(s). Contractor, on behalf of itself and any subcontractor(s), agrees to execute any and all document(s) necessary to assure ownership of the Intellectual Property vests in the State and shall take no affirmative actions that might have the effect of vesting all or part of the Intellectual Property in any entity other than the State. The Intellectual Property shall not be disclosed by contractor or its subcontractor(s) to any entity not the State without the express written authorization of the agency, department, division, board or commission of the State of Arizona requesting the issuance of this contract.
- 3.9. Federal Immigration and Nationality Act. The contractor shall comply with all federal, state and local immigration laws and regulations relating to the immigration status of their employees during the term of the contract. Further, the contractor shall flow down this requirement to all subcontractors utilized during the term of the contract. The State shall retain the right to perform random audits of contractor and subcontractor records or to inspect papers of any employee thereof to ensure compliance. Should the State determine that the contractor and/or any subcontractors be found noncompliant, the State may pursue all remedies allowed by law, including, but not limited to; suspension of work, termination of the contract for default and suspension and/or debarment of the contractor.
- 3.10. E-Verify Requirements. In accordance with A.R.S. § 41-4401, Contractor warrants compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with Section A.R.S. § 23- 214, Subsection A.

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- 3.11. Offshore Performance of Work Prohibited. Any services that are described in the specifications or scope of work that directly serve the State of Arizona or its clients and involve access to secure or sensitive data or personal client data shall be performed within the defined territories of the United States. Unless specifically stated otherwise in the specifications, this paragraph does not apply to indirect or 'overhead' services, redundant back-up services or services that are incidental to the performance of the contract. This provision applies to work performed by subcontractors at all tiers.

4. Costs and Payments

- 4.1. Payments. Payments shall comply with the requirements of A.R.S. Titles 35 and 41, Net 30 days. Upon receipt and acceptance of goods or services, the Contractor shall submit a complete and accurate invoice for payment from the State within thirty (30) days.
- 4.2. Delivery. Unless stated otherwise in the Contract, all prices shall be F.O.B. Destination and shall include all freight delivery and unloading at the destination.
- 4.3. Applicable Taxes
- 4.3.1. Payment of Taxes. The Contractor shall be responsible for paying all applicable taxes.
- 4.3.2. State and Local Transaction Privilege Taxes. The State of Arizona is subject to all applicable state and local transaction privilege taxes. Transaction privilege taxes apply to the sale and are the responsibility of the seller to remit. Failure to collect such taxes from the buyer does not relieve the seller from its obligation to remit taxes.
- 4.3.3. Tax Indemnification. Contractor and all subcontractors shall pay all Federal, state and local taxes applicable to its operation and any persons employed by the Contractor. Contractor shall, and require all subcontractors to hold the State harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under Federal, and/or state and local laws and regulations and any other costs including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.
- 4.3.4. IRS W9 Form. In order to receive payment the Contractor shall have a current I.R.S. W9 Form on file with the State of Arizona, unless not required by law.
- 4.4. Availability of Funds for the Next State fiscal year. Funds may not presently be available for performance under this Contract beyond the current state fiscal year. No legal liability on the part of the State for any payment may arise under this Contract beyond the current state fiscal year until funds are made available for performance of this Contract,
- 4.5. Availability of Funds for the current State fiscal year. Should the State Legislature enter back into session and reduce the appropriations or for any reason and these goods or services are not funded, the State may take any of the following actions:
- 4.5.1. Accept a decrease in price offered by the contractor;
- 4.5.2. Cancel the Contract; or
- 4.5.3. Cancel the contract and re-solicit the requirements.


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5. Contract Changes

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

6. Risk and Liability

- 6.1. **Risk of Loss:** The Contractor shall bear all loss of conforming material covered under this Contract until received by authorized personnel at the location designated in the purchase order or Contract. Mere receipt does not constitute final acceptance. The risk of loss for nonconforming materials shall remain with the Contractor regardless of receipt.
- 6.2. **Indemnification**
 - 6.2.1. **Contractor/Vendor Indemnification (Not Public Agency).** The parties to this contract agree that the State of Arizona, its departments, agencies, boards and commissions shall be indemnified and held harmless by the contractor for the vicarious liability of the State as a result of entering into this contract. However, the parties further agree that the State of Arizona, its departments, agencies, boards and commissions shall be responsible for its own negligence. Each party to this contract is responsible for its own negligence.
 - 6.2.2. **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

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or copyright arising out of Contract performance or use by the State of materials furnished or work performed under this Contract. The State shall reasonably notify the Contractor of any claim for which it may be liable under this paragraph. If the contractor is insured pursuant to A.R.S. § 41-621 and § 35-154, this section shall not apply.

6.4. Force Majeure.

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

6.4.2. Force Majeure shall not include the following occurrences:

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


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

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

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

7. Warranties


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

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

8. State's Contractual Remedies

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

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- 8.2.1. The State may, at any time, by written order to the Contractor, require the Contractor to stop all or any part, of the work called for by this Contract for period(s) of days indicated by the State after the order is delivered to the Contractor. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage.
- 8.2.2. If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the Contractor shall resume work. The Procurement Officer shall make an equitable adjustment in the delivery schedule or Contract price, or both, and the Contract shall be amended in writing accordingly.
- 8.2.3. Non-exclusive Remedies. The rights and the remedies of the State under this Contract are not exclusive.


8.3. 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.

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

9. Contract Termination

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

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

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or remedies, shall be entitled to recover exemplary damages in the amount of three times the value of the Gratuity offered by the Contractor.

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

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

9.5. **Termination for Default.**

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


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.

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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 (Title 41).

12. Comments Welcome

The State Procurement Office periodically reviews the Uniform Terms and Conditions and welcomes any comments you may have. Please submit your comments to: State Procurement Administrator, State Procurement Office, 100 North 15th Avenue, Phoenix, Arizona, 85007.


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Exhibit A – 2019 Benefit Services Division Annual Report

A copy of the 2019 Benefit Services Annual Report can be viewed online at:

https://benefitoptions.az.gov/sites/default/files/media/LEGI_HITF_2019_Annual_Report.pdf


	<p style="text-align: center;">Exhibits Request for Proposal Solicitation No. BPM003836 Healthcare Analytics and Reporting Tool (HART)</p>	<p>Arizona Department of Administration State Procurement Office 100 N 15th Avenue Phoenix, AZ 85007</p>
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Exhibit B – Data Sources

As of 2021-07-31

Data Sources	Data Type	Population
ADOA	Eligibility and Enrollment	State* / ASU* / UA* / NAU* / Retiree** / COBRA **
BCBS of AZ	Medical	State / ASU / UA / NAU / retiree / COBRA
United Healthcare	Medical	State / ASU / UA / NAU / retiree / COBRA
MedImpact	Rx	State / ASU / UA / NAU / retiree / COBRA
Delta Dental	Dental	State / ASU / UA / NAU / retiree / COBRA

Note:

* State / ASU / UA / NAU eligible is based on Basic Life Plan enrollment

** Retiree, COBRA eligible is based on any Medical and/or Dental enrollment


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Exhibit C – Corrective Action Plan Template

Corrective Action Document



Type

Report Date:

Requested by:

BACKGROUND


<ADOA to insert applicable information >

PERFORMANCE ISSUE

<ADOA to insert performance issue or audit finding>

ADOA CORRECTIVE ACTION REQUEST

Type	Action Required	Comments
Disruption Report		
Member Notification Letter		
Claim Reprocess		
Direct Reimbursement		
Staff Training		
System Review		
System Testing		
Process and Procedure Review		
Focus Audit		
Other		

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VENDOR RESPONSE

Corrective Plan Requirements	Vendor Response
Causal Factor(s)	
Name of the person accountable for implementing and overseeing the corrective action plan	
Specific Deliverables/Process Details (Including requirements identified on the cover page)	
Expected Completion Dates	
Metrics used to measure the success of each deliverable	
Completion Date	
Attachments	


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Exhibit D - Eligibility File Layout

Exhibit D – Data file format

As of 2021-07-31

Data File	Comments
Member File	Exhibits D, #1
Enrollment File	Exhibits D, #2
Medical Claims File, current	Exhibits D, #3
Medical Claims File, Historical, Vendor Aetna	Exhibits D, #4
Medical Claims File, Historical, Vendor BCBSAZ	Exhibits D, #5
Medical Claims File, Historical, Vendor Cigna	Exhibits D, #6
Medical Claims File, Historical, Vendor United HealthCare	Exhibits D, #7
PBM Claims File, Current Medicpact	Exhibits D, #8
PBM Claims File, Historical, Vendor Medimpact	Exhibits D, #9
Delta Dental Claims File, current	Exhibits D, #10

Excel File Attached with individual Data File Formats


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Exhibit E - Implementation Tracking Log

ADOA / _____ Implementation Tracking Log - Open

Meeting Time:

OPEN ITEMS

Transaction Dates	As of:
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-	Issue Opened	Issue Updated	Issue Closed	Issue	Responsible Party	Actions Items