

**PIMA COUNTY NOTICE OF REQUEST FOR PROPOSALS (RFP)
Amendment #1**



Solicitation Number: BH-2021-01-01

Title: Hospital Based Court Ordered Evaluation Services

Issue Date: July 12, 2021

DUE IN AND OPENS: August 13, 2021 AT OR BEFORE 4:00 P.M. LOCAL TUCSON, AZ TIME (MST)

Submit Proposal to:

Pima County Behavioral Health
3950 S. Country Club Rd. STE 300
Tucson, Arizona 85714

MS Teams Pre-proposal:

July 26, 2021. AT 1:30 PM LOCAL TUCSON AZ TIME (MST)

MS TEAMS MEETING ONLY

MS Teams Meeting Link: [Click here to join the meeting](#)

Phone: +1 213-279-1657

Phone Conference ID: 334 741 57#

SOLICITATION: Pima County ("County") is soliciting proposals from Offerors qualified, responsible and willing to provide the following Goods and/or Services in compliance with all solicitation specifications and requirements contained or referenced herein.

GENERAL DESCRIPTION: Pursuant to Arizona Revised Statutes (ARS) §36 545.04, Pima County is responsible to pay for services for individuals undergoing the Court Ordered Evaluation (COE) process.

The goal of contracting with hospital based evaluating agencies for Court Ordered Evaluation (COE) services is to ensure high quality, cost effective care is provided in the least restrictive environment as expeditiously as possible within the timeframes mandated by Arizona Revised Statute (ARS) §36-545.04.

County will hold a MS Teams Pre-Proposal Meeting for the purpose of clarifying requirements and answering prospective Offeror questions. This meeting will be held via MS Teams only. It is the responsibility of Prospective Offerors to familiarize themselves with all requirements of the solicitation and to identify any issues at the conference. Attendance is optional but encouraged.

To download the RFP, go to https://webcms.pima.gov/government/behavioral_health/; click on the "Solicitations" tab at the bottom of the page. Please contact Molly.Hilber@pima.gov if you have difficulty downloading the solicitation. Offerors are required to check this website for addenda prior to the closing date and time of the solicitation to assure that the proposal incorporates all addenda.

Offerors must submit proposals to the location indicated above and as defined in the Instructions to Offerors, in accordance with all solicitation documents, including the contract, either referenced or included herein. Failure to do so may be cause for County to reject a proposal as *non-responsive*.

Offerors must complete those forms identified in Instructions to Offerors, Section 2, Proposal Documents; and submit those documents in accordance with Section 3. Proposal Submission Requirements.

Offerors may not withdraw proposals for sixty (60) days after opening except as allowed by Pima County Procurement Code.

OFFERORS ARE REQUIRED TO READ THE ENTIRE SOLICITATION, INCLUDING ALL REFERENCED DOCUMENTS, ASSURE THAT THEY ARE WILLING AND ABLE TO COMPLY, AND TO INCORPORATE ALL ASSOCIATED COSTS IN THEIR PROPOSAL.

County will not accept verbal requests for clarifications or interpretations. Offerors must submit any questions or deviation requests in writing to the Pima County Behavioral Health Department Attention: Molly Hilber; email: Molly.Hilber@pima.gov.

All submittals must reference the Solicitation Number and Title. County may not answer any Questions that Offerors submit within 8 days of the solicitation Due Date/Time.

INSTRUCTIONS TO OFFERORS

1.) PREPARATION OF RESPONSES:

Offerors must make all proposals using the forms contained in this solicitation. Offerors must print or typewrite all notations. **No erasures are permitted.** Offerors may cross out errors and print in ink or typewrite corrections adjacent to the error and the person signing the proposal will initial any such correction. Pima County ("County") prefers typewritten responses.

2.) PROPOSAL DOCUMENTS:

Offerors must complete and submit their proposals utilizing the forms provided by this solicitation without modification. Offerors must provide requested information, supporting documents and data in the precise manner that County requests. Failure to comply may cause County to improperly evaluate the proposal or to reject the Offeror's proposal as **Non-Responsive and/or Non-Responsible.**

NOTE: Insurance certificate documents will be required from the winning Offeror within two (2) business days after the Notice of Recommendation for Award is posted on the Procurement website. The following forms are required for proposal submission:

Offeror must complete the proposal certification form, which an authorized representative of the Offeror must sign certifying that the firm is willing and able to meet all requirements of the solicitation. Failure to do so may be cause for the County for reject the proposal as non-responsive.

All unit prices will remain firm for the initial term of the executed agreement, with the exception that should Offeror during the term of the agreement offer to another buyer pricing for like or similar quantity, products of services at a price more favorable than those given to Pima County, that Offeror will provide the same pricing to County effective on the date of Offeror offered it to the other buyer. Offeror's Unit Prices must include all costs required to implement and actively conduct and document cost control and reduction activities. Unit prices must include all costs and, unless otherwise specified, must be F.O.B. Destination & Freight Prepaid Not Billed ("F.O.B. Destinations"). Unit prices will prevail in the event of an extension error. Offeror must price each item separately. Delivery time if stated as a number of days means "calendar" days. County reserves the right to question and correct obvious errors.

3.) GENERAL SPECIFICATIONS & DEVIATIONS:

The specifications included in this solicitation intend to identify the kind and quality of goods and/or services to be provided without being unnecessarily restrictive, and to allow Offeror to provide the information needed for the development of consistent and comprehensive proposals.

Equipment brand names, models, and numbers when given, intend to identify a level of quality, equivalent performance, and dimensional specifications, and are for reference only, unless otherwise specified in the solicitation.

Failure to perform appropriate research, discovery, examine any drawings, specifications, and instructions will be at the Offeror's sole risk.

Items included in Offeror's proposal must meet the specifications and requirements set forth in the solicitation.

Deviation requests must be submitted with proposal and must specifically document and clearly illustrate the deviation to the particular specification of the requirement set forth by this solicitation and fully explain the requested deviation's impact on the end performance of the item. Acceptance or rejection of deviation request is at the sole discretion of County in accordance with the Pima County Procurement code.

County may consider conditional proposals that do not conform to or that request exceptions to the published solicitation and amendments as non-responsive and County may not evaluate them.

4.) OFFEROR'S MINIMUM QUALIFICATIONS: In order for County to evaluate and consider proposals for award, they must be **Responsive and Responsible.** "**Responsive**" means that the submitted proposal document conforms in all material respects to the requirements in the solicitation. "**Responsible**" means that Offerors document and substantiate their ability to fully perform all requirements of the solicitation. Factors include and may not be limited to experience,

integrity, perseverance, reliability, capacity, facilities, equipment, credit and any other matter necessary to provide the performance that the solicitation requires.

Offeror must certify that they possess the minimum qualifications contained in **Attachment 2: Minimum Qualifications Certification Form (2 Pages)**. Offeror must provide the requested documents that substantiate their satisfaction of the minimum qualifications. Failure to provide the information required by these Minimum Qualifications and required to substantiate *responsibility* may be cause for County to reject the Offeror’s proposal as ***Non-Responsive and/or Non-Responsible***.

5.) EVALUATION & AWARD CRITERIA:

Pima County will evaluate proposals that are ***Responsive and Responsible*** as defined above. County will evaluate proposals according to the evaluation criteria set forth herein. County will evaluate cost without regard to applicable taxes.

The evaluation panel will use the evaluation criteria when scoring the Offeror’s answers to the questions contained in **Attachment 2: Questionnaire Form (2 pages)** and **Attachment 3: Reference Listing Form (2 pages)**. Offeror should respond in the form of a thorough narrative to each specification as guided by the Questionnaire. The evaluation panel will evaluate the narratives along with required supporting materials and award points accordingly.

Offerors will submit written Proposals, the Minimum Qualifications Verification Form, Questionnaire, Offer Agreement, and any associated documentation required. County will evaluate the submitted responses to identify the top ranked Offerors likely to receive an award.

<u>EVALUATION CRITERIA</u>	<u>MAXIMUM POINTS</u>
A. Cost (“Total price proposed”)	40
B. Oral Presentation	20
C. Project Plan	15
D. Experience	10
E. Key Personnel	10
F. Sustainability	<u>5</u>
Total Possible Points	100

Evaluation Criteria

The evaluation committee will assign points to reach proposal submitted on the basis of the following evaluation criteria unless otherwise indicated:

A. Cost (0 to 40 points)

Offerors must propose one firm, fixed, fully-loaded hourly rate [or unit price] per service category. The firm, fixed, fully-loaded hourly rate will include all direct cost, indirect cost, overhead profit margin, as well as subcontractors’ total costs if appropriate.

Offeror must propose the total charges for hospital based COE services and what is included per day.

County will evaluate cost without regard to applicable taxes. Contractor must propose a detailed daily rate(s) if requesting physician fees for rounding and evaluations with narrative responses.

SMALL BUSINESS ENTERPRISE (SBE):

Any contract funded in any amount with federal funds is not eligible.

For those proposals whose cost does not exceed \$500,000 per contract year, County will give a 5% bid preference to first submitting SBE Certificates issues by the City of Tucson WITH THEIR BID; said certification is subject to verification and acceptance by County. If County accepts the certification, the bid will be evaluated at 95% of the Total Price Proposal amount to determine the low and responsive bid. If County awards a contract it will utilize the Unit Prices, Total Price Proposed or as negotiated.

SBE firms must include with their bid documents a copy of their current certification which that may acquire from the City of Tucson; Department of Procurement. The City of Tucson SBE website, which typically includes an

SEB application form and a Directory listing firms holding SBE certification, is located at: http://www.tucsonprocurement.com/bidders_SBE.aspx.

The process of acquiring SBE certification may take several weeks. Please contact the Pima County Business Enterprise Program Coordinator at **(520) 724-3807** for assistance or further information.

COST POINTS CALCULATION

County will calculate points for the cost based on the Total Price Proposed (TPP) using the following formula: Lowest Total Price Proposed Amount (LTPP) will receive the maximum quality of points. Other proposals will receive points using the following formula: $(LTPP \text{ Other TPP}) \times \text{Maximum Points} = \text{Score}$

If the cost evaluation is based on SAVINGS, replace above with: County will calculate points for the cost criteria based on the Total Savings Proposed (TSP) using the following formula: Highest TSP will receive the maximum quantity of points. Other proposals will receive points using the following formula: $(\text{Other TSP} / \text{Highest TSP}) \times \text{Maximum Points} = \text{Score}$

B. Oral Presentation (0 to 20 points)

The Behavioral Health Contracts Manager will notify finalists of the date, time, and location of the oral presentations, which are anticipated to occur the week of August 16th, 2021. The presentation will include the demonstration of any function, workflow, product, or system capability included in the proposal. Points for the oral presentation will be based on presenter's knowledge, effectiveness of communication, experience with similar contracts and the quality of the responses to questions during the presentation.

C. Project Plan (0 to 15 Points)

Offerors should provide a thorough project plan to include a milestone chart naming tasks to be performed, and should include any mitigation strategies, training and support, the estimated time frame for completing each task, and the proposed staff member designated for the completion of each task.

County will base points for the project plan on the quality and thoroughness of the project plan and responses to criteria listed in **Attachment 2: Questionnaire (2 pages)**.

D. Experience (0 to 10 points)

Offerors should include in their proposals documentation describing the extent of their experience and expertise for work related to the provision of Court-Ordered Evaluation Services, patient satisfaction, and processing of billing medical claims.

Offeror's should provide at least three (3) references in **Attachment 3: Reference Listing (2 pages)**. Offeror should list organizations that are similar type, size, and operation as Pima County where Offeror has successfully delivered Court-Ordered Evaluation Services.

County will base points for contractor's experience on documented successful experience on similar projects and engagement.

E. Key Personnel (0 to 10 points)

Offerors should provide resumes and experience narratives for all key personnel who will be performing services under the contract with **Attachment 2: Questionnaire (2 pages)**. Experience narratives will describe the specific relevant experience in relation to the work performed in this contract, as well as their certifications or other professional credentials that clearly show how they meet or exceed the minimum requirements in this solicitation.

Offerors must include in their proposal copies of appropriate professional certifications for key personnel. County will base points for the key personnel on each staff member's experience as it relates to their role and the needs of this contract.

F. Sustainability (0 to 5 points)

Offerors should provide contractors' operating policies and materials handling directed at using less, recycling, and minimizing the overall impact on the environment.

County will base points for sustainability philosophy and practices on responses provided with **Attachment 2: Questionnaire (2 pages)**.

County reserves the right to request additional information and/or clarification. Any clarification of a proposal will be in writing. Recommendation for award will be the responsible and responsive Offeror whose proposal County determines to be the most advantageous taking into consideration the evaluation criteria in this solicitation.

If County makes an award, it will enter into an agreement with the one, two Offeror(s) that submitted the highest scoring responsive and responsive proposal(s) by executing and transmitting a contract document that incorporates the Proposal without further action by the Offeror. The County may conduct discussions with the Offeror to clarify the Proposal without further action by the Offeror. The County may conduct discussions with the Offeror to clarify the Proposal and Agreement details provided that they do not substantially change the intent of the solicitation.

6.) SUBMISSION OF PROPOSALS

Offerors are to complete, execute and submit one (1) original and five (5) copies of the required documentation submittal MUST include all information requested by the solicitation, and utilize without modification the forms provided by the solicitation.

A COMPLETE AND SIGNED OFFER AGREEMENT MUST BE SUBMITTED: A complete offer agreement will consist of:

- A. Offer Agreement:** All thirteen (13) pages of the Offer Agreement (which includes Pima County's Standard Terms and Conditions), with the following sections and their requirements completed:
 - **Section 3: Contractor Minimum Qualifications and supporting documents**
 - **Section 7: Compensation and Payment**
 - **Section 13: Acknowledgement of Solicitation Amendments**
 - **Section 14: Small Business Enterprise (SBE) Certification**
 - **Section 15: Bid/Offer Certification Page**
- B. Attachment 1: Minimum Qualifications Verification Form (2 pages):** fully complete, including the required documentation.
- C. Attachment 2: Questionnaire (2 pages):** fully complete, including all requested documentation
- D. Attachment 3: Reference Form (2 pages, minimum 3 copies, one for each reference):** Offeror is to provide this form to their current clients, and the clients will complete the form and return by electronic email to County via the following email address: PCBH@pima.gov. Offeror's clients must prior to the closing date and time of solicitation. Offeror must verify that at least 3 current clients submit the form on Offeror's behalf. Failure to meet this requirement may cause County to reject Offeror's submittal as non-responsive.
- E. Any other documents required by the solicitation.**

7.) BEST AND FINAL OFFER:

County reserves the right to request additional information and/or clarification with responsible Offerors who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of, and conformance to, the solicitation requirements.

In the event that County holds discussions and requests clarifications, County will issue a written request for best and final proposals. The request will set forth the date, time, and place for the submission of best and final proposals. If Offerors fail to respond to the request for best and final proposal or fail to submit a notice of withdrawal, County will consider their immediate previous proposal as their best and final proposal.

8.) COMPLIANCE WITH CONTRACT:

County will execute a contract with the successful Offeror(s). The Offeror agrees to establish, monitor, and manage an effective administration process that assures compliance with all requirements of the agreement. In particular, the Offeror agrees that they shall not provide goods or services in excess of the executed agreement items, item quantity, item amount, or agreement amount without prior written authorization by revision or change order properly executed by the County. Any items provided in excess of the quantity stated in the agreement shall be at the Offeror's own risk.

Offerors shall decline verbal requests to deliver items in excess of the agreement and shall report all such requests in writing to the Pima County Behavioral Health Department within 1 workday of the request. The report shall include the name of the requesting individual and the nature of the request.

9.) INQUIRIES AND NOTICE OF RECOMMENDATION FOR AWARD (NORFA):

County will not provide results of this procurement in response to telephone inquiries. Interested parties may attend the public opening at the time and date stated in this solicitation. A tabulation of submittals will be on file at the Procurement Department. No oral interpretations or clarifications made to any respondent as to the meaning of any solicitation documents will be binding on Pima County. If a prospective respondent believes a requirement of the solicitation documents to be needlessly restrictive, unfair, or unclear, the respondent will notify the Pima County Procurement Department in writing identifying the solicitation number, page, and paragraph number and clearly stating the issues and suggested solution prior to the date set for receipt of the bid or proposal. County will respond by written amendment sent to all known potential respondents. County may not answer issues that are not submitted within 8 days prior to the closing date and time of the solicitation.

The Pima County protest procedures are in Chapter 11.20 of the Pima County Procurement Code, available through [http://library.amlegal.com/nxt/gateway.dll/Arizona/pimacounty_az/title11pimacountyprocurementcode/chapter1120protests?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:pimacounty_az\\$anc=JD_Chapter11.20](http://library.amlegal.com/nxt/gateway.dll/Arizona/pimacounty_az/title11pimacountyprocurementcode/chapter1120protests?f=templates$fn=default.htm$3.0$vid=amlegal:pimacounty_az$anc=JD_Chapter11.20). The five-day period to file a protest of the award will be measured from the date the Notice of Recommendation for Award is posted on the Pima County Behavioral Health website at https://webcms.pima.gov/government/behavioral_health/ **without regard to whether individual notices were issued**. It is the responsibility of Offerors and Proposers to check the website.

10.) CONTRACTOR RECORD MAINTENANCE: By submitting a response to this solicitation, Offeror agrees to establish and maintain a complete Pima County Vendor record, including the provision of a properly completed and executed "Request for Taxpayer Identification Number and Certification" document (Form W-9) within ten (10) calendar days of the solicitation due date. Offeror also agrees to update the information within ten (10) calendar days of any change in that information and prior to the submission of any invoice request for payment. The preferred method for creating or updating this record is via the internet utilizing the Pima County Vendor Self Service (VSS). The registration requires that Offeror establish and maintain email functionality. In addition to providing the means for an Offeror to create and maintain its Vendor record, VSS also provides email notice to Offeror regarding solicitations that County publishes for commodities of interest as defined by the vendor record. Internet links for Vendor Registration are located at the Procurement Internet page: <http://www.pima.gov/procure/venreg.htm>.

11.) DOCUMENTS MARKED CONFIDENTIAL:

Disclosure. Pursuant to A.R.S. § 39-121 et seq., and A.R.S. § 34-603(H) in the case of construction or Architectural and Engineering services procured under A.R.S. Title 34, Chapter 6, all documents submitted in response to this solicitation, including, but not limited to, pricing schedules, product specifications, work plans, and any supporting documents are public records. As such, those documents are subject to release and/or review by the general public upon request, including competitors.

Records Marked Confidential: Notice and Protective Order. If Offeror reasonably believes that some of those records contain proprietary, trade-secret or otherwise-confidential information, Offeror must prominently mark those records "CONFIDENTIAL." In the event a public-records request is submitted to County for records marked CONFIDENTIAL, County will notify Offeror of the request as soon as reasonably possible. County will release the records 10 business days after the date of that notice, unless Offeror has, within that period, secured an appropriate order from a court of competent jurisdiction enjoining the release of the records. County will not, under any circumstances, be responsible for securing such an order, nor will County be in any way financially responsible for any costs associated with securing such an order.

Any information marked as CONFIDENTIAL must be accompanied by an index specifically identifying and describing the general contents of each page so marked. The index is a Public Record and will not include any information considered confidential.

The Offeror agrees to waive confidentiality of any price terms in the event of an awarded contract.

END OF INSTRUCTIONS TO OFFEROR

OFFER AGREEMENT

1.) INTENT:

This document is intended to establish a contract to provide Pima County "County" with Court-Ordered Evaluation (COE) services on an "as required basis" by issue of Deliver Order ("DO").

As defined by the Pima County Standard Terms and Conditions included herein, this contract is non-exclusive and County may terminate it for any reason without penalty or cost.

All Goods and Services that Contractor offers or provides pursuant to the contract will conform to the requirements defined by or referred to by the solicitation documents including *Solicitation Amendment*, *Instructions to Offerors*, *Standard Terms and Conditions*, and this *Offer Agreement*, all of which are incorporated herein.

2.) CONTRACT TERM, RENEWALS, EXTENSIONS AND REVISIONS:

The initial term will be for a three (3) year period and include two (2) one-year renewal options that the parties may exercise upon written agreement as follows:

Contract extensions, renewals, or revisions will occur through the issuance by County to Contractor of an amendment document setting forth the requested changes. Failure by Contractor to object in writing to the proposed revisions, terms conditions, scope modifications and/or specifications within ten (10) calendar days of issuance by County will signify acceptance of all such changes by Contractor and the revision will be binding upon the parties, effective on the date of issuance.

3.) CONTRACTOR MINIMUM QUALIFICATIONS:

The Contractor certifies that it is competent, willing, and responsible for performing the services or providing the products in accordance with all requirements of the solicitation and this contract. Contractor certifies that it possesses all licenses required by applicable Agencies to satisfy the requirements of this contract.

Refer to **Attachment 1: Minimum Qualifications Verification Form (2 pages)**.

4.) PRODUCT OR SERVICE SPECIFICATIONS AND SCOPE:

Refer to **Exhibit A: Specifications and Scope of Work to Contract: Court-Ordered Evaluation (6 pages)**

5.) OFFER ACCEPTANCE AND ORDER RELEASES:

County will accept offer and execute this contract to be effective on the document's date of issue without further action by either party. The contract will document the term of the agreement.

Pursuant to the executed contract, County departments requiring the services defined herein will issue a DO to the Contractor. Behavioral Health Department will furnish the DO to the Contractor via facsimile, e-mail, or telephone. **If County gives the order verbally, the County Department issuing the order will transmit a confirming order document to Contractor within five (5) business days of the date it gives the verbal order.**

Contractor must not supply materials or services that are not specified in the contract and are not documented or authorized by a DO at the time of provision. County accepts no responsibility for control of or payment for materials or services not documented by a County DO.

Contractor will establish, monitor, and manage an effective contract administration process that assures compliance with all requirements of this contract. In particular, Contractor will not provide goods or services in excess of the executed contract items, item quantity, item amount, or contract amount without prior written authorization by contract revision that County has properly exercised and issued. Any items Contractor provides in excess of those stated in the contract are at Contractor's own risk. Contractor will decline any verbal requests to deliver items in excess of the contract and will report such requests in writing to the County Procurement Department within one (1) workday of the request. The report must include the name of the requesting individual and the nature of the request.

6.) ACCEPTANCE OF GOODS AND SERVICES:

County will accept goods and services only in accordance with this contract. Such acceptance is a prerequisite to the commencement of payment terms.

7.) COMPENSATION AND PAYMENT:

The contract issued to accept Contractor's offer will define the not-to-exceed amount.

Contractor's unit prices must include all incidentals and associated costs required to comply with and satisfy all requirements of this solicitation, which includes the *Instructions to Offerors, Standard Terms and Conditions, Sample Professional Services Contract, and Offer Agreement*. County will make no payments for items not in the contract.

Quantities in this solicitation are estimates only. County reserves the right to increase or decrease quantities and amounts. County makes no guarantee regarding actual orders for items or quantities during the term of the agreement. County is not responsible for Contractor inventory or order commitment.

UNIT PRICES (Net 30-day Payment Terms)

Item #	Item Name	Estimated Annual Usage Quantity	UOM	Unit Price	Extended Amount
1	Facility Charges or Bed Days	9426	Days		
2	Physician Billing for Psychiatric evaluations required for COE	6284	Ea		
3	Reported COE cases	3142	Ea		
FOB Destination/Unloaded; include cost of freight I unit price.				Total Bid	
Although County will pay taxes <u>IF</u> applicable, do <u>NOT</u> include sales tax in unit price.					

Unless the parties otherwise agree in writing, all pricing will be F.O.B. Destination & Freight Prepaid Not Billed ("F.O.B. Destination"). Contractor will deliver and unload all products or services at the destinations(s) that the delivery article of this contract or accepted order indicates. The offered Unit Price must include all freight costs.

Although an order may not fully define State and City sales tax, County will pay such taxes as are DIRECTLY applicable to County and Contractor invoices such taxes as a separate line item. Contractor must not include such taxes in the item unit price.

Price Warranty. Contractor will give County the benefit of any price reduction before actual time of shipment.

Price Escalation. All unit prices include compensation for Contractor to implement and actively conduct cost and price control activities. Pricing will remain firm during the initial year of the contract term after which the parties may consider price increases no more frequently than once per year. Contractor will submit a written request to County that includes supporting documents justifying requested increases at least ninety (90) days prior to the renewal date. Contractor will provide evidence, cite sources, demonstrate specific conditions and document how those conditions affect the cost of its performance, and identify specific efforts Contractor has taken to control and reduce those and other costs to avoid the need to increase prices. County will review proposed pricing and determine if it is allowable, fair, and reasonable, and in the best interest of the County to accept the proposal. County reserves the right to continue, accept, or reject the price proposal, or terminate and re-solicit the contract.

All pricing will conform to Pima County's Living Wage ordinance if applicable, including required annual adjustments of the wage.

The parties may negotiate and establish unit pricing in writing under the contract for items included in the scope of the contract that does not have previously defined unit pricing.

Standard Payment Term Net (30) is effective from the date of valid invoice document and does not commence until the later of 1) the receiving County Department receives goods or services into County's payment system or 2) County Financial Operations receives and verifies Contractor's invoice.

OPTIONAL EARLY PAYMENT DISCOUNT TERM: Pima County Administrative Procedure No. 22-35 Section 2.2.4 defines County's practice regarding discounts for early payment. Contractor offers the following discounts to those prices to be used for all orders issued pursuant to this contract. County will utilize the existing payment code that best matches that offered and does not exceed the offered discount percentage. Payment days cannot be less than ten (10) calendar days. Contractor will submit valid invoice document consistent with the associated DO to County Finance Department at least seven (7) calendar days prior to the date on which the discounted payment is due. If desired, for any order issued pursuant with this contract, Contractor may offer early payment discounts that exceed this Standard Early Payment Discount.

Optional Early Payment Discount Percent: _____ % if payment tendered within _____ Days as above.

Contractor will submit Request(s) for Payment of Invoices to the location an entity defined by the County's DO document.

All invoice documents will reference the County's DO number under which the services or products were ordered. **ALL** invoice line items will utilize the item description, precise unit price and unit of measure defined by the County's order document. County may return invoices that include line items or unit process that do not match those documented by the County's order to Contractor unprocessed for correction. **Contractor will not accept order, or provide services or products that cumulatively exceed the contract amount.**

Contractor will provide detailed documentation in support of payment requests, which should be consistent with and not exceed County's DO document. Contractor will bill County within one (1) month after the date on which Contractor's right to payment accrues ("Payment Accrual Date"), which, unless this contract specifically provides otherwise, is the appropriate line item of County's order and document each Payment Accrual Date. County may refuse to pay any amount that Contractor bills in which does not conform to County's DO document. County will refuse to pay any amount that Contractor bills more than six (6) months after the Payment Accrual Date, pursuant to A.R.S. § 11-622(C).

8.) DELIVERY:

As defined by the Standard Terms "On-Time" delivery is an essential part of the consideration Contractor will give County under the contract. Contractor will make delivery in accordance with the *Instructions to Offerors, Standard Terms and Conditions* and to the location(s) referenced on the DO or contract.

Contractor guarantees it can execute a contract with a start date no later than **October 1, 2021**. If required to satisfy the guaranteed delivery interval, Contractor will utilize additional man-hours at no additional cost to County.

9.) TAXES, FEES, EXPENSES:

Pursuant to IRS Publication 510, County is exempt from federal excise taxes for goods. County is subject to State and City sales tax. County will pay no separate charges for delivery, drayage, express, parcel post, packing, insurance, license fees, permits, costs of bonds, surcharges, or bid preparation unless the contract expressly includes such charges and the solicitation documents itemize them.

10.) OTHER DOCUMENTS:

Contractor and County in entering into this contract have relied upon information provided or referenced by Pima County Solicitation No. BH-2021-01 including the *Request for Proposal, Instructions to Offerors, Offer Agreement, Standard Terms and Conditions, Sample Professional Services Contract, Solicitation Amendments, Contractor's Proposal*, documents submitted by Contractor or References to satisfy Minimum Qualifications and any other information and documents that Contractor has submitted in its response to County's solicitation. The contract

incorporates these documents as though set forth in full herein, to the extent not inconsistent with the provisions of this contract.

11.) INSURANCE:

The insurance Requirement herein are minimum requirements for this contract and in no way limit the indemnity covenants contained in this contract. Contractor's insurance shall be placed with companies licensed by the State of Arizona and the insureds shall have an "A.M. Best" rating of not less than A-VII. Pima County in no way warrants that the minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

Minimum Scope and Limits of Insurance:

Contractor shall procure and maintain, until all contractual obligations have been discharged, the insurance coverage with limits of liability not less than stated below. Pima County in no way warrants that the minimum insurance limits contained herein are sufficient to protect the Contractor from liabilities that arise out of the performance of the work under this contract. If necessary, Contractor may obtain commercial umbrella or excess insurance to satisfy the County's insurance requirements.

Commercial General Liability (CGL). Occurrence Form with limits not less than \$2,000,000 Each Occurrence and \$2,000,000 General Aggregate. Policy shall include cover for liability arising from premises, operations, independent contractors, personal injury, bodily injury, broad form contractual liability and products-completed operations.

Business Automobile Liability. Coverage for bodily injury and property damage on any owned, leased, hired, and/or non-owned autos assigned to or used in the performance of this Contract with minimum limits not less than \$1,000,000 Each Accident.

Workers' Compensation and Employers' Liability. Statutory coverage for Workers' Compensation. Workers' Compensation statutory coverage is compulsory for employers of one or more employees. Employers Liability coverage with limits of \$1,000,000 each accident and \$1,000,000 each person – disease.

Additional Insurance Requirements. The policies shall include, or be endorsed to include, as required by this written agreement, the following provisions.

Claims Made Coverage. If any part of the Required Insurance is written on a claims-made basis, any policy retroactive date must precede the effective date of this Contract, and Contractor must maintain such coverage for a period of not less than three (3) years following Contract expiration, termination or cancellation.

Additional Insured Endorsement. The General Liability, Business Automobile Liability and Technology E&O Policies shall each be endorsed to include County, its departments, districts, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor.

Subrogation Endorsement. The General Liability, Business Automobile Liability, Workers' Compensation and Technology E&O Policies shall each contain a waiver of subrogation endorsement in favor of County, and its departments, districts, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

Primary Insurance Endorsement. The Contractor's Insurance policies must stipulate that they are primary and that any insurance carried by County, or its agents, officials, or employees, is excess and not contributory insurance.

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

Notice of Cancellation. Each Required Insurance policy must provide to County, and certificates specify, that County will receive not less than thirty (30) days advance written notice of any policy cancellation, except ten (10) days prior notice is sufficient when the cancellation is for non-payment of a premium.

Verification of Coverage.

Contractor must furnish County with a certificate of insurance (valid ACORD form or equivalent approved by County) for each Required Insurance policy, which must specify that the policy has all the required endorsements, and must include County's project or contract number and project description. Each certificate must be signed by an authorized representative of the insurer.

All certificates and endorsements, as required by this written agreement, are to be received and approved by Pima County before work commences. 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 coverages or policies as required by the contract, or to provide evidence of renewal, is a material breach of the contract.

County may at any time require Contractor to provide a complete copy of any Required Insurance policy or endorsement. Note: Contractors for larger projects must provide actual copies of the additional insured and subrogation endorsements.

All insurance certificates must be sent directly to the appropriate County Department. The Certificate of Insurance shall include the Pima County project or contract number and project description on the certificate. Pima County reserves the right to require complete copies of all insurance policies required by this contract at any time.

Approval and Modifications. County's Risk Manager may modify the Insurance Requirements at any point during the Term of this Contract. This can be done administratively, with written notice from the Risk Manager and does not require a formal Contract amendment. Neither the County's failure to obtain a required insurance certificate or endorsement, the County's failure to object to a non-complying insurance certificate or endorsement, nor the County's receipt of any other information from the Contractor, its insurance broker(s) and/or insurer(s), constitutes a waiver of any of the Insurance Requirements.

12.) PERFORMANCE BOND:

Not applicable to this agreement.

13.) ACKNOWLEDGEMENT OF SOLICITATION AMENDMENTS:

Contractor acknowledges that it incorporates the following solicitation amendments in its offer and this contract:

Amendment #	Date	Amendment #	Date	Amendment #	Date

14.) SMALL BUSINESS ENTERPRISE (SBE) CERTIFICATON:

Is your firm SBE certified as defined by the solicitation *Instructions to Offerors* section?

Yes No (select one)

If Yes, have you included your certification document?

Yes No (select one)

NOTE: If you do not submit the SBE Certification document with your bid, County will not apply the SBE Preference.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

15.)

BID/OFFER CERTIFICATION:

CONTRACTOR LEGAL NAME: _____

BUSINESS ALSO KNOWN AS: _____

MAILING ADDRESS: _____

CITY/STATE/ZIP: _____

REMIT TO ADDRESS: _____

CITY/STATE/ZIP: _____

CONTACT _____ PERSON

NAME/TITLE: _____

PHONE: _____ FAX: _____

CONTACT PERSON EMAIL

ADDRESS: _____

EMAIL ADDRESS FOR ORDERS &

CONTRACTS: _____

CORPORATE HEADQUARTERS

ADDRESS: _____

WEBSITE: _____

By signing and submitting these proposal documents, the undersigned certifies that all information submitted is accurate, that the firm has reviewed the Procurement website for solicitation addenda and incorporated to their proposal, that the firm is qualified and willing to provide the services requested, and that the firm will comply with all requirements of the solicitation. This firm also certifies it agrees to enter into a contract materially similar to the SAMPLE PROFESSIONAL SERVICES CONTRACT attached, and is ready and able to execute required activities listed in Exhibit A - Scope of Services.

Yes No (Select one)

The unit pricing includes all costs incidental to the provision of the items in compliance with the above documents; no additional payment will be made. Conditional offers that modify the solicitation requirements may be deemed non-responsive and County may not evaluate them. Contractor's signature below constitutes a firm offer and upon the execution of the Professional Services Contract issued by the Pima County Procurement Director or authorized designee will form a binding contract that will require Contractor to provide the goods or services described in this solicitation. The undersigned hereby offers to furnish the goods or services in compliance with all terms, conditions, specifications that the solicitation defines or references, which includes Instructions to Offerors, the sample Professional Services Contract, and related attachments or exhibits.

SIGNATURE: _____ DATE: _____

PRINTED NAME & TITLE OF AUTHORIZED CONTRACTOR REPRESENTATIVE EXECUTING OFFER

PHONE AND
EMAIL: _____

ATTACHMENT 1
MINIMUM QUALIFICATIONS VERIFICATION FORM (2 PAGES)

OFFEROR'S NAME: _____

In order for County to evaluate and consider proposals for award, they must be **Responsive and Responsible**. **“Responsive”** means that the submitted proposal documents conform in all material respects to the requirements in the solicitation. **“Responsible”** means that Offerors document and substantiate their capability to fully perform all requirements of the solicitation. Factors include and may not be limited to experience, integrity, perseverance, reliability, capacity, facilities, equipment, credit and any other matter necessary to provide the performance that the solicitation requires.

Offeror must certify that they possess the minimum qualifications contained herein. Offeror must provide the requested documents that substantiate their satisfaction of the Minimum Qualifications. Failure to provide the information required by these Minimum Qualifications and required to substantiate responsibility may be cause for County to reject the Offeror's proposal as **Non-Responsive and/or Non-Responsible**.

Offeror certifies that they possess the following minimum qualifications and will provide the requested documents that substantiate their satisfaction of the Minimum Qualifications.

Provide documented and verifiable evidence that your firm satisfies the following Minimum Qualifications, and indicate what/if attachments are submitted.

ITEM NO.	MINIMUM QUALIFICATIONS	COMPLIANCE YES/NO (SELECT ONE)	DOCUMENT TITLE AND NUMBER OF PAGES SUBMITTED FOR EACH DOCUMENT
1	Licensure by the State of Arizona to provide Court Ordered Evaluation services <i>Provide copy of licensure</i>	<input type="checkbox"/> YES <input type="checkbox"/> NO	
2	Offeror must have current accreditation, either by The Joint Commission or another national accrediting organization that has been approved by the Centers for Medicare and Medicaid Services (CMS) if providing services to individuals under the age of 21; OR Offeror's psychiatric program must undergo a State survey to determine whether the hospital meets the requirements for participation in Medicare as a hospital <i>Provide proof of accreditation or approval from State survey</i>	<input type="checkbox"/> YES <input type="checkbox"/> NO	
3	Licensure pursuant to A.R.S. § 36 Chapter 4 Articles 1 and 2; or for adults aged 21 and older, certification as provider under Title XVIII of the Social Security Act; OR for adults aged 21 and over, documentation that Offeror is currently determined by the Arizona Department of Health Services Assurance and Licensure to meet such requirements <i>Provide copy of license or accreditation OR ADHS determination letter</i>	<input type="checkbox"/> YES <input type="checkbox"/> NO	
4	Offeror's employees or sub-contractors providing services must be appropriately licensed by the State of Arizona <i>Provide proof of licensure of employees/subcontractors to provide service</i>	<input type="checkbox"/> YES <input type="checkbox"/> NO	

5	<p>Psychiatrists on medical staff or belonging to a separate physicians' group must provide services in compliance with the terms of this agreement and the provision of ARS Title 36, chapter 5</p> <p><i>Provide completed Attachment 3: Reference Form from at least one (1) vendor validating that you meet this requirement</i></p>	<input type="checkbox"/> YES <input type="checkbox"/> NO	
6	<p>Offeror must demonstrate they meet the requirements specified in 42 CFR 440.10 and Part 482</p> <p><i>Provide completed Attachment 3: Reference Form from at least one (1) vendor validating that you meet this requirement OR provide utilization review plan demonstrating you meet the requirements specified in 42 CFR 440.10 and Part 482.</i></p>	<input type="checkbox"/> YES <input type="checkbox"/> NO	
7	<p>Offeror must be able to accommodate courtroom proceedings, both virtual and in-person.</p> <p><i>Provide completed Attachment 3: Reference Form from at least one (1) vendor validating that you meet this requirement</i></p>	<input type="checkbox"/> YES <input type="checkbox"/> NO	
8	<p>Offeror must have telemedicine capability to manage T36 process remotely</p> <p><i>Provide completed Attachment 3: Reference Form from at least one (1) vendor validating that you meet this requirement</i></p>	<input type="checkbox"/> YES <input type="checkbox"/> NO	

SIGNATURE: _____

DATE: _____

PRINTED NAME & TITLE OF AUTHORIZED CONTRACTOR REPRESENTATIVE EXECUTING OFFER

ATTACHMENT 2: QUESTIONNAIRE (2 PAGES)

OFFEROR'S NAME: _____

The evaluation committee will assign points to each answer submitted on the basis of the following evaluation criteria unless otherwise indicated.

A. Cost: (0 to 40 points)

1. Propose the total charges for hospital based COE services and what costs are included per day. Cost will be evaluated and scored by the Pima County Behavioral Health Department. (20 points)
2. Propose a detailed daily rate(s) if requesting physician fees for rounding and evaluations with narratives. County will evaluate cost without regard to applicable taxes. (20 points)

B. Oral Presentation: (0 to 20 points)

The Behavioral Health Contracts Manager will notify Offeror's of the date, time, and location of the oral presentations. It is anticipated these will be virtually held through the week beginning August 16, 2021.

1. Be prepared to provide detailed descriptions of current operations and/or provide a demonstration of any function, workflow, product, or system capability included in the proposal. (20 points)

C. Project Plan: (0 to 15 points)

1. Provide a description of Offeror's philosophy in relation to involuntary vs. voluntary treatment including diagnoses they do not consider appropriate for Title 36 and towards dually diagnosed individuals; (3 points)
2. Provide an example of how you will approach the hospital based COE process through disposition of the petition, from the perspective of both the admission through the facility's emergency department and transfer from the Crisis Response Center (CRC); (3 points)
3. Provide a description of your plan to accommodate hearings on site, which may also include use of telemedicine capability to manage the Title-36 process remotely; (3 points)
4. List the number of available beds for the COE process, and identify any beds reserved for specialty populations; (2 points)
5. Provide an estimate for the total volume of patients the agency may be able to serve per month; (2 points),
6. Describe the administrative duties related to this process, including notification of claims submission. (2 points)

D. Experience: (0 to 10 points)

1. Describe and include documentation of experience and expertise for work related to (3 points):
 - i. Hospital-based COEs;
 - ii. Authorization and/or utilization review of services;
 - iii. Claims billing.
2. Provide documentation of fiscal health, such as the most recent financial audit with current financial statements. (2 points)
3. Provide examples of Patient Satisfaction Surveys or comparable tool regularly used by your organization for quality improvement and/or improvement in patient experience. If this is not a practice used by your organization, explain how you assess patient satisfaction and what informs quality improvement efforts. (5 points)

E. Key Personnel: (0 to 10 points)

1. Submit resumes of all proposed key personnel who will be performing services under the contract. Experience narratives must be attached that describe the specific relevant experience of the key personnel in relation to the role that personnel will perform for this contract. (4 points)
2. Identify key personnel special competencies that will be valuable in completing the contract. Include and provide copy of certification, licensure, or other professional credential (6 points).

If a subcontractor will perform the work on the project, include and provide full details as indicated above.

F. Sustainability: (0 to 5 points)

Offeror must provide information regarding company's philosophy and/or policies on waste prevention, reduction, recycling and/or reuse of your company's material resources. Place a check mark ✓ in each applicable box.

- Waste prevention/reduction or material recycling/reuse? (1 point)
- Alternative energy/fuels (such as solar/wind energy, bio-diesel, alternative fuels, hybrid vehicles) in your program's preparation, transportation, and demonstration? (1 point)
- Environmentally preferable materials (such as recycled materials; locally produced/manufactured products)? (1 point)
- Sustainable practices that lessen impact on non-renewable resources and global climate change (such as reduction in water/energy/paper use, minimization of hazardous materials; use of compressed/flexible work schedules)? (1 point)
- Other practices which coincide with the County's definition of sustainable practices (such as alternative modes of transportation; transportation minimization; life-cycle costs; product/packaging "take back" practices; preference to firms located within Pima County)? (1 point)

SIGNATURE: _____ **DATE:** _____

PRINTED NAME & TITLE OF AUTHORIZED CONTRACTOR REPRESENTATIVE EXECUTING OFFER

ATTACHMENT 3: REFERENCE FORM (2 PAGES)

Name of Contractor for whom reference is given: _____

Your organization's business name: _____

Your name and title: _____ Telephone number: _____

Email address: _____

- 1) Does Contractor currently provide your organization with Court Ordered Evaluation Services?
 No Yes

Service was provided from _____ to _____

Please briefly describe the scope of service and dollar value of the contract with Contractor:

- 2) Did Contractor meet all contract requirements satisfactorily: Yes No

- 3) Did Contractor demonstrate complete knowledge in NCCHC Standards for Health Services in Jails, Standards for Health Services in Juvenile Detention and Confinement Facilities, and Standards for Mental Health Services in Correctional Facilities:
 Yes No Not applicable

- 4) PLEASE RATE THE FOLLOWING ITEMS (circle one):

	Unsatisfactory	Below Average	Average	Above Average	Exceptional
1) Communications with Contractor: Comments: _____	0	1	2	3	4
2) Understanding of contractual requirements: Comments: _____	0	1	2	3	4
3) Completing projects on time and within budget Comments: _____	0	1	2	3	4
4) Contractor knowledge of COE process: Comments: _____	0	1	2	3	4
5) Contractor's record keeping and billing accuracy: Comments: _____	0	1	2	3	4
6) Contractor's responsiveness and success at addressing problems that arise: Comments: _____	0	1	2	3	4

7) Contractor's ability to accommodate court hearings on site, which may include use of telemedicine:
Comments: _____

8) Contractor's ability to ensure psychiatrists on medical staff or belonging to a separate physicians' group provide services in compliance with the terms of this agreement and the provision of ARS Title 36, chapter 5:
Comments: _____

9) Contractor's compliance with the requirements specified in 42 CFR 440.10 and Part 482:
Comments: _____

10) Contractor's telemedicine capability and ability to manage T36 process remotely:
Comments: _____

11) Competence of professional services staff:
Comments: _____

12) Overall satisfaction with the Contractor:
Comments: _____

Any other information that you would like to share about the Contractor:

Your Signature: _____

Please email this form by August 13, 2021, no later than 4:00 PM local Tucson, AZ time to:

Molly Hilber, Grants and Contracts Manager
Pima County Behavioral Health Department
Tel: 520.724.7515
Email: Molly.Hilber@pima.gov

Contractor may contact you if Reference Form due-in schedule has been revised by subsequent solicitation amendment. The published revised due-in schedule will supersede above schedule.

Thank you for your time. Pima County sincerely appreciates your cooperation.

END OF OFFER AGREEMENT

SAMPLE PROFESSIONAL SERVICES CONTRACT (10 PAGES)

Pima County Department of Behavioral Health

Project: Inpatient Court Ordered Evaluation Services Pursuant to ARS Title 36, Chapter 5

Contractor: awardee legal name
awardee address
awardee city, st zip

Amount: \$#,###.00

Contract No.: CT-BH-##-###

Funding: Enter Fund NAME from Finance list of defined sources

PROFESSIONAL SERVICES CONTRACT

1. Parties, Background and Purpose.

- 1.1. Parties. This Contract is between Pima County, a body politic and corporate of the State of Arizona ("County"), and Legal Name as documented by the ACC or individual's name for sole proprietorship ("Contractor").
- 1.2. Purpose. The Pima County Behavioral Health Department requires the provision of involuntary, hospital-based psychiatric evaluation services required pursuant to ARS Title 36, Chapter 5, Court Ordered Evaluations.
- 1.3. Authority. County selected Contractor pursuant to and consistent with County's Procurement Code 11.12.020 Competitive Sealed Proposals;
- 1.4. Solicitation and Other Documents. County previously issued Solicitation No. BH-2021-01 for certain services (the "Solicitation"). Requirements and specifications contained in the Solicitation, all documents included in the Solicitation, and any information and documentation submitted by Contractor in response to the Solicitation, are incorporated into this Contract by reference.
- 1.5. Contractor's Response. Contractor submitted the most advantageous response to the Solicitation.

2. Term.

- 2.1. Initial Term. The term of this Contract commences on October 1, 2021 and will terminate on September 30, 2024 ("Initial Term"). "Term," when used in this Contract, means the Initial Term plus any exercised extension options under Section 2.2. If the commencement date of the Initial Term is before the signature date of the last party to execute this Contract, the parties will, for all purposes, deem the Contract to have been in effect as of the commencement date.
- 2.2. Extension Options. County may renew this Contract for up to two (2) additional periods of up to 1 year each (each an "Extension Option"). An Extension Option will be effective only upon execution by the Parties of a formal written amendment.

3. Scope of Services. Contractor will provide County with the services described in **Exhibit A** (6 pages), at the dates and times described on **Exhibit A** or, if **Exhibit A** contains no dates or time frames, then upon demand. The Services must comply with all requirements and specifications in the Solicitation.

4. Key Personnel. Contractor will employ suitably trained and skilled professional personnel to perform all consultant services under this Contract. Prior to changing any key personnel, especially those key personnel

County relied upon in making this Contract, Contractor will obtain the approval of County. The key personnel include the following staff:

Name: _____ Title: _____
Name: _____ Title: _____
Name: _____ Title: _____

5. Compensation and Payment.

- 5.1. Rates; Adjustment. County will pay Contractor at the rates set forth in **Exhibit B**. Those rates will remain in effect during an Extension Option period unless Contractor, at least 90 days before the end of the then-existing Term, or at the time the County informs Contractor that the County intends to extend the Term, if that is earlier, notifies County in writing of any adjustments to those rates, and the reasons for the adjustments.
- 5.2. Not-to-Exceed (NTE) Amount. County’s total payments to Contractor under this Contract, including any sales taxes, may not exceed \$ _____ [per year] (the “NTE Amount”). The NTE Amount can only be changed by a formal written amendment executed by the Parties. Contractor is not required to provide any services, payment for which will cause the County’s total payments under this Contract to exceed the NTE Amount; if Contractor does so, it is at the Contractor’s own risk.
- 5.3. Sales Taxes. The payment amounts or rates in **Exhibit B** do not include sales taxes. Contractor may invoice County for sales taxes that Contractor is required to pay under this Contract. Contractor will show sales taxes as a separate line item on invoices.
- 5.4. Timing of Invoices. Contractor will invoice County on a monthly basis unless a different billing period is set forth in Exhibit C.3. Billing, and pursuant to A.R.S. § 11-622(C), will not pay for any product or service invoiced more than 6-months late.
- 5.5. Content of Invoices. Contractor will include detailed documentation in support of its claims in accordance with Exhibit B.

5.6. Invoice Submittal. Claims are to be sent to:

Pima County Behavioral Health
Attn: COE Claims
3950 S. Country Club Rd. #3240
Tucson, AZ 85714

Or via Email at: PCBHClaims@pima.gov

5.7. Invoice Adjustments. Not applicable to this Agreement.

6. Insurance. Contractor will procure and maintain at its own expense insurance policies (the “**Required Insurance**”) satisfying the below requirements (the “**Insurance Requirements**”) until all of its obligations under this Contract have been met. The below Insurance Requirements are minimum requirements for this Contract and in no way limit Contractor’s indemnity obligations under this Contract. The County in no way warrants that the required insurance is sufficient to protect the Contractor for liabilities that may arise from or relate to this Contract. If necessary, Contractor may obtain commercial umbrella or excess insurance to satisfy the Insurance Requirements.

6.1. Insurance Coverages and Limits. Contractor will procure and maintain, until all of its obligations have been discharged, coverage with limits of liability not less than those stated below. Coverage must be placed with insurers acceptable to the County with A.M. Best rating of not less than A-VII, unless otherwise approved by the County.

- 6.1.1. Commercial General Liability (CGL). Occurrence Form with limits not less than \$2,000,000 Each Occurrence and \$2,000,000 General Aggregate. Policy shall include cover for liability arising from premises, operations, independent contractors, personal injury, bodily injury, broad form contractual liability and products-completed operations. Any standard coverages excluded from the CGL policy, such as products/completed operations, etc. shall be covered by endorsement or separate policy and documented on the Certificates of Insurance.
- 6.1.2. Business Automobile Liability. Coverage for bodily injury and property damage on any owned, leased, hired, and/or non-owned autos assigned to or used in the performance of this Contract with minimum limits not less than \$1,000,000 Each Accident.
- 6.1.3. Workers' Compensation and Employers' Liability. Statutory coverage for Workers' Compensation. Workers' Compensation statutory coverage is compulsory for employers of one or more employees. Employers Liability coverage with limits of \$1,000,000 each accident and \$1,000,000 each employee – disease.
- 6.1.4. Professional Liability (E&O Insurance). This insurance is required for work from professionals whose coverage is excluded from the above CGL policy. The policy limits shall be not less than \$2,000,000 Each Claim and \$2,000,000 Annual Aggregate. The insurance shall cover professional misconduct or negligent acts of anyone performing any services under this contract.
- 6.1.5. In the event that the Professional Liability insurance required by this Contract is written on a claims-made basis, Contractor shall warrant that continuous coverage will be maintained as outlined under "Additional Insurance Requirements – Claims-Made Coverage" located in the next section.
- 6.2. Additional Insurance Requirements. The policies shall include, or be endorsed to include, as required by this written agreement, the following provisions.
 - 6.2.1. Claims Made Coverage. If any part of the Required Insurance is written on a claims-made basis, any policy retroactive date must precede the effective date of this Contract, and Contractor must maintain such coverage for a period of not less than three (3) years following Contract expiration, termination or cancellation.
 - 6.2.2. Additional Insured Endorsement. The General Liability, Business Automobile Liability and Technology E&O Policies shall each be endorsed to include County, its departments, districts, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor.
 - 6.2.3. Subrogation Endorsement. The General Liability, Business Automobile Liability, Workers' Compensation and Technology E&O Policies shall each contain a waiver of subrogation endorsement in favor of County, and its departments, districts, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.
 - 6.2.4. Primary Insurance Endorsement. The Required Insurance policies must stipulate that they are primary and that any insurance carried by County, or its agents, officials, or employees, is excess and not contributory insurance.
 - 6.2.5. The Required Insurance policies may not obligate the County to pay any portion of a Contractor's deductible or Self Insurance Retention (SIR). Insurance provided by the Contractor shall not limit the Contractor's liability assumed under the indemnification provisions of this Contract.
 - 6.2.6. Subcontractors. Contractor must either (a) include all subcontractors as additional insureds under its Required Insurance policies, or (b) require each subcontractor to separately meet all Insurance Requirements and verify that each subcontractor has done so, Contractor must furnish, if

requested by County, appropriate insurance certificates for each subcontractor. Contractor must obtain County's approval of any subcontractor request to modify the Insurance Requirements as to that subcontractor.

6.3. Notice of Cancellation. For each insurance policy required by the insurance provisions of this Contract, the Contractor must provide to County, within two (2) business days of receipt of notice, if a policy is suspended, voided, or cancelled for any reason. Such notice shall be mailed, emailed, hand-delivered or sent by facsimile transmission to the County Contracting Representative. Notice shall include County's project or contract number and project description.

6.4. Verification of Coverage.

6.4.1. Contractor must furnish County with a certificate of insurance (valid ACORD form or equivalent approved by County) for each Required Insurance policy, which must specify that the policy has all the required endorsements, and must include County's project or contract number and project description. Each certificate must be signed by an authorized representative of the insurer.

6.4.2. Contractor must provide the certificates to County before work commences. Each Required Insurance policy must be in effect at least 10 days before work under this Contract commences. Contractor must provide County a renewal certificate not less than 15 days prior to a Required Insurance policy's expiration date. Failure to maintain the Required Insurance policies, or to provide evidence of renewal, is a material breach of this Contract.

6.4.3. County may at any time require Contractor to provide a complete copy of any Required Insurance policy or endorsement. Note: Contractors for larger projects must provide actual copies of the additional insured and subrogation endorsements.

6.4.4. All insurance certificates must be sent directly to the appropriate County Department.

6.5. Approval and Modifications. County's Risk Manager may modify the Insurance Requirements at any point during the Term of this Contract. This can be done administratively, with written notice from the Risk Manager and does not require a formal Contract amendment. Neither the County's failure to obtain a required insurance certificate or endorsement, the County's failure to object to a non-complying insurance certificate or endorsement, nor the County's receipt of any other information from the Contractor, its insurance broker(s) and/or insurer(s), constitutes a waiver of any of the Insurance Requirements.

7. Indemnification. To the fullest extent permitted by law, Contractor will defend, indemnify, and hold harmless County and any related taxing district, and the officials and employees of each of them (collectively, "Indemnatee") from and against any and all claims, actions, liabilities, losses, and expenses (including reasonable attorney fees) (collectively, "Claims") arising out of actual or alleged 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 any act or omission 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. The Indemnatee will, in all instances, except for Claims arising solely from the acts or omissions of the Indemnatee, be indemnified by Contractor from and against any and all Claims. Contractor is responsible for primary loss investigation, defense and judgment costs for any Claim to which this indemnity applies. This indemnity will survive the expiration or termination of this Contract.

8. Laws and Regulations.

- 8.1. Compliance with Laws. Contractor will comply with all federal, state, and local laws, rules, regulations, standards and Executive Orders, including those specified in 42 CFR 440.10 and Part 482.
- 8.2. Licensing. Contractor warrants that it is appropriately licensed to provide the services under this Contract and that its subcontractors will be appropriately licensed.
- 8.3. Choice of Law; Venue. The laws and regulations of the State of Arizona govern the rights and obligations of the parties under this Contract. Any action relating to this Contract must be filed and maintained in the appropriate court of the State of Arizona in Pima County.
- 9. Independent Contractor.** Contractor is an independent contractor. Neither Contractor, nor any of Contractor's officers, agents or employees will be considered an employee of County for any purpose or be entitled to receive any employment-related benefits, or assert any protections, under County's Merit System. Contractor is responsible for paying all federal, state and local taxes on the compensation received by Contractor under this Contract and will indemnify and hold County harmless from any and all liability that County may incur because of Contractor's failure to pay such taxes.
- 10. Subcontractors.** Contractor is fully responsible for all acts and omissions of any subcontractor, and of persons directly or indirectly employed by any subcontractor, and of persons for whose acts any of them may be liable, to the same extent that the Contractor is responsible for the acts and omissions of its own employees. Nothing in this Contract creates any obligation on the part of County to pay or see to the payment of any money due any subcontractor, except as may be required by law.
- 11. Assignment.** Contractor may not assign its rights or obligations under this Contract, in whole or in part, without the County's prior written approval. County may withhold approval at its sole discretion.
- 12. Non-Discrimination.** Contractor will comply with all provisions and requirements of Arizona Executive Order 2009-09, which is hereby incorporated into this contract, including flow-down of all provisions and requirements to any subcontractors. During the performance of this Contract, Contractor will not discriminate against any employee, client or any other individual in any way because of that person's age, race, creed, color, religion, sex, disability or national origin.
- 13. Americans with Disabilities Act.** Contractor will comply with Title II of the Americans with Disabilities Act (Public Law 110-325, 42 U.S.C. §§ 12101-12213) and the federal regulations for Title II (28 CFR Part 35).
- 14. Authority to Contract.** Contractor warrants its right and power to enter into this Contract. If any court or administrative agency determines that County does not have authority to enter into this Contract, County will not be liable to Contractor or any third party by reason of such determination or by reason of this Contract.
- 15. Full and Complete Performance.** The failure of either party to insist, in one or more instances, upon the other party's complete and satisfactory performance under this Contract, or to take any action based on the other party's failure to completely and satisfactorily perform, is not a waiver of that party's right to insist upon complete and satisfactory performance, or compliance with any other covenant or condition in this Contract, either in the past or in the future. The acceptance by either party of sums less than may be due and owing it at any time is not an accord and satisfaction.
- 16. Cancellation for Conflict of Interest.** This Contract is subject to cancellation for conflict of interest pursuant to A.R.S. § 38-511, the pertinent provisions of which are incorporated into this Contract by reference.
- 17. Termination by County.**
 - 17.1. Without Cause. County may terminate this Contract at any time without cause by notifying Contractor, in writing, at least 30 days before the effective date of the termination. In the event of such termination, County's only obligation to Contractor will be payment for services rendered prior to the date of termination.

17.2. With Cause. County may terminate this Contract at any time without advance notice and without further obligation to County when County finds Contractor to be in default of any provision of this Contract.

17.3. Non-Appropriation. Notwithstanding any other provision in this Contract, County may terminate this Contract if for any reason there are not sufficient appropriated and available monies for the purpose of maintaining County or other public entity obligations under this Contract. In the event of such termination, County will have no further obligation to Contractor, other than to pay for services rendered prior to termination.

18. Notice. Any notice required or permitted to be given under this Contract must be in writing and be served by personal delivery or by certified mail upon the other party as follows:

County:

Paula Perrera, Director
Pima County Behavioral Health
3950 S. Country Club #3420
Tucson, AZ 85714

Contractor:

19. Non-Exclusive Contract. Contractor understands that this Contract is nonexclusive and is for the sole convenience of County. County reserves the right to obtain like services from other sources for any reason.

20. Remedies. Either party may pursue any remedies provided by law for the breach of this Contract. No right or remedy is intended to be exclusive of any other right or remedy and each is cumulative and in addition to any other right or remedy existing at law or at equity or by virtue of this Contract.

21. Severability. Each provision of this Contract stands alone, and any provision of this Contract found to be prohibited by law will be ineffective to the extent of such prohibition without invalidating the remainder of this Contract.

22. Use of County Data. Unless it receives County's prior written consent, Contractor: (a) shall not access, process, or otherwise use County Data other than as necessary to provide contracted services or products; and (b) shall not intentionally grant any third party access to County Data, including without limitation Contractor's other customers, except subcontractors that are subject to a reasonable nondisclosure agreement. Notwithstanding the foregoing, Contractor may disclose County Data as required by applicable law or by proper legal or governmental authority. Contractor shall give County prompt notice of any such legal or governmental demand and reasonably cooperate with County in any effort to seek a protective order or otherwise to contest such required disclosure, at County's expense. Upon termination or completion of the Contract, Contractor will, within 60 calendar days, either return all County Data to County or will destroy County Data and confirm destruction to County in writing. As between the parties, County retains ownership of County Data. "County Data" means data in electronic or paper form provided to Contractor by County, including without limitation personal identifying information as defined in A.R.S. § 13-2001(10).

23. Health Insurance Portability and Accountability Act. The Parties acknowledge that County's health benefit program is a "covered entity" as described in 45 C.F.R. §160.103 of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), and is required to comply with the provisions of HIPAA with respect to safeguarding the privacy, confidentiality and security of protected health information. Contractor acknowledges that it may obtain confidential personal health information of County's health benefit program participants in the course of Contractor's performance under the terms of this Contract. "Confidential personal health information" includes information that could be used to identify a participant, information pertaining to the participant's care, treatment or experience in County's program, and information pertaining to the cost of, payment for, or collections activities related to participant's care, treatment and experience in County's program. Contractor agrees to maintain the privacy, confidentiality and security of information it may obtain

in the course of its performance under this Contract. In particular, Contractor agrees that it is County's Business Associate and agrees to be bound by the Business Associate Agreement in **EXHIBIT C** which is incorporated into this agreement, and further specifically agrees that:

- 23.1. Contractor shall establish and maintain procedures and controls that are acceptable to County to assure that no confidential personal health information contained in its records or obtained from County or from others in carrying out its functions under this Contract shall be used by or disclosed by Contractor, its agents, officers, employees or subcontractors, except as required in the performance of its obligations under the terms of this Contract; and
- 23.2. Contractor shall not remove any confidential personal health information from County premises, if applicable; and
- 23.3. Any other information pertaining to individual persons shall not be divulged other than to employees or officers of Contractor as needed for the performance of its duties under this Contract, or to County.

24. Reporting. Contractor will regularly deliver data summary reports per the Reporting Requirements and Schedule attached as **Attachment A-1**.

25. Books and Records. Contractor will keep and maintain proper and complete books, records and accounts, which will be open at all reasonable times for inspection and audit by duly authorized representatives of County. In addition, Contractor will retain all records relating to this Contract for at least five (5) years after its expiration or termination or, if later, until any related pending proceeding or litigation has concluded.

26. Public Records.

- 26.1. Disclosure. Pursuant to A.R.S. § 39-121 et seq., all documents submitted in response to the solicitation resulting in award of this Contract, including, but not limited to, pricing schedules, product specifications, work plans, and any supporting documents, are public records. As such, those documents are subject to release and/or review by the general public upon request, including competitors.
- 26.2. Records Marked Confidential; Notice and Protective Order. If Contractor reasonably believes that some of its records contain proprietary, trade-secret or otherwise-confidential information, Contractor must prominently mark those records "CONFIDENTIAL" before submitting them to County. In the event a public-records request is submitted to County for records marked CONFIDENTIAL, County will notify Contractor of the request as soon as reasonably possible. County will release the records 10 business days after the date of that notice, unless Contractor has, within that period, secured an appropriate order from a court of competent jurisdiction in Arizona, enjoining the release of the records. County will not, under any circumstances, be responsible for securing such an order, nor will County be in any way financially responsible for any costs associated with securing such an order.

27. Legal Arizona Workers Act Compliance.

- 27.1. Compliance with Immigration Laws. Contractor hereby warrants that it will at all times during the term of this Contract comply with all federal immigration laws applicable to its employment of its employees, and with the requirements of A.R.S. § 23-214 (A) (together the "State and Federal Immigration Laws"). Contractor will further ensure that each subcontractor who performs any work for Contractor under this Contract likewise complies with the State and Federal Immigration Laws.
- 27.2. Books & Records. County has the right at any time to inspect the books and records of Contractor and any subcontractor in order to verify such party's compliance with the State and Federal Immigration Laws.

27.3. Remedies for Breach of Warranty. Any breach of Contractor's or any subcontractor's warranty of compliance with the State and Federal Immigration Laws, or of any other provision of this section, is a material breach of this Contract subjecting Contractor to penalties up to and including suspension or termination of this Contract. If the breach is by a subcontractor, and the subcontract is suspended or terminated as a result, Contractor will be required to take such steps as may be necessary to either self-perform the services that would have been provided under the subcontract or retain a replacement subcontractor, as soon as possible so as not to delay project completion. Any additional costs attributable directly or indirectly to such remedial action are the responsibility of Contractor.

27.4. Subcontractors. Contractor will advise each subcontractor of County's rights, and the subcontractor's obligations, under this Section 26 by including a provision in each subcontract substantially in the following form:

"Subcontractor hereby warrants that it will at all times during the term of this contract comply with all federal immigration laws applicable to Subcontractor's employees, and with the requirements of A.R.S. § 23-214 (A). Subcontractor further agrees that County may inspect the Subcontractor's books and records to insure that Subcontractor is in compliance with these requirements. Any breach of this paragraph by Subcontractor is a material breach of this contract subjecting Subcontractor to penalties up to and including suspension or termination of this contract."

28. Grant Compliance. Not applicable to this Agreement

29. Written Orders. County will order services under this Contract by issuing a Delivery Order (DO) document. Order documents will be furnished to Contractor via e-mail or telephone.

Contractor must not perform services pursuant to the contract that are not documented or authorized by a Delivery Order (DO) at the time of provision. County accepts no responsibility for control of or payment for services not documented by a County Delivery Order (DO).

Contractor will establish, monitor, and manage an effective contract administration process that assures compliance with all requirements of this Contract. In particular, Contractor will not provide services other than those described in this Contract, in excess of the Maximum Payment Amount, or after the Term of the Contract has ended, without a Contract amendment properly executed and issued by County, as provided below. Any services provided in excess of that stated in this Contract are at Contractor's own risk.

30. Counterparts. The parties may execute the Contract that County awards pursuant to the solicitation in any number of counterparts, each counterpart is considered an original, and together such counterparts constitute one and the same instrument.

31. Israel Boycott Certification. Pursuant to A.R.S. § 35-393.01, if Contractor engages in for-profit activity and has 10 or more employees, and if this Contract has a value of \$100,000.00 or more, Contractor certifies it is not currently engaged in, and agrees for the duration of this Contract to not engage in, a boycott of goods or services from Israel. The certification does not apply to a boycott prohibited by 50 U.S.C. § 4842 or a regulation issued pursuant to 50 U.S.C. § 4842.

32. Amendment. The parties may modify, amend, alter or extend this Contract only by a written amendment signed by the parties.

33. Entire Agreement. This document constitutes the entire agreement between the parties pertaining to the subject matter it addresses, and this Contract supersedes all prior or contemporaneous agreements and understandings, oral or written.

This Contract will become effective when all parties have signed it. The effective date of the Contract will be the date this Contract is signed by the last party (as indicated by the date associated with that party's signature).

IN WITNESS WHEREOF, the parties have approved this Professional Services Contract and agree to be bound by the terms and conditions of the Contract on the dates written below.

PIMA COUNTY

CONTRACTOR

Chair, Board of Supervisors

Authorized Officer Signature

Date

Printed Name and Title

Date

ATTEST

Clerk of the Board

Date

APPROVED AS TO FORM

APPROVED AS TO CONTENT

Deputy County Attorney

Department Head

Print DCA Name

Date

Date

PIMA COUNTY STANDARD TERMS AND CONDITIONS

1.) OPENING

Pima County ("County") will publicly open responses on the date and at the location as stated in the *Request for Proposal (RFP)*. The County will read each respondent's name, and open proposals so as to avoid disclosure of the contents of any proposal to competing Offerors during the **evaluation** process. County invites all interested parties to attend the bid opening.

2.) EVALUATION:

County will evaluate responses to determine which are most advantageous to County considering conformity to the evaluation criteria in the RFP and other factors.

If County makes an award, County will enter into an agreement with one or more Contractor(s) that submitted the lowest responsive bid(s) or highest scoring proposal that County determined responsible for providing the required goods or services. Unless otherwise specified in the RFP document, County will determine the low or lowest bids considering all items in the Unit Price Schedule.

County, at its sole discretion, reserves the following rights: 1) to waive informalities in the bid or bid procedure; 2) to reject the response of any persons or corporations that have previously defaulted on any contract with County or have engaged in conduct that constitutes a cause for debarment or suspension as set forth in County Code Section 11.32; 3) to reject any and all responses; 4) to re-advertise for bids previously rejected; 5) to otherwise provide for the purchase of such equipment, supplies, materials, and services as may be required herein; 6) to award on the basis of price and other factors, including but not limited to such factors as delivery time, quality, uniformity of product, suitability for the intended task, and bidder's ability to supply; 7) to increase or decrease the item quantity or eliminate any item of this solicitation prior to the award. Pricing evaluations will be based on pre-tax pricing proposed by Contractor.

3.) AWARD NOTICE:

County will post a *Notice of Recommendation for Award* for RFP on the Pima County Behavioral Health website available for review by interested parties.

4.) AWARD:

Either the Procurement Director or the Board of Supervisors will make the contract award in accordance with the Pima County Procurement Code. County reserves the right to reject any or all proposals, bids, or to waive irregularities and informalities in the best interest of the County. Unless County expressly agrees otherwise, resulting contracts are not exclusive, they are for the sole convenience of County, and County reserves the right to obtain like goods or services from other sources.

5.) WAIVER:

Each Offeror, by submission of a proposal or bid waives any and all claims for damages against County or its officers or employees when County exercises any of its reserved rights.

6.) ACKNOWLEDGEMENT AND ACCEPTANCE:

If Contractor's terms of sale are inconsistent with the terms of the resultant contract, the terms herein will govern, unless County accepts Contractor's terms in writing. No oral agreement or understanding will in any way modify this contract or other terms and conditions herein. Contractors' acceptance, delivery or performance called for herein will constitute unqualified acceptance of the terms and conditions of the resultant contract.

7.) INTERPRETATION OF APPLICABLE LAW:

The laws of the State of Arizona govern the interpretation and construction of this Contract. If any of Contractor's terms or conditions is not in agreement with County's terms and conditions as set forth herein, County's will govern. This contract incorporates the complete agreement of the parties with respect to the subject matter of this contract. No oral agreement or other understanding will in any way modify the terms and conditions of this contract.

8.) WARRANTY:

Contractor warrants goods or services to be satisfactory and free from defects.

9.) QUANTITY:

Contractor will not exceed or reduce the quantity of goods ordered without written permission from County in the form of a properly executed contract, Delivery Order ("DO") or Purchase Order ("PO") revision or amendment as the County's Procurement Code requires. All quantities are estimates and County provides no guarantee regarding actual usage.

10.) PACKING:

Contractor will make no extra charges for packaging or packing material. Contractor is responsible for safe packaging conforming to carrier's requirements.

11.) DELIVERY:

On-time delivery of goods and services is an essential part of the consideration that County will receive.

Contractor must provide a guaranteed delivery date, or interval period from order release date to delivery if the price proposal document requires it. Upon receipt of notification of delivery delay, county at its sole option and at no cost to County may cancel the order or extend delivery times. Such extension of delivery times will not be valid unless an authorized representative of County extends it to Contractor in writing.

To mitigate or prevent damages from delayed delivery, County may require Contractor to deliver additional quantity utilizing express modes of transport, or overtime, all costs will be Contractor's responsibility. County reserves the right to cancel any delinquent order, procure from an alternate source, or refuse receipt of or return delayed deliveries, all at no cost to County. County reserves the right to cancel any order or refuse deliver upon default by concerning Contractor concerning time, cost, or manner of delivery.

Contractor is not responsible for unforeseen delays caused by fires, strikes, acts of God, or other causes beyond Contractor's control, provided that Contractor provides County with immediate notice of delay.

12.) SPECIFICATION CHANGES:

County has the right to make changes in the specifications, services, or terms and conditions of an order. If such changes cause an increase or decrease in the amount due under an order or in time required for performance, County will make an acceptable adjustment and will modify the order in writing. No verbal agreement for adjustment is acceptable.

Nothing in this clause reduces Contractor's responsibility to proceed without delay in the delivery or performance of an order.

13.) INSPECTION:

County may inspect or test all goods and services at place of manufacture, destination, or both. Contractor will hold goods failing to meet specifications off the order or contract at Contractor's risk and County may return such goods to Contractor with costs for transportation unpacking, inspection, repacking, reshipping, restocking, or other like expense to be the responsibility of the Contractor. In lieu of return of nonconforming supplies, County, at its sole discretion and without prejudice to County's rights, may waive any nonconformity, receive the delivery, and treat the defect(s) as a warranty item, but any waiver of any condition will not apply to subsequent shipments or deliveries.

14.) SHIPPING TERMS:

Unless the contract states otherwise, delivery terms are to be F.O.B. Destination and Freight Prepaid no Billed ("F.O.B. Destination") and Contractor is to include such terms in its Unit Price Proposal.

15.) PAYMENT TERMS:

Payment term are net thirty (30) days, unless the contract specifies otherwise.

16.) ACCEPTANCE OF MATERIALS AND SERVICES:

County will not execute an acceptance or authorize payment for any service, equipment, or component prior to delivery and verification that the delivery meets all specification requirements.

17.) RIGHTS AND REMEDIES OF COUNTY FOR DEFAULT:

In the event any item that Contractor furnishes in the performance of the contract should fail to conform to the specifications thereof, or to other sample that Contractor submitted, County may reject same, and it thereupon becomes the duty of the contractor to reclaim and remove the same, without expense to County, and immediately replace all such rejected items with others conforming to the specifications or samples. Should Contractor fail, neglect, or refuse immediately to do so, County has the right to purchase in the open market in lieu thereof a corresponding quantity of any such items and to deuce from any monies due or that may become due to Contractor the difference between the price named in the Purchase Order ("PO") and the actual cost to County.

In the event Contractor fails to make prompt delivery as specified of any item, the same conditions as to the rights of County to purchase in the open market and invoke the reimbursement condition above apply, except when delivery is delayed by fire, strike, freight embargo, or acts of God or of the government. In the event of cancellation or the PO, contract, or associate orders, in whole or in part, by reason of the default breach by Contract, Contractor will bear and pay for any loss or damage sustained by County in procuring any items which the Contractor agreed to supply. The rights and remedies of County provided above are not exclusive and are in addition to any other rights and remedies provided by law or under the contract.

18.) FRAUD AND COLLUSION:

Each Contractor, by submission of a bid, certifies that no officer or employee of County or of any subdivision thereof: 1) has aided or assisted Contractor in securing or attempting to secure a contract to furnish labor, materials, or supplies at a higher price than that proposed by any other Contractor; 2) has favored one Contractor or another by giving or withholding information or by willfully misleading the bidder in regard to the character of the material or supplies called for or the conditions under which the proposed work is to be done; 3) will knowingly accept materials or supplies of a quality inferior to those called for by any other contract; 4) has any direct or indirect financial interest om the proposal or resulting contract. Additionally, during the conduct of business with County, Contractor will not knowingly certify, or induce others to certify, to a greater amount of labor performed than has been actually performed, or to the receipt of a greater amount or different kind of materials or supplies than has actually been received. If County finds at any time that has in presenting any proposal(s) colluded with any other party or parties for the purpose of preventing any other proposal being made, then County will terminate any contract so awarded and that person or entity will be liable for all damages that Countysustains.

19.) COOPERATIVE USE OF RESULTING CONTRACT:

As allowed by law, County has entered into cooperative procurement agreements that enable other public agencies to utilized procurement agreements that County has developed. Participating agencies may contact Contractor with requests to provide services and products pursuant to the pricing, terms, and conditions set forth in the contract or PO. Minor adjustments are allowed subject to agreement by both Contractor and requesting party to accommodate additional cost or other factors not present in the County's agreement and required to satisfy particular public agency code or functional requirements and within the intended scope of the solicitation and resulting contract. The parties to the cooperative procurement will negotiate and transact any such usage in accordance with State, County, and other public agency procurement rules, regulations and requirements. Contractor will hold harmless County its officers, employees, and agents from and against all liability, including without limitation payment and performance associated with such use. Contractor may view a list of agencies that are authorized to use County contracts at the Procurement Department Internet home page: <http://www.pima.gov/procure>, under the "Vendor Information" tab, by selecting the link titled *county Cooperative Agreements – Authorized Agencies*.

20.) PATENT INDEMNITY:

Contractor will indemnify, defend, and hold harmless County, its officers, agents, and employees, harmless from liability of any nature of any kind, including costs and expenses, for infringement or use of any copyrighted composition, secret process, patented or unpatented invention, article or appliance furnished or used in connection the contract, PO, or associated orders. County may require contractor to furnish a bond or other

indemnification to County against any and all loss, damage, costs, expenses, claims, and liability or patent or copyright information.

21.) INDEMNIFICATION:

Contractor will indemnify, defend, and hold harmless County, its officers, agent, and employees from and against any and all suits, actions, legal administrative proceedings, claims or demands and costs attendant thereto, arising out of any act, omission, fault or negligence by Contractor, its agents, employees or anyone under its direction or control or on its behalf in connection with performance of the contract, PO, or associated orders. Contractor warrants that all products and services provided under this contract are non-infringing. Contractor will indemnify, defend and hold County harmless from any claim of infringement arising from services provided under this contract or from provision, license, transfer or use for their intended purpose of any products provided under this contract.

22.) UNFAIR COMPETITION AND OTHER LAWS:

Responses must comply with Arizona trade and commerce laws (Title 44 A.R.S.) and all other applicable County, State, and Federal laws and regulations.

23.) COMPLIANCE WITH LAWS:

Contractor will comply with all Federal, State, and local laws, rules, regulations, standards, and Executive Orders, without limitation. In the event any services that Contractor provides under this contract require a license issued by the Arizona Registrar of Contractors (ROC), Contractor certifies that a contractor licensed by ROC to perform those services in Arizona will provide such services. The laws and regulations of the State of Arizona govern the rights, performance, and disputes of and between the parties. Any action relating to this contract must be filed and maintained in a court of the State of Arizona in Pima County.

Any changes in the governing laws, rules, and regulations during an agreement apply, but do not require an amendment or revisions.

24.) ASSIGNMENT:

Contractor may not assign its rights to the contract, in whole or in part, without prior written approval of County. County may withhold approval at its sole discretion, provided that County will not unreasonably withhold such approval.

25.) CANCELLATION FOR CONFLICT OF INTEREST:

This contract is subject to cancellation pursuant to A.R.S. §§38-506 and 38-511, the pertinent provisions of which are incorporated into this contract by reference.

26.) NON-DISCRIMINATION:

Contractor agrees to comply with all provisions and requirements of Arizona Executive Order 2009-09 which is hereby incorporated into this contract as if set forth in full herein including flow down of all provisions and requirements to any subcontractors. During the performance of the contract, Contractor must not discriminate against any employee, client, or any other individual in any way because of that person's age, race, creed, color, religion, sex, gender-identity, disability, or national origin.

27.) NON-APPROPRIATION OF FUNDS:

County may cancel this contract pursuant to A.R.S. § 11-251(42) if for any reason the County Board of Supervisors does not appropriate funds for the state purpose of maintaining this contract. In the event of such a cancellation, County has no further obligation, other than payment for services or goods that County has already received.

28.) PUBLIC RECORDS:

- a. Disclosure: Pursuant to A.R.S. § 39-121 et seq. and A.R.S. § 34-603(H) in case of construction or Architectural and Engineering services procured under A.R.S. Title 34, Chapter 6, all documents submitted in response to the solicitation resulting in award of this contract, including, but not limited to, pricing schedules, product specifications, work plans, and any supporting documents are public records.

As such, those documents are subject to release and/or review by the general public upon request, including competitors.

- b. Records Marked Confidential; Notice and Protective Order. If Contractor reasonably believes that some of those records contain proprietary, trade-secret, or otherwise confidential information, Contractor must prominently mark those records "CONFIDENTIAL". In the event a public-records request is submitted to the County for records marked CONFIDENTIAL, County will notify Contractor of the request as soon as reasonably possible. County will release the records 10 business days after the date of that notice, unless Contractor has, within that period, secured an appropriate order from a court of competent jurisdictions, enjoining the release of the records. County will not, under any circumstances, be responsible for securing such an order, nor will County be in any way financially responsible for any costs associated with securing such an order.

The Contractor agrees to waive confidentiality of any price terms in the event of a contract award.

29.) CUSTOM TOOLING, DOCUMENTATION AND TRANSITIONAL SUPPORT:

Costs to develop all tooling and documentation, such as and not limited to, dyes, molds, jigs, fixtures, artwork, film, patterns, digital files, work instructions, drawings, etc. necessary to provide the contracted services or products and unique to the services or products supplied to County are included in the agreed upon Unit Price unless the contract specifically states otherwise. Such tools and documentation are the property of County and will be marked, as is practical, as "property of Pima County" and County so requests, Contractor will deliver a copy of the tooling and documentation to County within twenty (20) days of acceptance by County of the first article sample, or not later than ten (10) days of termination of the contract associated with their development, without additional cost to County. Contractor also agrees to act in good faith to facilitate the transition of work to a subsequent Contractor if and as reasonably requested by County at no additional cost. Should exceptional circumstances be present that may justify an additional charge, Contractor may submit said justification and proposed cost to negotiate an agreement acceptable to both Contractor and County, but Contractor may not withhold any requested tooling, document, or support as defined above that would delay the orderly, efficient, and prompt transition of work. Should conduct by Contractor result in additional costs to County, Contractor will reimburse county for said actual and incremental costs provided that County has given Contractor reasonable time to respond to County's requests for support.

30.) AMERICANS WITH DISABILITIES ACT:

Contractor will comply with all applicable provisions of the Americans with Disabilities Act (public law 101 336, 42 USC 12101 12213) and all applicable Federal regulations under the act, including 28 CFR parts 35 and 36.

31.) NON-EXCLUSIVE:

Contracts resulting from this solicitation are non-exclusive and are for the sole convenience of County, which reserves the right to obtain like goods and services from other sources for any reason.

32.) PROTESTS:

An interested party may file a protest regarding any aspect of a solicitation, evaluation, or recommendation for award. Protests must be in accordance with the Pima County Procurement Code, Section 11.20.010.

33.) TERMINATION:

County reserves the right to terminate any MA, PO, DO, contract, or award, in whole or in part, at any time, without penalty or recourse, when in the best interests of County. Upon receipt of written notice, Contractor will immediately cease all work as directed by the notice, notify all subcontractors of the effective date of termination and take appropriate actions to minimize costs to County. In the event of termination under this paragraph, all documents, data, and reports prepared by Contractor under the contract become the property of County and Contractor must promptly deliver them to County. Contractor is entitled to receive just and equitable compensation for work in progress, work completed and materials accepted before the effective date of the termination.

34.) ORDER OF PRECEDENCE – CONFLICTING DOCUMENTS:

In the event of inconsistencies between contract documents, the following is the order of precedence, superior to subordinate, that will apply to resolve the inconsistency: Contract, DO, PO, Offer Agreement or contract attached to MA, PO, or DO; these standard terms and conditions; any other solicitation documents.

35.) INDEPENDENT CONTRACTOR:

The status of Contractor is that of an independent contract. Contractor and Contractor officer's agents or employees are not considered employees of County and are not entitled to receive any employment-related fringe benefits under the County merit system. Contractor is responsible for payment of all federal, state, and local taxes associated with the compensation received pursuant to this contract and will indemnify and hold County harmless from any and all liability which County may incur because of Contractor's failure to pay such taxes. Contractor is solely responsible for its program development and operation.

36.) REPORTS:

Contractor will regularly submit reports per the standards and schedules attached as Attachment A-1 to EXHIBIT A: Scope of Services.

37.) BOOKS AND RECORDS:

Contractor will keep and maintain proper and complete books, records, and accounts, which will be open at all reasonable times for inspection and audit by duly authorized representatives of County. In addition, Contractor will retain all records relating to this contract at least five (5) years after its termination or cancellation, or, if later, until any pending proceeding or litigation has been closed.

38.) COUNTERPARTS:

The parties may execute the contract or PO that County awards pursuant to this solicitation in any number of counterparts, and each counterpart is considered an original, and together such counterparts constitute one and the same instrument.

For the purposes of the contract and/or PO, the signed proposal of Contractor and the signed acceptance of County are each an original and together constitute a binding contract, if all other requirements for execution are present.

39.) AUTHORITY TO CONTRACT:

Contractor warrants its right and power to enter into the contract or PO. If any court or administrative agency determines that County does not have authority to enter into the contract or PO, the County is not liable to Contractor or any third party by reason of such determination or by reason of the contract or PO.

40.) FULL AND COMPLETE PERFORMANCE:

The failure of either party to insist on one or more instances upon the full and complete performance with any of the terms or conditions of the contract, PO, or DO to be performed on the part or the pother, or to take any action permitted as a result thereof, is not a waiver or relinquishment of the right to insist upon full and complete performance of the same, or any other covenant or condition, either in the past or in the future.

The acceptance by either party of sums less than may be due and owing it at any time is not an accord and satisfaction.

41.) SUBCONTRACTORS:

Contractor is fully responsible for all acts and omissions of any subcontractor and of persons directly or indirectly employed by any subcontractor, and of persons for whose acts Contractor may be liable to the same extent that Contractor is responsible for the acts and omissions of persons that it directly employs. Nothing in this contract creates any obligation on the part of the county to pay or see to the payment of any money due any subcontractor, except as may be required by law.

42.) SEVERABILITY:

Each provision of this contract stands alone, and any provision of this contract that a court finds to be prohibited by law is ineffective to the extent of such prohibition without invalidating the remainder of this contract.

43.) LEGAL ARIZONA WORKERS ACT COMPLIANCE:

For the procurement of services in the State of Arizona, Contractor hereby warrants that it will at all times during the term of this contract comply with all federal immigration laws applicable to Contractor's employment of its employees, and with the requirements of A.R.S. § 23-214 (A), together the "State and Federal Immigration Laws". Contractor will further ensure that each subcontractor who performs any work for Contractor under this contract likewise complies with the State and Federal Immigration Laws.

Any breach of Contractor's or any subcontractor's warranty of compliance with the State and Federal Immigration Laws, or of any other provision of this section, is a material breach of this contract subjecting Contractor to penalties up to and including suspension or termination of this contract. If the breach is by a subcontractor, and the subcontract is suspended or terminated as a result, Contractor will take such steps as may be necessary to either self-perform the services that would have been provided under the subcontract or retain a replacement subcontractor as soon as possible so as not to delay project completion.

Contractor will advise each subcontractor of County's rights, and the subcontractors' obligations, under this Section by including a provision in each subcontract substantial in the following form:

"Subcontractor hereby warrants that it will at all times during the term of this contract comply with all federal immigration laws applicable to Subcontractor's employees, and with the requirements of A.R.S. § 23-214 (A). Subcontractor further agrees that County may inspect the Subcontractor's books and records to ensure that Subcontractor is in compliance with these requirements. Any breach of this paragraph by Subcontractor is a material breach of this contract subjecting Subcontractor to penalties up to and including suspension or termination of this contract."

Any additional costs attributable directly or indirectly to remedial action under this Section is the responsibility of Contractor. In the event the remedial action under this Section results in delay to one or more tasks on the critical path of Contractor's approved construction or critical milestones schedule, such period of delay will be excusable delay for which the Contractor is entitled to an extension of time, but not costs.

44.) CONTROL OF DATA PROVIDED BY COUNTY:

For those projects and contracts where County has provided data to enable the Contractor to provide contract services of products, unless County otherwise specifies and agrees in writing, Contractor will treat, control, and limit access to said information as confidential and will under no circumstances release any data provided by County during the term of this contract and thereafter, including but not limited to personal identifying information as defines by A.R.S. § 44-1373, and Contractor is further prohibited from selling such data directly or through a third party. Upon termination and completion of the contract, Contractor will either return such data to County or will destroy such data and confirm destruction in writing in a timely manner not to exceed sixty (60) calendar days.

45.) ISRAEL BOYCOTT CERTIFICATION:

Pursuant to A.R.S. § 35-393.01, if Contractor engages in for-profit activity and has ten (10) or more employees, and if this contract has a value of \$100,000.00 or more, Contractor certifies it is not currently engaged in, and agrees for the duration of this contract to not engage in, a boycott of goods or services from Israel. This certification does not apply to a boycott prohibited by 50 U.S.C. § 4842 or a regulation issued pursuant to 50 U.S.C. § 4842.

END OF PIMA COUNTY STANDARD TERMS AND CONDITIONS

EXHIBIT A: REQUIRED SCOPE OF SERVICES (6 PAGES)

COURT ORDERED EVALUATION (COE)

1. **FACILITY:** Contractor shall meet and maintain the following requirements throughout the term of this Agreement:
 - 1.1 Accreditation through the Joint Commission, or is a hospital with an inpatient psychiatric program that undergoes a State survey resulting in successful participation in Medicare, or is accredited by a national accrediting organization whose hospital accrediting program has been approved by Centers for Medicare & Medicaid Services (CMS) if providing treatment to members under the age of 21; and
 - 1.2 Meets the requirements specified in 42 CFR 440.10 and Part 482 and is licensed pursuant to ARS § 36, Chapter 4, Articles 1 and 2; or
 - 1.2.1 For adults age 21 and older, certified as provider under Title XVIII of the Social Security Act; or
 - 1.2.2 For adults age 21 or over, currently determined by Arizona Department of Health Services (ADHS) Assurance and Licensure to meet such requirements; and
 - 1.2.3 Must not be banned or limited from providing services to federal programs.
2. **EMPLOYEES OR SUB-CONTRACTORS:** Contractor affirms that it and any of its employees or sub-contractors providing services pursuant to this agreement were and are appropriately licensed by the State of Arizona on the dates of service.
3. **INPATIENT PROFESSIONAL SERVICES:** Contractor shall assure that psychiatrists on its medical staff or any separate physicians group who provides contract services to Proposed Patients are in compliance with the terms of this Agreement and the provision of ARS Title 36, Chapter 5.
4. **UTILIZATION MANAGEMENT/REVIEW PLANS:** Contractor shall adopt, maintain and observe utilization review plans that conform to nationally accepted accreditation standards:
 - 4.1 Contractor shall provide evidence of compliance with 42 CFR requirements to County at least annually or upon request. Specific Federal and AHCCCS Compliance activities include:
 - 4.1.1 Development of Certifications of Need and re-Certifications of Need and submission of those in compliance with Pima County Providers Manual.
 - 4.1.2 Development of and performance of services based on a plan of care in accordance with 42 CFR 441.154 to 456.
 - 4.1.3 Development and implementation of utilization management plans and committees in accordance with 42 CFR 456.10 to 129 and 456.200 to 213.
 - 4.2 County reserves the right to withhold payment and/or terminate this agreement for any services rendered by any entities or individuals whose license has been suspended or revoked.
5. **CONTRACTOR'S CONTINUOUS QUALITY IMPROVEMENT PROGRAM:**

The Contractor shall implement or maintain a Continuous Quality Improvement Program (CQI Program) designed for quality monitoring and continuous quality improvement. If the Contractor does not already use a standard form to collect patient feedback, Contractor may use the example Patient Satisfaction form included as **Attachment A-2: Example Patient Satisfaction Form**.
6. **MINIMUM STAFFING REQUIREMENTS:**
 - 6.1 Contractor will maintain organizational, managerial and administrative systems and staff capable of fulfilling all contractual requirements.
 - 6.2 Contractor shall employ sufficient staffing with adequate time designated to ensure:
 - 6.2.1 Services provided pursuant to this agreement are conducted as quickly as possible, so as to expedite transition of Proposed Patient to a voluntary status, petition for court-ordered treatment or discontinuation of the involuntary commitment process, as clinically indicated;
 - 6.2.2 All evaluations, petitions, motions, affidavits and other paperwork required in connection with the Court Ordered Evaluation (COE) process are completed and submitted according to the Pima County Attorney's Office (PCAO) and court deadlines;

- 6.2.3 Proposed Patients and hospital staff are available for court appearances on the date, time and location ordered by the court;
- 6.2.4 A psychiatrist or physician staff is available 24/7, including weekends and holidays, as back up to a psychiatric and mental health nurse practitioner to:
 - 6.2.4.1 Discharge Proposed Patients from COE when indicated;
 - 6.2.4.2 Write prescriptions; and
 - 6.2.4.3 Ensure hospital discharge planners, social workers coordinate discharges with the receiving Health Home (HH) Team.

7. **COURT ORDERED EVALUATION (COE)/INVOLUNTARY COMMITMENT SERVICES:** Contractor shall provide hospital-based involuntary commitment psychiatric services pursuant to Arizona Revised Statutes (ARS) Title 36, Chapter 5, Article 4, for Court-Ordered Evaluations (COE), which include:

7.1 **EMERGENCY DEPARTMENT SERVICES:** Contractor shall provide all necessary emergency psychiatric services to Proposed Patients who present or are presented to Contractor for mental health services through Contractor's Emergency Department or, pursuant to requirements of the Emergency Medical Treatment and Active Labor Act (EMTALA), 42 U.S.C. § 1395dd, regulations which are set forth in the Code of Federal Regulations, 42 C.F.R. 489.24, 42 C.F.R. 413.65 and C.F.R. 489.20, and other sites located on Contractor's premises.

7.2 **PSYCHIATRIC ADMISSIONS:**

- 7.2.1 **FACILITATION OF ADMISSIONS AND TRANSFERS:** Contractor must cooperate and collaborate with other local hospitals, evaluating agencies, and the Regional Behavioral Health Authority (RBHA) and its crisis system to facilitate transfer of or receipt of Proposed Patients to an available psychiatric bed as expeditiously as possible.
- 7.2.2 **PATIENT RIGHTS:** Contractor must provide Proposed Patients with a copy of their patient rights;
- 7.2.3 **RESIDENCY:** Contractor must make appropriate inquiry and determine, to the best of its ability, whether Proposed Patients reside within the geographical boundaries of County, whether Proposed Patients are not residents of the State of Arizona, or if alleged behaviors were witnessed and originated within COUNTY.
- 7.2.4 **EVALUATIONS:** Contractor shall provide necessary psychiatric evaluation services to Proposed Patients admitted pursuant to an Application for Emergency Admission for Evaluation or a Court Ordered Evaluation, and notwithstanding statutorily permissible timeframes, must:
 - 7.2.4.1 Ensure that evaluations are performed, and if clinically appropriate, submit to the Pima County Attorney, the Petition for Court Ordered Treatment (COT), if any, on the same or the next business day following the completion of the second evaluation.
 - 7.2.4.2 Ensure that inpatient evaluations are completed in less than seventy-two (72) hours.
 - 7.2.4.3 Ensure court ordered evaluations are performed by licensed psychiatrists, except as noted in ARS 36-501.

7.3 **DAILY ASSESSMENTS:** On a daily basis, including weekends and holidays, Contractor shall:

- 7.3.1 Offer the Proposed Patient every opportunity, as clinically appropriate, to participate in treatment on a voluntary basis at any time during the involuntary commitment-related hospital stay.
- 7.3.2 Assess Proposed Patients, to determine whether the Proposed Patient is suitable for involuntary commitment. If, at any point during the stay, the Proposed Patients are found not to be suitable for involuntary commitment or is able to agree to voluntary treatment Contractor shall remove Proposed Patient from the involuntary commitment process and either:
 - 7.3.2.1 Discharge the Proposed Patient; or
 - 7.3.2.2 Admit the Proposed Patient into a voluntary status.
- 7.3.3 Document the daily assessment in the Proposed Patient's medical record, including their ability and willingness to participate in treatment on a voluntary basis.
- 7.3.4 File the appropriate documentation with the Court on the first available business day after the Proposed Patient was discharged from the involuntary commitment process.
- 7.3.5 In the event that Contractor admits Proposed Patients to a medical service, Contractor shall ensure that psychiatric providers consult on a clinically appropriate basis with the Proposed Patient's non-psychiatrist attending physician until the Proposed Patient is transferred to Contractor's psychiatric service.

7.4 **PROGRESS NOTES:** Ensure progress notes contain:

- 7.4.1 Day 1: Admitting diagnoses: Axis I, II and III;
- 7.4.2 Upon Admission and Daily: Evidence the Proposed Patient was assessed for and offered voluntary treatment, if suitable;
- 7.4.3 Upon Admission and Daily: A description of behaviors and symptoms that indicate the Proposed Patient requires continued involuntary treatment or cannot agree to voluntary treatment.

7.5 **DISCHARGE PLANNING:** Contractor will

- 7.5.1 Facilitate early identification of Proposed Patients who may be ready for discharge over a weekend and/or holiday;
- 7.5.2 Ensure timely completion of discharge plans and provide a copy of the discharge summary to the Proposed Patient's RBHA assigned provider, if applicable;
- 7.5.3 Provide Proposed Patients with a discharge plan;
- 7.5.4 Work collaboratively with stakeholders in the placement and discharge of members from Level I services;
- 7.5.5 Provide medical records to the assigned HH agency, as part of the discharge plan, to assure coordination of care upon transition into the community, if applicable; and
- 7.5.6 Collaborate with the assigned HH, if applicable to make arrangements to provide for discharges daily, including evenings, weekends and holidays.

8. **COORDINATION WITH THE COURTS AND PIMA COUNTY'S ATTORNEY'S OFFICE (PCAO) HEALTH LAW UNIT:**

- 8.1 Contractor must complete and submit evaluations, petitions, motions, affidavits and any and all other paperwork required in connection with the involuntary commitment process to PCAO Health Law Unit, according to the timetable established by the PCAO Health Law Unit.
- 8.2 Contractor must coordinate with the PCAO Health Law Unit to dismiss any pending proceedings for Court Ordered Evaluation or Court Ordered Treatment, when the attending physician determines that the Proposed Patient can engage in treatment on a voluntary basis, or does not suffer from a mental disorder as defined in ARS 35-501.
- 8.3 Contractor shall ensure evaluating physicians provide timely appearance and testimony as directed by the Pima County Superior Court.
- 8.4 Contractor must have sufficient space to accommodate a courtroom that meets the judicial security standards of the Pima County Superior Court and that is capable of participating in virtual hearings.

8. **UTILIZATION REVIEW (UR):**

- 8.1. COE services and claims for payment are subject to County's concurrent and/or retrospective utilization review and management to assess compliance with statutory requirements, appropriate payment of claims, documentation of clinical need for inpatient COE or COT and efficiency and effectiveness of processes applicable to service provision. County reserves the right to conduct concurrent and retrospective utilization review and management either in person, through the electronic health record portal (if applicable) or by request for documentation.
- 8.2. County shall conduct retrospective review of all Involuntary Commitment Services provided by Contractor to determine appropriateness, medical necessity and compliance with ARS Title 36, Chapter 5, Article 4 and this contract, when the complete COE Packet is received.
- 8.3. Contractor will notify County via secure email of any Proposed Patient who moves to and/or from a medical unit to the psychiatric unit, who is under the COE period.
- 8.4. Contractor will notify County Utilization Management (UM) team, via PCBH's secure Qualtrics Portal, of any payer change within the COE period, immediately upon enrollment verification with AHCCCS or other Third Party Payer.
- 8.5. Contractor shall provide County UM via PCBH's secure Qualtrics Portal, confirmation of each Proposed Patient's discharge date and disposition within one (1) business day of discharge, including the following information:
 - 8.5.1. Proposed Patient's first and last name;
 - 8.5.2. Proposed Patient's date of birth;
 - 8.5.3. Admit date;
 - 8.5.4. Discharge date; and

8.5.5. Disposition.

8.5.6. Contractor may use the reporting form attached as **Attachment A-1: Reporting Form** to submit required information.

8.6. The Contractor, including its hospital medical staff, will meet with County, as needed for the purpose of collaboration and discussion of application of medical necessity criteria, standards of documentation supporting use of criteria and other performance improvement activities as determined necessary by County to reduce occurrence of denials and appeals. Contractor's failure to provide access to medical staff for these purposes may result in denial of payments of claims.

8.7. **REQUIRED DOCUMENTS:** Contractor will submit via PCBH's secure Qualtrics Portal, the COE Packet, which includes the following:

8.7.1. Admitting face sheet, by 8:30am and within 24 hours from admit;

8.7.2. The Evaluating Agency Authorization Request Form (**Attachment A-3: Evaluation Agency Authorization Form**)

8.7.3. The First Set;

8.7.4. The Second Set; and

8.7.5. The Release from Evaluation form when Proposed Patient changes to voluntary status or discharges.

9. UTILIZATION MANAGEMENT/CONCURRENT REVIEW:

9.1 County may conduct concurrent review on admission and at frequent intervals during acute inpatient hospital stays to validate the medical necessity for continued stay and to evaluate quality of care.

9.2 **DAILY CENSUS OF PETITIONED PATIENTS IN EMERGENCY DEPARTMENT.** Contractor shall provide to County a daily census report, no later than 8:00 am each day, via PCBH's secure Qualtrics Portal and include a list of the adult Proposed Patients receiving COE services in Level I acute beds, as well as the list of Proposed Patients discharged since the last census report.

9.2.1 Contractor will notify County via PCBH's secure Qualtrics Portal of patients who are under an Application for Emergency Admission in the Emergency Department and not admitted for psychiatric services.

9.2.2 Contractor will make available to County, in person or via telephone access to professional behavioral health (non-clerical) staff who can review the medical record and present the basis for continuing medical necessity of Level I inpatient services.

9.2.3 Contractor will provide via PCBH's secure Qualtrics Portal, within one (1) business day of request any documentation requested by County UM that is needed to verify admission or continued stay criteria are being met.

10. REPORTING: Contractor will submit all documents, reports and data in the format prescribed by County, and within the time frames specified below.

10.1 Contractor shall cooperate with County in providing information and data as needed on a monthly basis, or as necessary for County to develop and submit all reports regarding COE services. Reporting data will be submitted to County via PCBH's secure Qualtrics Portal on a monthly basis within thirty (30) days following the end of each month, and will include:

10.1.1 Number of Emergency Applications;

10.1.2 Number of Involuntary Applications;

10.1.3 Total number of patients admitted for COE;

10.1.4 Number of Outpatient Title 36 COEs, if applicable;

10.1.5 Number of proposed patients transferred from Pima County Adult Detention Center (PCADC);

10.1.6 Number of patients returned to PCADC before hearing;

10.1.7 Number of patients on applications who were admitted in the previous 90 days;

10.1.8 Number of petitions dropped because individual agreed to voluntary treatment;

10.1.9 Number of petitions dropped before the hearing other than voluntary;

10.1.10 Reason for dropped petitions;

10.1.11 Number of patients who went to court;

10.1.12 Number of patients court ordered for treatment;

10.1.13 Number of inpatient orders;

10.1.14 Number of combined orders;

10.1.15 Number ordered without a hearing (stipulated);

- 10.1.16 Number of COE patients who had no insurance;
 - 10.1.17 Number of Petitions dismissed at court – patient able to be voluntary;
 - 10.1.18 Number of Petitions dismissed at court – patient did not meet criteria for court order;
 - 10.1.19 Number of petitions dismissed at court – psychiatrist not available for hearing;
 - 10.1.20 Number of Petitions dismissed at court – filing error;
 - 10.1.21 Number of hearings rescheduled – psychiatrist not available for hearing;
 - 10.1.22 Number of hearings rescheduled – other; and
 - 10.1.23 Substance abuse issues at time of admission (how many had a substance diagnosis and to which substance(s).
- 10.2 Management and Reporting: County reserves the right to audit any process or data resulting from provision of services pursuant to this Agreement and to request evaluation agency reports or data compilation as County determines necessary.
- 10.3 County and Contractor may determine and agree to receive and report necessary ad-hoc data reporting requests as advised or requested by the parties.
- 10.4 **REPORT FORMAT**: Contractor will report data in the format outlined as **Attachment A-1: Sample Reporting Form**

REMAINDER OF PAGE LEFT BLANK

ATTACHMENT A-1
SAMPLE REPORTING FORM

Demographics		Petition Status		Dropped Cases		Disposition and Discharge	
Patient Last Name		Not filed		Date Dropped		Court date	
Patient First Name		Date Petition Filed		Drop Reason / Status After Drop		Rescheduled court date 1	
Date of Birth		Location Petition Filed		Doctor who dropped		Rescheduled court date 2	
Application Type		First set standards - DTS		Identified as Out of County patient?		Reschedule reason(s)	
Date of Application		First set standards - DTO		Identified as Already on COT?		Court Outcome	
Application / Referral Source		First set standards - PAD		If Out of County or Already on COT, date COE process was stopped		Allegations upheld in court - DTS	
Admit Date		Second set file date				Allegations upheld in court - DTO	
Behavioral Health Agency		Second set standards - DTS				Allegations upheld in court - PAD	
Primary Diagnosis		Second set standards - DTO				Stipulation - DTS	
		Second set standards - PAD				Stipulation - DTO	
						Stipulation - PAD	
						Date of Discharge from Hospital	
						Stipulation - PAD	

REMAINDER OF PAGE LEFT BLANK

ATTACHMENT A-2
EXAMPLE PATIENT SATISFACTION SURVEY (1 PAGE)

	I would never recommend this agency 0	Not likely to recommend 1	Neutral/same as other agencies 2	Likely to recommend 3	Would definitely recommend 4
How likely are you to recommend this hospital to your family or friends?	0	1	2	3	4
Comments:	<hr/>				

Thinking about your experience with this hospital, how much do you agree or disagree with each statement below?

	Strongly disagree 0	Disagree 1	Neutral 2	Agree 3	Strongly Agree 4
1) The therapy program addressed my needs.	0	1	2	3	4
Comments:	<hr/>				

2) The environment helped me heal.	0	1	2	3	4
Comments:	<hr/>				

3) The therapy program helped me understand how to manage my symptoms.	0	1	2	3	4
Comments:	<hr/>				

4) I am comfortable with my support system (e.g. friends, family) when I leave the hospital.	0	1	2	3	4
Comments:	<hr/>				

Thinking about your interactions with the agency, how would you rate your interactions with the following staff:

	Horrible 0	Poor 1	Neutral 2	Good 3	Excellent 4
Psychiatrists:	0	1	2	3	4
Comments:	<hr/>				

Case Managers/Therapists	0	1	2	3	4
Comments:	<hr/>				

Behavioral Health Specialists	0	1	2	3	4
Comments:	<hr/>				

Nurses	0	1	2	3	4
Comments:	<hr/>				

Any other information that you would like to share about your experience:

This survey is anonymous; your identity will be protected and your answers will never affect your ability to receive care.

ATTACHMENT A-3:
EVALUATING AGENCY AUTHORIZATION REQUEST FORM (2 PAGES)

EVALUATING AGENCY NAME: _____
 PATIENT NAME: _____ DOB: _____
 DATES OF SERVICE FOR REVIEW: _____

<u>INSURANCE: IF DUAL ENROLLED</u>		# of days eligible for review
<u>SELECT BOTH CARRIERS</u>		
<input type="checkbox"/>	Title 19	Up to 4 COE days (RBHA pays for day 4 onward)
<input type="checkbox"/>	Private/Commercial/Medicare	Up to 4 COE days for patient responsibility up to contract allowable
<input type="checkbox"/>	County is only payer - Non T-19	Up to 4 COE days & up to 4 PEP days

MINIMUM REQUIRED ELEMENTS

Authorization form must be filled out in full and attached with each individual packet submission to be accepted as complete. Packets must contain copies of all applicable records corresponding to each area checked below.

- Face sheet: Admit Date: _____ Date Submitted _____ (by 8:30am & within 24 hours from admit)
- Admitting Diagnosis _____ Diagnosis on discharge _____
- Number of days requested for review Day 1 Day 2 Day 3 Day 4 Day 5 Day 6 Day 7 Day 8
- Evaluation 1 requested for review: Provider Name: _____ Date of Service: _____
- Evaluation 2 requested for review: Provider Name: _____ Date of Service: _____
- Daily Psych note for each day requested above that indicates:
 - A. Patient meets criteria for involuntary evaluation B. Patient has been offered voluntary treatment
- Lab Results (UTOX / BAL)
- Psychosocial / A&R / Initial Level of Care Assessment
- Collateral Information (application origin and description of circumstances)
- 1st Set (Conformed)**
 - A. Application for Emergency Admission for Evaluation or Application for Involuntary Evaluation
 - B. Petition for Court Order Evaluation
 - B. Order for Evaluation
- 2nd Set (Conformed)**
 - A. Two (2) Psychiatric Evaluations
 - B. Affidavit(s) if applicable C. Petition for Court Order Treatment
 - D. Notice of Hearing on Petition for Court Order Treatment E. Date Court Ordered or Dismissed
- Release from Evaluation (signed and notarized), if the patient is dropped or the case is dismissed, indicate drop code(s): _____
- Signed consent to treat form (if patient changed to voluntary status)

PRINT STAFF NAME:	
DATE SUBMITTED:	
DATE RECEIVED:	**PIMA COUNTY BEHAVIORAL HEALTH FIELD ONLY**

*Authorization of services is not a guarantee of payment.

Drop Code List:

- A1 – Evaluation no longer required – Substance Abuse diagnosis
- A2 – Evaluation no longer required – Medical diagnosis
- A3 – Evaluation no longer required – Allegations not sustained
- B1 – Patient voluntary – Inpatient
- B2 – Patient voluntary – Discharged for outpatient treatment
- B3 - Patient voluntary – Allegations not sustained
- C1 – Guardianship/POA verified
- E1 – Dismissed - Administrative error
- E2 – Dismissed – Provider no show at court
- E3 – Dismissed – Primary diagnosis not psych diagnosis
- F1 – Other

END OF EXHIBIT A

EXHIBIT B COVERED SERVICES, COMPENSATION & BILLING (4 PAGES)

1. **INPATIENT COE SERVICES:** County shall provide reimbursement for authorized all-inclusive daily rates for:
 - 1.1. Up to four (4) consecutive days of COE service for which County is the only payer; and
 - 1.2. Up to four (4) additional consecutive days for the Post Evaluation Period (PEP) for proposed patients with no third party health insurance coverage.
 - 1.3. **PHYSICIANS GROUPS SERVICES:** In the event a separate physicians group provides services pursuant to this contract, Contractor shall be responsible for reimbursing said physicians group for services provided from the compensation paid to Contractor.

2. **PROFESSIONAL SERVICES:**
 - 2.1. **PSYCHIATRIC EVALUATIONS:** County shall provide reimbursement for up to two (2) psychiatric evaluations performed by two different doctors on Proposed Patients pursuant to a Court Order for Evaluation and completed pursuant to the timelines indicated in Article 4, Chapter 5, Title 36 of the Arizona Revised Statutes following the issuance of a Court Order for Evaluation.
 - 2.2. **PHYSICIAN ROUNDS:** Contractor will be compensated for services related to routine daily assessment/interaction of a Proposed Patient.

3. **COMPENSATION:** County will provide reimbursement for covered services in accordance with the Fee Schedule, **Attachment B-1.**

4. **BILLING:**
 - 4.1. County will process and adjudicate timely filed, clean claims submitted on the appropriate UB92 or CMS1500 form by Contractor within thirty (30) days of the date it is received. Contractor must submit timely filed, clean claims in accordance with the following guidelines:
 - 4.1.1. **COORDINATION OF BENEFITS (COB):** Before billing County for services provided in this Agreement, Contractor must make appropriate inquiry and determine, to the best of its ability, whether proposed patients are eligible with a primary payer.
 - 4.1.2. Verification shall include examination of patient/family information to determine if the proposed patient is any of the following:
 - 4.1.2.1. Employed (and possibly has an employer sponsored health plan);
 - 4.1.2.2. Medicaid eligible;
 - 4.1.2.3. Medicare eligible; and/or
 - 4.1.2.4. Covered by, or eligible for, commercial or private insurance.
 - 4.1.3. Contractor must bill the primary payer for the entire COE stay, and submit to County, together with each claim:
 - 4.1.3.1. Evidence of denial of coverage by other known insurers;
 - 4.1.3.2. Remittance Advice; or
 - 4.1.3.3. Documentation substantiating Contractor's efforts to discover and verify other potential payer coverage.
 - 4.2. Contractor agrees to accept all payments from insurers or non-County payers as payment in full, except that following County's receipt of Remittance Advice, County will pay the co-payment, co-insurance or deductible for which the proposed patient may otherwise be liable, not to exceed the rate at which the County would have otherwise paid.
 - 4.3. **CLAIM SUBMISSION WINDOW:** Contractor must submit claims to County within the following time frames, where:
 - 4.3.1. Pima County is the only payer: within ninety (90) days of the last date of service;
 - 4.3.2. Pima County is the secondary payer: within ninety (90) days from the date of the primary payer's Explanation of Benefits (EOB), of a timely filed claim.

4.3.3. All claims must be submitted within the above prescribed timeframes, and no later than 180 days from the date of service.

4.4. **CLAIM RESUBMISSIONS/RECONSIDERATIONS:** If a claim is received within the prescribed timeframes, Contractor has up to sixty (60) from the date of County's remittance advice to resubmit a clean or corrected claim.

4.5. **CLAIM RECOUPMENTS:** County may deny claims for services or recover payment made to Contractor for denied services. Any repayment, recovery or recoupment will be made by deduction from any amount owed to Contractor by County as the result of any contract between County and Contractor. Contractor shall have the right to appeal such denial or recovery pursuant to the terms described in County's Provider Manual.

5. **DENIED/EXCLUDED SERVICES:** County may deny, limit or exclude coverage for payment of services for the following reasons:

5.1. Contractor did not adhere to the terms of this contract;

5.2. Services that are not authorized and/or medical services that are not part of the COE process;

5.3. Services provided to proposed patients after their status changed to voluntary are not covered;

5.4. Invalidation of a petition due to physicians performing evaluations after the statutory timelines;

5.5. Dismissal of a Petition for Court Ordered Treatment due to a physician's unavailability at the date, time and place of hearing;

5.6. Failure to file complete petitions with the PCAO within the timeframes set forth by the PCAO;

5.7. Failure to file signed, legible evaluation paperwork that provides sufficient detail and specificity to meet statutory requirements and contract; or

5.8. Failure to follow the statutory requirements indicated in Arizona Revised statutes, Title 36, Chapter 5

5.9. Failure to provide and/or document daily assessments that a physician or mid-level practitioner sees and assesses the proposed patient to determine whether proposed patients requires involuntary commitment;

5.10. County will not pay for services provided to proposed patients who are not a resident of Pima County, unless behavior occurred within Pima County. Contractor must submit claims for services rendered to proposed patients who are residents of other Arizona counties to the county of residence. Petitions based on behavior occurring outside Pima County must be filed in the county of the proposed patient's residence.

5.11. The day of, or days subsequent to a proposed patient's transition from involuntary to voluntary status for the date of discharge from the facility is not covered;

5.12. Additional inpatient days resulting from Contractor's failure to complete and file the two psychiatric evaluations according to the deadlines as required under Article 4, Chapter 5, title 36 of Arizona Revised Statutes, or for evaluations that are determined to be deficient by the Court.

5.13. Services provided on or after the date on which an Order for Treatment is issued.

5.14. Services provided after the two (2) evaluations have been completed.

5.15. Claims not billed with a valid, complete or legible Explanation of Benefits (EOB) from a proposed patient's third party payer, where applicable;

5.16. County will not compensate Contractor for services provided to patients who are on Court Ordered Treatment (COT);

6. **STATUTORY DEADLINES:** County will not compensate Contractor for psychiatric evaluations that are not completed in compliance with the statutory timeline or for evaluations that are not conducted or prepared in a manner acceptable to the Court.

6.1. In the event that an error or non-compliance with statutory timelines by Contractor or Contractor's staff causes an involuntary commitment action to be dismissed by the Court or rejected by PCAO, County will not compensate Contractor for either the inpatient day or the evaluations performed that pertain to the dismissed involuntary commitment action.

7. **UNTIMELY FILED CLAIMS:** County may refuse to pay any amount billed in an untimely manner, and may refuse to pay any amount billed more than one hundred and eighty (180) days after the last date of service on any specific claim, or the date patient is known to be a County resident, pursuant to ARS 11-622(C).

8. **APPEALS**: Contractor may file an appeals of denied claims or partial payments.
 - 8.1. Appeals must be submitted in writing, and must be clearly marked "APPEALS." The appeal must explain why County determination of authorization nor denial is incorrect and the result Contractor is seeking. Describe the relevant information Contractor believes is known by County and include copies of the documents that provide additional information that County should consider. Appeal documentation must include:
 - 8.1.1. A statement of the factual and legal basis for the dispute;
 - 8.1.2. A statement of relief requested;
 - 8.1.3. Documentation and explanation to support the claim/dispute;
 - 8.1.4. For questions regarding the appeal, please include primary contact information to include the contact's name, phone number and email address.
 - 8.2. **APPEAL SUBMISSION WINDOW**: Appeals must be filed within ninety (60) days after the denial of a timely filed claim. COUNTY agrees to provide a written determination of the appeal within thirty (30) days of receipt.

REMAINDER OF PAGE LEFT BLANK

ATTACHMENT B-1 – SAMPLE FEE SCHEDULES:

Table 1. Facility charges

Bed days Revenue code 0114, 0124, 0134, 0144	Billable Services	Payable	Claim Submission Window
Patient has no payer	Up to 4 COE days and 4 PEP days	Contracted rates < \$RATE >	90 days after discharge
Patient has private/commercial/Medicare (EOB required)	Up to 4 COE days	Copay/Coinsurance/Deductible/or non-covered behavioral health benefits, not to exceed contracted rate	90 days from the date of the primary payer's EOB, but never more than 180 days after discharge.
Patient has AHCCCS/Title 19/Behavioral Health Only, non-Title 19 (EOB required)	Up to 4 COE days	Contracted rates < \$RATE >	90 days from the date of the primary payer's EOB, but never more than 180 days after discharge

Table 2. Professional fees – Rounding

Physician Billing for Daily assessment of a patient.	Billable Services: Service codes 99221, 99222, 99223, 99231, 99232, 99233, 99234, 99235	Payable	Claim Submission Window
Patient has no payer	1 daily assessment of patient, up to 8 days in total	Contracted rates < \$RATE >	90 days from the date of service billed
Patient has private/commercial/Medicare (EOB required)	1 daily assessment of patient, up to 4 days total.	Copay, Coinsurance, deductible or non- covered behavioral health benefits, not to exceed contract rates.	90 days from the date of the primary payer's EOB, but never more than 180 days after discharge
Patient has AHCCCS/Title 19/Behavioral Health Only, non-Title 19 (EOB required)	1 daily assessment of patient up to 4 days	Contracted rates < LIST RATES >	90 days from the date of the primary payer's EOB, but never more than 180 days after discharge

Table 3. Professional fees - Psychiatric Evaluations

Physician Billing for psychiatric evaluations	Billable Services: Service codes 90791 or 90792	Payable	Claim Submission Window
Patient has no payer	Up to 2 psychiatric evaluations billed by two (2) separate psychiatrists and/or medical doctors	Contracted rates <\$ RATES>	90 days from the date of service billed
Patient has private/commercial/Medicare (EOB required)	Up to 2 psychiatric evaluations billed by two (2) separate psychiatrists and/or medical doctors	Copay, Coinsurance, deductible or non-covered behavioral health benefits, not to exceed contract rates.	90 days from the date of the primary payer's EOB, but never more than 180 days after discharge
Patient has AHCCCS/Title 19/Behavioral Health Only, non-Title 19 (EOB required)	Up to 2 psychiatric evaluations billed by two (2) separate psychiatrists and/or medical doctors	Copay, Coinsurance, deductible or non-covered behavioral health benefits, not to exceed contract rates.	90 days from the date of the primary payer's EOB, but never more than 180 days after discharge

PSYCHIATRIC EVALUATIONS: CONTRACTOR may bill for the evaluations using CPT code 90791 or 90792. Payment will be at the higher rate of either (\$XXX.XX) per 90791 and 90792 evaluations, or at 100% of the AHCCCS fee for service schedule for place of service in effect on the date of service for procedure code 90791 and 90792 as amended and updated by AHCCCS from time to time. Any changes in AHCCCS fee for service rates shall apply on the date such rate changes are published by AHCCCS and will not require an amendment to the contract.

ROUNDS: Payment for CPT codes, 99221, 99222, 99223, 99231, 99232, 99233, 99234 or 99235, shall be reimbursed at \$XX.XX per day.

END OF EXHIBIT B

Exhibit C – Business Associate Agreement (7 pages)

WHEREAS, Pima County, on behalf of the Pima County Behavioral Health Department (“Covered Entity”), and **Vendor** (“Business Associate”) (each, a “Party,” and collectively, the “Parties”) wish to enter into a Business Associate Agreement to ensure compliance with the Privacy and Security Rules of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA Privacy and Security Rules”) (45 C.F.R. Parts 160 and 164); and

WHEREAS, the Health Information Technology for Economic and Clinical Health (“HITECH”) Act of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, modified the HIPAA Privacy and Security Rules (hereinafter, all references to the “HIPAA Privacy and Security Rules” include all amendments thereto set forth in the HITECH Act and any accompanying regulations); and

WHEREAS, the Parties have entered into a written or oral arrangement or arrangements (the “Underlying Agreement”) whereby Business Associate will provide certain services to Covered Entity that require Business Associate to create, receive, maintain, or transmit Protected Health Information (“PHI”) on Covered Entity’s behalf, and accordingly Business Associate may be considered a “business associate” of Covered Entity as defined in the HIPAA Privacy and Security Rules; and

WHEREAS, Business Associate and Covered Entity wish to comply with the HIPAA Privacy and Security Rules, and Business Associate wishes to honor its obligations as a business associate to Covered Entity.

THEREFORE, in consideration of the Parties’ continuing obligations under the Underlying Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree to the provisions of this Business Associate Agreement (“Agreement”).

Except as otherwise defined herein, any and all capitalized terms in this Agreement shall have the definitions set forth in the HIPAA Privacy and Security Rules. In the event of an inconsistency between the provisions of this Agreement and mandatory provisions of the HIPAA Privacy and Security Rules, as amended, the HIPAA Privacy and Security Rules in effect at the time shall control. Where provisions of this Agreement are different than those mandated by the HIPAA Privacy and Security Rules, but are nonetheless permitted by the HIPAA Privacy and Security Rules, the provisions of this Agreement shall control.

1. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE

- 1.1. Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Underlying Agreement, provided that such use or disclosure would not violate the HIPAA Privacy and Security Rules if done by Covered Entity.
- 1.2. Business Associate may use PHI in its possession for its proper management and administration and to fulfill any present or future legal responsibilities of Business Associate, provided that such uses are permitted under state and federal confidentiality laws.
- 1.3. Business Associate may disclose PHI in its possession to third parties for the purposes of its proper management and administration or to fulfill any present or future legal responsibilities of Business Associate, provided that:
 - 1.3.1. the disclosures are required by law; or
 - 1.3.2. Business Associate obtains reasonable assurances from the third parties to whom the PHI is disclosed that the information will remain confidential and be used or further disclosed only as required by law or for the purpose for which it was disclosed to the third party, and that such third parties will notify Business Associate of any instances of which they are aware in which the confidentiality of the information has been breached.

- 1.4. Until such time as the Secretary issues regulations pursuant to the HITECH Act specifying what constitutes “minimum necessary” for purposes of the HIPAA Privacy and Security Rules, Business Associate shall, to the extent practicable, access, use, and request only PHI that is contained in a limited data set (as defined in 45 C.F.R. § 164.514(e)(2)), unless Business Associate requires certain direct identifiers in order to accomplish the intended purpose of the access, use, or request, in which event Business Associate may access, use, or request only the minimum necessary amount of PHI to accomplish the intended purpose of the access, use, or request.

2. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

- 2.1. Business Associate agrees not to use or further disclose PHI other than as permitted or required by this Agreement or the Underlying Agreement or as required by law.
- 2.2. Business Associate agrees to use appropriate safeguards and to comply, where applicable, with 45 C.F.R. Part 164, Subpart C with respect to Electronic Protected Health Information, to prevent use or disclosure of PHI other than as provided for by this Agreement. Specifically, Business Associate will:
 - 2.2.1. implement the administrative, physical, and technical safeguards set forth in 45 C.F.R. §§ 164.308, 164.310, and 164.312 that reasonably and appropriately protect the confidentiality, integrity, and availability of any PHI that it creates, receives, maintains, or transmits on behalf of Covered Entity, and, in accordance with 45 C.F.R. § 164.316, implement and maintain reasonable and appropriate policies and procedures to enable it to comply with the requirements outlined in 45 C.F.R. §§ 164.308, 164.310, and 164.312; and
 - 2.2.2. report to Covered Entity any Security Incident, and any use or disclosure of PHI that is not provided for by this Agreement, of which Business Associate becomes aware without unreasonable delay and in no case later than thirty (30) calendar days after discovery.
- 2.3. Business Associate shall require each subcontractor that creates, receives, maintains, or transmits PHI on its behalf to enter into a business associate agreement or equivalent agreement containing the same restrictions on access, use, and disclosure of PHI as those applicable to Business Associate under this Agreement. Furthermore, to the extent that Business Associate provides Electronic PHI to a subcontractor, Business Associate shall require such subcontractor to comply with all applicable provisions of 45 C.F.R. Part 164, Subpart C.
- 2.4. Business Associate agrees to comply with any requests for restrictions on certain disclosures of PHI to which Covered Entity has agreed in accordance with 45 C.F.R. § 164.522 of which Business Associate has been notified by Covered Entity.
- 2.5. If Business Associate maintains a designated record set on behalf of Covered Entity, at the request of Covered Entity and in a reasonable time and manner, Business Associate agrees to make available PHI required for Covered Entity to respond to an individual’s request for access to his or her PHI in accordance with 45 C.F.R. § 164.524. If Business Associate maintains PHI in an electronic designated record set, it agrees to make such PHI available electronically to Covered Entity or, upon Covered Entity’s specific request, to the applicable individual or to a person or entity specifically designated by such individual, upon such individual’s request.
- 2.6. If Business Associate maintains a designated record set on behalf of Covered Entity, at the request of Covered Entity and in a reasonable time and manner, Business Associate agrees to make available PHI required for amendment by Covered Entity in accordance with the requirements of 45 C.F.R. § 164.526.
- 2.7. Business Associate agrees to document any disclosures of Protected Health Information, and to make PHI available for purposes of accounting of disclosures, as required by 45 C.F.R. § 164.528.

- 2.8. If Business Associate is to carry out one or more of Covered Entity's obligations under 45 C.F.R. Part 164, Subpart E, Business Associate shall comply with the requirements of Subpart E that apply to Covered Entity in the performance of such obligation(s).
- 2.9. Business Associate agrees that it will make its internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, Covered Entity, available to the Secretary, in a time and manner designated by the Secretary, to enable the Secretary to determine Business Associate's or Covered Entity's compliance with the HIPAA Privacy and Security Rules. Business Associate also shall cooperate with the Secretary and, upon the Secretary's request, pursuant to 45 C.F.R. § 160.310, shall disclose PHI to the Secretary to enable the Secretary to investigate and review Business Associate's or Covered Entity's compliance with the HIPAA Privacy and Security Rules.
- 2.10. Unless expressly authorized in the Underlying Agreement, Business Associate shall not:
- 2.10.1. use PHI for marketing or fundraising;
 - 2.10.2. use PHI to create a limited data set or to de-identify the information;
 - 2.10.3. use PHI to provide data aggregation services relating to the health care operations of Covered Entity; or
 - 2.10.4. use or disclose PHI in exchange for remuneration of any kind, whether directly or indirectly, financial or non-financial, other than such remuneration as Business Associate receives from Covered Entity in exchange for Business Associate's provision of the services specified in the Underlying Agreement.
 - 2.10.5. Prior express written authorization from Covered Entity is required for Business Associate to access, store, share, maintain, transmit, use, or disclose PHI in any form via any medium with any entity or person, including the Business Associate's employees and subcontractors, beyond the boundaries and jurisdiction of the United States. Authorization may be granted in the sole discretion of Covered Entity and, if granted, will be subject to additional conditions with which Business Associate must agree.

3. BUSINESS ASSOCIATE'S MITIGATION AND BREACH NOTIFICATION OBLIGATIONS

- 3.1. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement.
- 3.2. Following the discovery of a Breach of Unsecured PHI ("Breach"), Business Associate shall notify Covered Entity of such Breach without unreasonable delay and in no case later than thirty (30) calendar days after discovery of the Breach, and shall assist in Covered Entity's breach analysis process, including risk assessment, if requested. A Breach shall be treated as discovered by Business Associate as of the first day on which such Breach is known to Business Associate or, through the exercise of reasonable diligence, would have been known to Business Associate. The Breach notification shall be provided to Covered Entity in the manner specified in 45 C.F.R. § 164.410(c) and shall include the information set forth therein to the extent known. If, following the Breach notification, Business Associate learns additional details about the Breach, Business Associate shall notify Covered Entity promptly as such information becomes available. Covered Entity shall determine whether Business Associate or Covered Entity will be responsible for providing notification of any Breach to affected individuals, the media, the Secretary, and/or any other parties required to be notified under the HIPAA Privacy and Security Rules or other applicable law. If Covered Entity

determines that Business Associate will be responsible for providing such notification, Business Associate may not carry out notification until Covered Entity approves the proposed notices in writing.

3.3. Notwithstanding the provisions of Section III.B., above, if a law enforcement official states to Business Associate that notification of a Breach would impede a criminal investigation or cause damage to national security, then:

3.3.1. if the statement is in writing and specifies the time for which a delay is required, Business Associate shall delay such notification for the time period specified by the official; or

3.3.2. if the statement is made orally, Business Associate shall document the statement, including the identity of the official making it, and delay such notification for no longer than thirty (30) days from the date of the oral statement unless the official submits a written statement during that time.

4. Following the period of time specified by the official, Business Associate shall promptly deliver a copy of the official's statement to Covered Entity.

4.1. Business Associate shall bear Covered Entity's costs of any Breach and resultant notifications, if applicable, to the extent the Breach arises from Business Associate's negligence, willful misconduct, violation of law, violation of the Underlying Agreement, or violation of this Agreement.

5. **OBLIGATIONS OF COVERED ENTITY**

5.1. Upon request of Business Associate, Covered Entity shall provide Business Associate with the notice of privacy practices that Covered Entity produces in accordance with 45 C.F.R. § 164.520.

5.2. Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by an individual to use or disclose Protected Health Information, if such changes could reasonably be expected to affect Business Associate's permitted or required uses and disclosures.

5.3. Covered Entity shall notify Business Associate of any restriction on the use or disclosure of PHI to which Covered Entity has agreed in accordance with 45 C.F.R. § 164.522, and Covered Entity shall inform Business Associate of the termination of any such restriction, and the effect that such termination shall have, if any, upon Business Associate's use and disclosure of such Protected Health Information.

6. **TERM AND TERMINATION**

6.1. Term. The Term of this Agreement shall be effective as of the first effective date of any Underlying Agreement, and shall terminate upon later of the following events: (i) in accordance with Section V.C., when all of the PHI provided by Covered Entity to Business Associate or created or received by Business Associate on behalf of Covered Entity is returned to Covered Entity or destroyed (and a certificate of destruction is provided) or, if such return or destruction is infeasible, when protections are extended to such information; or (ii) upon the expiration or termination of the last of the Underlying Agreement.

6.2. Termination. Upon either Party's knowledge of a material breach by the other Party of its obligations under this Agreement, the non-breaching Party shall, within twenty (20) days of that determination, notify the breaching Party, and the breaching Party shall have thirty (30) days from receipt of that notice to cure the breach or end the violation. If the breaching Party fails to take reasonable steps to effect such a cure within such time period, the non-breaching Party may terminate this Agreement and the Underlying Agreement without penalty.

6.3. Where either Party has knowledge of a material breach by the other Party and determines that cure is infeasible, prior notice of the breach is not required, and the non-breaching Party shall terminate the portion of the Underlying Agreement affected by the breach without penalty.

6.4. Effect of Termination.

6.4.1. Except as provided in paragraph 2 of this subsection C., upon termination of this Agreement, the Underlying Agreement or upon request of Covered Entity, whichever occurs first, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of subcontractors of Business Associate. Neither Business Associate nor its subcontractors shall retain copies of the PHI except as required by law.

6.4.2. In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide within ten (10) days to Covered Entity notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction of PHI is infeasible, Business Associate, and its applicable subcontractors, shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate and its applicable subcontractors maintain such Protected Health Information.

7. MISCELLANEOUS

7.1. No Rights in Third Parties. Except as expressly stated herein or in the HIPAA Privacy and Security Rules, the Parties to this Agreement do not intend to create any rights in any third parties.

7.2. Survival. The obligations of Business Associate under Section V.C. of this Agreement shall survive the expiration, termination, or cancellation of this Agreement, the Underlying Agreement, and/or the business relationship of the Parties, and shall continue to bind Business Associate, its agents, employees, contractors, successors, and assigns as set forth herein.

7.3. Amendment. The Parties agree that this Agreement will be amended automatically to conform to any changes in the HIPAA Privacy and Security Rules as are necessary for each of them to comply with the current requirements of the HIPAA Privacy and Security Rules and the Health Insurance Portability and Accountability Act, unless a particular statutory or regulatory provision requires that the terms of this Agreement be amended to reflect any such change. In those instances where an amendment to this Agreement is required by law, the Parties shall negotiate in good faith to amend the terms of this Agreement within sixty (60) days of the effective date of the law or final rule requiring the amendment. If, following such period of good faith negotiations, the Parties cannot agree upon an amendment to implement the requirements of said law or final rule, then either Party may terminate this Agreement and the Underlying Agreement upon ten (10) days written notice to the other Party. Except as provided above, this Agreement may be amended or modified only in a writing signed by the Parties.

7.4. Assignment. Neither Party may assign its respective rights and obligations under this Agreement without the prior written consent of the other Party.

7.5. Independent Contractor. None of the provisions of this Agreement are intended to create, nor will they be deemed to create, any relationship between the Parties other than that of independent parties contracting with each other solely for the purposes of effecting the provisions of this Agreement and any other agreements between the Parties evidencing their business relationship. Nothing in this Agreement creates or is intended to create an agency relationship.

- 7.6. Governing Law. To the extent this Agreement is not governed exclusively by the HIPAA Privacy and Security Rules or other provisions of federal statutory or regulatory law, it will be governed by and construed in accordance with the laws of the state in which Covered Entity has its principal place of business.
- 7.7. No Waiver. No change, waiver, or discharge of any liability or obligation hereunder on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation, on any other occasion.
- 7.8. Interpretation. Any ambiguity of this Agreement shall be resolved in favor of a meaning that permits Covered Entity and Business Associate to comply with the HIPAA Privacy and Security Rules.
- 7.9. Severability. In the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the provisions of this Agreement will remain in full force and effect.
- 7.10. Notice. Any notification required in this Agreement shall be made in writing to the representative of the other Party who signed this Agreement or the person currently serving in that representative's position with the other Party.
- 7.11. Entire Agreement. This Agreement constitutes the entire understanding of the Parties with respect to the subject matter hereof and supersedes all prior agreements, oral or written. In the event of any inconsistency between this Agreement and any other agreement between the Parties concerning the use and disclosure of PHI and the Parties' obligations with respect thereto, the terms of this Agreement shall control.
- 7.12. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same Agreement.

END OF EXHIBIT C