

f. A person awaiting receipt of the Central Registry Background Check may provide direct services to ADES clients after completion and submittal of the Direct Service Position certification if the certification states:

- (1) The person is not currently the subject of an investigation of child abuse or neglect in Arizona or another state or jurisdiction; and
- (2) The person has not been the subject of an investigation of child abuse or neglect in Arizona, or another state or jurisdiction, which resulted in a substantiated finding. The Certification for Direct Service Position is located at:
<https://www.azdes.gov/InternetFiles/InternetProgrammaticForms/doc/ACY-1287AFORFF.doc>.

If the Central Registry Background Check specifies any disqualifying act and the person does not have a Central Registry exception, the person shall be prohibited from providing direct services to ADES clients.

g. The Contractor shall maintain the Central Registry Background Check results and any related forms or documents in a confidential file for five (5) years after termination of the Contract. The Request for Search of Central Registry for Background Check is located at: <https://www.azdes.gov/opac>.

13. **Cancellation for Conflict of Interest.** Either party may cancel this contract without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the state or contractor is or becomes at anytime while the contract or an extension of the contract is in effect an employee of or a consultant to any other party to this contract with respect to the subject matter of the contract. The cancellation shall be effective when either party receives written notice of the cancellation unless the notice specifies a later time.

14. **Certification of Cost or Pricing Data.** By signing the offer and contract award form or contract signature form or change order or contract amendment or other official form, the contractor is certifying that, to the best of the contractor's knowledge and belief, any cost or pricing data submitted is accurate, complete and current as of the date submitted or other mutually agreed upon date.

Furthermore, the price to AAA-PCOA shall be adjusted to exclude any significant amounts by which AAA-PCOA finds the price was increased because the contractor-furnished cost or pricing data was inaccurate, incomplete or not current as of the date of certification. Such adjustment by AAA-PCOA may include overhead, profit or fees. The certifying of cost or pricing data does not apply when contract rates are set by law or regulation.

15. **Client Fees and Program Income.** Any program income generated by the contractor as a result of service provision during the term of the contract shall be expended as the first dollar during the period in which it was earned and shall be used to expand or enhance the services. Income generated while the contract is in effect shall not be used to meet matching requirements associated with the receipt of federal funds from the contract.

The Contractor must comply with all restrictions or stipulations set by PCOA regarding the collection and use of the income generated regardless if the contract awarded is a Fixed Price with Price Adjustment or a Unit Rate Contract. Program Income refers to the

following:

- a. **Cost Sharing** The Contractor may impose cost sharing upon recipients of a certain service if the service is funded with Older Americans Act-Title III-B or III-E, Title XX Social Services Block Grant (SSBG) or State funds, which permit a sliding fee to be charged. If the contractor proposes to initiate a cost sharing policy for the services rendered, said policy must be submitted to PCOA for review and approval prior to implementation. Services excluded from a cost sharing requirement under the Older Americans Act Program are Information & Assistance, Outreach, Benefit Counseling, Case Management, Ombudsman, Elder Abuse Prevention, Legal Assistance, Consumer Protection services, Congregate Meals, Home Delivered Meals and services delivered through a Tribal Organization or to individuals at or below the Federal poverty level.
- b. **Program Income:** Income generated from the sale of tangible personal or real property, equipment, usage of rental fees and patent or copy right royalties acquired for use during the term of the contract.
- c. **Voluntary Contributions:** Income generated as a result of clients voluntarily contributing toward the cost of the services received.

16. **Code of Conduct.** The Contractor shall avoid any action that might create or result in the appearance of:

- a. Inappropriate use of divulging of information gathered or discovered pursuant to the performance of its duties under the contract;
- b. Acted on behalf of the State or AAA-PCOA without appropriate authorization;
- c. Provided favorable or unfavorable treatment to anyone;
- d. Made a decision on behalf of the State or AAA-PCOA that exceeded its authority, could result in partiality, or have a political consequence for the State or AAA-PCOA,
- e. Misrepresent or otherwise impeded the efficiency, authority, actions, policies, or adversely affect the confidence of the public or integrity of the State; or
- f. Loss of impartiality when advising the State.

17. **Competitive Bidding.** Contractor is authorized to purchase the supplies and equipment itemized in the Compensation section of the contract for utilization in the delivery of contract services. Contractor shall procure all such supplies and equipment at the lowest practicable cost and shall purchase all non-expendable items, having a useful life of more than one year and an acquisition cost of \$1,000 or more, through generally accepted and reasonable competitive bidding processes. Any procurement in violation of this provision shall be subject to a financial audit exception.

18. **Confidentiality.** Contractor shall observe and abide by all applicable state and federal statutes, rules and regulations regarding use or disclosure of information, including but not limited to information concerning applicants for and recipients of contract services. The contractor shall release information to AAA-PCOA, the Department and the Attorney General's office as required by the terms of this contract, by law or upon request. The Contractor shall comply with the requirements of Arizona Address Confidentiality Program, A.R.S. §41-161 et. Seq. PCOA will advise the Contractor as to applicable policies and procedures the Arizona Department of Economic Security has adopted for such compliance.

19. **Continuation of Performance Through Termination.** The Contractor shall continue to perform, in accordance with the requirements of the Contract, up to date of termination, as directed in the termination notice.
20. **Contract Claims.** All contract claims and controversies under this contract shall be resolved according to A.R.S. Title 41, Chapter 23, Article 9, and rules adopted thereunder.
21. **Contract Extension.** Neither party has an obligation to extend or renew this contract. However, this contract may be extended or renewed for multiple periods, or may be established as a multi-year contract in its entirety or in part upon mutual agreement of the parties. Any extension or renewal must be made prior to the end of the contract period specified in this contract.
22. **Contract Term.** The term of this contract shall be the period of time from the contract begin date to the contact termination date as awarded or extended. The begin date of the contract term is the date that the contractor may start to provide services under this contract. The contractor will not be paid or reimbursed for contract services provided prior to the begin date, or after the end date of the contract. However, payments or reimbursements shall not be made under this contract until the effective date of this contract.
23. **Contract Interpretation and Amendment.**
 - a. **No Parole Evidence.** This contract is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any term used in this contract and no other understanding either oral or in writing shall be binding.
 - b. **No Waiver.** Either party's failure to insist on strict performance of any term or condition of the contract shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.
 - c. **Written Contract Amendments.** The contract shall be modified only through a written contract amendment within the scope of the contract signed by the procurement officer on behalf of AAA-PCOA and the authorized representative of the contractor.
24. **Cooperation.** AAA-PCOA may undertake or award other contracts for additional work related to the work performed by the contractor, and the contractor shall fully cooperate with such other contractors and carefully fit its own work to such other contractors' work. The contractor shall not commit or permit any act which will interfere with the performance of work by any other contractor. The contractor shall cooperate as AAA-PCOA deems necessary, with the transfer of work, services, case records and files performed or prepared by the contractor to other contractor(s).
25. **Cooperation with the Department's Investigation.** All Contractors, providers, vendors and volunteers are to cooperate fully and truthfully with any PCOA or ADES investigation, including but not limited to an investigation by Division of Internal Affairs. Failure to adhere to this policy may result in PCOA or ADES taking whatever actions it deems appropriate, from removal of the subject and or witness from working with PCOA or ADES clients up to terminating the Contracts with PCOA.

26. **Data Sharing Agreement.** When determined by PCOA that sharing of confidential data will occur with the Contractor, the Contractor shall complete an agreement consistent with applicable law and submit the completed Agreement to the PCOA Program Designated Staff prior to any work commencing or data shared. A separate Data Sharing Request Agreement shall be required between the Contractor and each PCOA Program sharing confidential data.

27. **Effective Date.** The effective date of this contract shall be the date that the AAA-PCOA Chief Executive Officer signs the offer and acceptance form or other official contract form, unless another date is specifically stated in the contract.

28. **Equipment.** If the contractor is authorized to purchase equipment, it shall be itemized in the Compensation section for utilization in the delivery of contract services. If equipment purchase is authorized the contractor shall maintain complete and up-to-date inventory records for all equipment purchased hereunder.

Equipment specifically designated with this contract to be purchased in whole or part with AAA-PCOA funds, shall be reported in accordance with PCOA inventory policies and procedures. The contractor shall report equipment purchased with contract funds to AAA-PCOA within thirty (30) days of purchase and perform an annual inventory of all capital equipment purchased with AAA-PCOA funds and submit the equipment inventory to AAA-PCOA.

AAA-PCOA shall retain an equitable interest, equal to the purchase price paid, or a fair estimate or appraisal of current market value, whichever is greater, in all equipment purchased under this or a predecessor contract. AAA-PCOA shall be included as a co-insured on any insurance policy that covers equipment purchased under this or a predecessor contract.

The contractor shall not dispose of any equipment purchased under this or a predecessor contract without the prior written consent of AAA-PCOA during and after the contract term. Such consent, if given, may include direction as to means of disposition and utilization of proceeds including any necessary adjustments to the contract.

Upon termination of this contract, any equipment purchased under this or a predecessor contract shall be disposed of as directed by AAA-PCOA and if sold AAA-PCOA shall be compensated in the amount of its equitable interest.

Under a fixed price contract, this section does not apply unless specifically required by federal or state law.

29. **Evaluation.** AAA-PCOA will be entitled to evaluate, and the contractor shall cooperate in the evaluation of, contract services. Evaluation may assess the quality and impact of contract services, either in isolation or in comparison with other similar services, and will assess the contractor's progress and/or success in achieving the goals, objectives and deliverables set forth in this contract. As requested by AAA-PCOA, the Contractor shall participate in third party evaluation relative to contract impact in support of AAA-PCOA goals.

30. E-Verify The Contractor warrants compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with Section A.R.S. §23-214 subsection A, as may be amended. (That subsection reads: "After December 31, 2007, every employer, after hiring an employee, shall verify the employment eligibility of the employee through the E-Verify program.")

- a. A breach of a warrant regarding compliance with immigration laws and regulations shall be deemed a material breach of the contract and the Contractor may be subject to penalties up to and including termination of the contract.
- b. Failure to comply with a State audit process to randomly verify the employment records of contractors and subcontractors shall be deemed a material breach of the contract and the Contractor may be subject to penalties up to and including termination of the contract.
- c. The AAA-PCOA retains the legal right at AAA/PCOA expense to inspect the papers of any employee who works on the contract to ensure that the Contractor or subcontractor is complying with the warranty under 30.a.

31. Fair Hearings and Service Recipient's Grievances. The contractor shall advise all applicants for and recipients of contract services of their right, at anytime and for any reason, to present to the contractor and to AAA-PCOA any grievances arising from the delivery of contract services, including but not limited to ineligibility determination, service reduction, suspension or termination, or quality of service. AAA-PCOA may establish its jurisdiction in the grievance or refer the matter to the appropriate authority.

The contractor, whenever authorized by law, shall maintain a formal system acceptable to and approved by PCOA for reviewing and adjudicating grievances by service recipients or subcontractors arising from this contract.

32. Federal Immigration and Nationality Act. By entering into the Contract, the Contractor warrants compliance with the Federal Immigration and Nationality Act (FINA) and all other Federal immigration laws and regulations related to the immigration status of its employees. The Contractor shall obtain statements from its subcontractors certifying compliance and shall furnish the statements to the Procurement Officer upon request.

These warranties shall remain in effect through the term of the Contract. The Contractor and its subcontractors shall also maintain Employment Eligibility Verification forms (I-9) as required by the U.S. Department of Labor's Immigration and Control Act, for all employees performing work under the Contract. I-9 forms are available for download at USCIS.GOV.

- a. The State may request verification of compliance for any Contractor or subcontractor performing work under the Contract. Should the State suspect or find that the Contractor or any of its subcontractors are not in compliance, the PCOA/State may pursue any and all remedies allowed by law, including, but not limited to: suspension of work, termination of the Contract for default, and suspension and/or debarment of the Contractor.

33. Fingerprinting.

Contractor shall comply with, and shall ensure that all of Contractor's employees, independent contractors, subcontractors, volunteers and other agents comply with, all applicable (current and future) legal requirements relating to fingerprinting, fingerprint clearance cards, certifications regarding pending or past criminal matters, and criminal records checks that relate to contract performance.

The provisions of A.R.S. 46-141 (as may be amended) are hereby incorporated in their entirety as provisions of this contract. For reference, these provisions include, but are not limited to, the following.

- a. Personnel who are employed by the Contractor whether paid or not, and who are required or allowed to provide services directly to juveniles or vulnerable adults shall have a valid fingerprint clearance card or shall apply for a fingerprint clearance card within seven working days of employment..
- b. The Contractor shall assume the costs of fingerprint checks and may charge these costs to its fingerprinted personnel.
- c. Except as provided in A.R.S §46-141, this contract may be cancelled or terminated immediately if a person employed by the Contractor and who has contact with juveniles certifies pursuant to the provisions of A.R.S §46-141 (as may be amended) that the person is awaiting trial or has been convicted of any of the offenses listed therein in this State, or of acts committed in another state that would be offenses in this State, or if the person does not possess or is denied issuance of a valid fingerprint clearance card.
- d. Personnel who are employed by any Contractor whether paid or not, and who are required or allowed to provide services directly to juveniles shall certify on forms provided by the Department of Economic Security and notarized whether they are awaiting trial on or have ever been convicted of any of the offenses described in A.R.S §46-141 (as may be amended).
- e. Personnel who are employed by an Contractor, whether paid or not, and who are required or allowed to provide services directly to juveniles shall certify on forms provided by the Department of Economic Security and notarized whether they have ever committed any act of sexual abuse of a child, including sexual exploitation and commercial sexual exploitation, or any act of child abuse.
- f. Federally recognized Indian tribes or military bases may submit and the Department of Economic Security shall accept certifications that state no personnel who are employed or who will be employed during the contract term have been convicted of, have admitted committing or are awaiting trial on any offenses as described in A.R.S. §36-594.01 (as may be amended).

34. Force Majeure.

- a. Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of force majeure. The term "*force majeure*" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes acts of God; acts of

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

Force Majeure shall not include the following occurrences:

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

- b. If either party is delayed at any time in the progress of the work by force majeure, the delayed party shall notify the other party in writing of such delay, as soon as is practicable and no later than the following working day, of the commencement thereof and shall specify the causes of such delay in such notice. Such notice shall be delivered or mailed certified-return receipt and shall make a specific reference to this article, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by contract amendment for a period of time equal to the time that results or effects of such delay prevent the delayed party from performing in accordance with this Contract.
- c. Any delay or failure in performance by either party hereto shall not constitute default hereunder or give rise to any claim for damages or loss of anticipated profits if, and to the extent that such delay or failure is caused by force majeure.

35. **General Indemnification.** To the extent permitted by law, the contractor shall defend, indemnify and hold harmless both AAA-PCOA and the state from any claim, demand, suit, liability, judgment and expense (including attorney's fees and other costs of litigation) arising out of or relating to injury, disease, or death of persons or damage to or loss of property resulting from or in connection with the negligent performance of this contract by the contractor, its agents, employees, and subcontractors or anyone for whom the contractor may be responsible. The obligations, indemnities and liabilities assumed by the contractor under this paragraph shall not extend to any liability caused by the negligence of AAA-PCOA or its employees. The contractor's liability shall not be limited by any provisions or limits of insurance set forth in this contract. AAA-PCOA shall reasonably notify the contractor of any claim for which it may be liable under this paragraph.

36. **General Understanding.** In order for AAA-PCOA to accomplish a comprehensive and coordinated service response system, some services must be provided through a joint venture between AAA-PCOA and the contractor. AAA-PCOA recognizes the contractor's role as both integral and significant to the delivery of services and understands the importance of a true partnership between itself and the contractor. To this end, AAA-PCOA recognizes the autonomy of the contractor and will try to avoid unnecessary demands on the operations and business practices of the contractor.

37. Gratuities. The procurement officer may, by written notice to the contractor, immediately terminate this contract if AAA-PCOA determines that employment or a gratuity was offered or made by the contractor or a representative of the contractor to any officer or employee of AAA-PCOA for the purpose of influencing the outcome of the procurement or securing the contract, an amendment to the contract, or favorable treatment concerning the contract, including the making of any determination or decision about contract performance.

AAA-PCOA, in addition, to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three times the value of the gratuity offered by the contractor.

Contractor personnel shall not accept gratuities or "tips" for provision of service.

38. Identification of Funding. All advertisement, publications and printed materials which are produced by the contractor and refer to contract services shall state that such services are funded under contract with AAA-PCOA as part of the Older Americans Act Program.

39. Inclusive Contractor: Contractor is encouraged to make every effort to utilize subcontractors, when specified in the contract, that are small, women-owned and/or minority owned business enterprises. This could include subcontractors for a percentage of the administrative or direct service being proposed. Contractor who is committing a portion of its work to such subcontractors shall do so by identifying the type of service and work to be performed by providing detail concerning the Contractor's utilization of small, women-owned and/or minority business enterprises. Emphasis should be placed on specific areas that are subcontracted and percentage of contract utilization and how this effort will be administered and managed, including reporting requirements.

40. Indemnification - Patent and Copyright. To the extent permitted by law, the contractor shall indemnify and hold harmless both AAA-PCOA and the state against any liability, including costs and expenses, for infringement of any patent, trademark or copyright arising out of contract performance or use by AAA-PCOA or the state of materials furnished or work performed under this contract. AAA-PCOA shall reasonably notify the contractor of any claim for which it may be liable under this paragraph. If the contractor is insured pursuant to A.R.S. §41-621 and §35-154, this section shall not apply.

41. Inspection and Testing. The Contractor agrees to permit access to its facilities, subcontractor facilities and the Contractor's processes or services at reasonable times for inspection of the facilities or materials covered under this Contract. AAA-PCOA shall also have the right to test at its own cost the materials to be supplied under this Contract. Neither inspection at the Contractor's facilities nor materials testing shall constitute final acceptance of the materials or services. If AAA-PCOA determines non-compliance of the materials, the Contractor shall be responsible for the payment of all costs incurred by AAA-PCOA for testing and inspection.

42. Indemnification and Insurance.

INDEMNIFICATION CLAUSE:

The parties to this contract agree that the State of Arizona and the Department of Economic Security (DES) and Pima Council on Aging shall be indemnified and held harmless by Contractor for the vicarious liability of the State and/or DES or PCOA as a result of entering into this contract. However, the parties further agree that the State of Arizona, DES and PCOA shall each be responsible for its own negligence. Each party to this contract is responsible for its own negligence.

INSURANCE REQUIREMENTS:

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

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

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

(1) Commercial General Liability – Occurrence Form

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

• General Aggregate	\$2,000,000
• Products – Completed Operations Aggregate	\$1,000,000
• Personal and Advertising Injury	\$1,000,000
• Blanket Contractual Liability – Written and Oral	\$1,000,000
• Fire Legal Liability	\$ 50,000
• Each Occurrence	\$1,000,000

- a. The policy shall be endorsed to **include coverage for sexual abuse and molestation.**
- b. The policy shall be endorsed to include the following additional insured language: ***"The State of Arizona, the Department of Economic Security and Pima Council on Aging shall be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor".***
- c. Policy shall contain a waiver of subrogation against the State of Arizona/ PCOA its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

This requirement may be satisfied with a policy combining General and Professional Liability, provided that the General Liability section of the policy is written on an occurrence basis, and includes coverage for contractual liability.

(2) Business Automobile Liability

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

Combined Single Limit (CSL)	\$1,000,000
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- a. The policy shall be endorsed to include the following additional insured language: ***The State of Arizona, Department of Economic Security and Pima Council on Aging shall be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor, involving automobiles owned, leased, hired or borrowed by the contractor***.
- b. Policy shall contain a waiver of subrogation against the State of Arizona and PCOA, its departments, agencies, boards, commissions, universities and its officers, officials, agents and employees for losses arising from work performed by or on behalf of the Contractor.
- c. This paragraph, **Business Automobile Liability**, shall not be applicable in the event Contractor (or its Subcontractors) does not utilize a vehicle in any manner in the performance of this Contract or if the utilization is used only for commuting purposes. In the event Contractor (or its Subcontractors) subsequently utilizes the vehicle in the performance of the Contract or utilizes it for other than commuting purposes, this paragraph, **Business Automobile Liability**, shall be fully applicable, effective the date the utilization is changed.

(3) Worker's Compensation and Employers' Liability

	Statutory
Workers' Compensation	
Employers' Liability	
Each Accident	\$ 500,000
Disease – Each Employee	\$ 500,000
Disease – Policy Limit	\$1,000,000

- a. Policy shall contain a waiver of subrogation against the State of Arizona/PCOA, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.
- b. This requirement shall not apply to: Separately, EACH contractor or subcontractor exempt under A.R.S. 23-901, AND when such contractor or subcontractor executes the appropriate waiver (Sole Proprietor/Independent Contractor) form.

(4) Professional Liability (Errors and Omissions Liability)

Each Claim	\$1,000,000
Annual Aggregate	\$2,000,000

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

(5) Fidelity Bond or Crime Insurance

Bond or Policy Limit	\$100,000
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- a. The bond or policy shall be issued with minimum limits of \$100,000.
- b. The bond or policy shall include coverage for all directors, officers, agents and employees of the Contractor.
- c. The bond or policy shall include coverage for theft for third party fidelity.
- d. The bond or policy shall include coverage for theft and mysterious disappearance.
- e. The bond or policy shall contain no requirement for arrest and conviction.
- f. The bond or policy shall cover loss outside the premises of the Names Insured.

B. **ADDITIONAL INSURANCE REQUIREMENTS:** The policies shall include, or be endorsed to include, the following provisions: Pima Council on Aging and the State of Arizona Department of Economic Security wherever additional insured status is required such additional insured shall be covered to the full limits of liability purchased by the Contractor, even if those limits of liability are in excess of those required by this Contract.

- (1) The Contractor's insurance coverage shall be primary insurance with respect to all other available sources.
- (2) Coverage provided by the Contractor shall not be limited to the liability assumed under the indemnification provisions of this contract.

C. **NOTICE OF CANCELLATION:** Each insurance policy required by the insurance provisions of this Contract shall provide the required coverage and shall not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty (30) days prior written notice has been given to the Pima Council on Aging and State of Arizona. Such notice shall be sent directly to **Pima Council on Aging, 8467 E. Broadway, Tucson, AZ 85710** and **Department of Economic Security, Office of Procurement, 1789 W. Jefferson St., Site Code 805Z, Phoenix, AZ 85007** and shall be sent by certified mail, return receipt requested.

D. **ACCEPTABILITY OF INSURERS:** Insurance is to be placed with duly licensed or approved non-admitted insurers in the state of Arizona with an "A.M. Best" rating of not less than A- VII. The State of Arizona in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

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

E. **VERIFICATION OF COVERAGE:** Contractor shall furnish Pima Council on Aging and the State of Arizona with certificates of insurance (ACORD form or equivalent approved by the State of Arizona) as required by this Contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

All certificates and endorsements are to be received and approved by DAAS and Pima Council on Aging before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.

All certificates required by this Contract shall be sent directly to **Pima Council on Aging, 8467 E. Broadway, Tucson, Arizona 85710 unless the Contract specifies otherwise.** Pima Council on Aging's project/contract number and project description shall be noted on the certificate of insurance. Pima Council on Aging/State of Arizona reserves the right to require complete, certified copies of all insurance policies required by this Contract at any time. **DO NOT SEND CERTIFICATES OF INSURANCE TO THE STATE OF ARIZONA'S RISK MANAGEMENT SECTION.**

F. **SUBCONTRACTORS:** Contractors' certificate(s) shall include all subcontractors as insureds under its policies or Contractor shall furnish to PCOA/State of Arizona separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum requirements identified above.

G. **APPROVAL:** Any modification or variation from the *insurance requirements* in this Contract shall be made by the Department of Administration, Risk Management Section, whose decision shall be final. Such action will not require a formal Contract amendment, but may be made by administrative action.

H. **EXCEPTIONS:** In the event the Contractor or sub-contractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a Certificate of Self-Insurance. If the contractor or sub-contractor(s) is/are a State of Arizona agency, board, commission, or university none of the above shall apply.

In the event that Contractor determines that it may not be able to comply fully with the insurance requirements set forth above in section 42 of the Uniform Terms and Conditions, the Contractor may request that the insurance requirements be modified pursuant to section 42, provided that such request be delivered in writing to PCOA at least ten days prior to the solicitation due date or, if not a solicitation, prior to contract execution. Contractor shall include with such request Contractor's justification for the modification with supporting documentation.

As provided in section 42, the Department of Administration, Risk Management Section, shall decide whether such modification may be permitted. If the Department of Administration, Risk Management, decides to grant permission, the DES Chief Procurement Officer shall then decide whether to approve the modification.

Modifications that are approved will be done so on a case-by-case basis and shall not affect the insurance requirements of other Contractors for whom modifications have not been approved. If a Contractor's request has not been approved or a Contractor fails to deliver its request prior to the applicable deadline, then the Contractor shall be required to comply fully with the insurance requirements set forth in section 42.

43. **IT508 Compliance.** Unless specifically authorized in the Contract, any electronic or information technology offered to the State of Arizona under this contract shall comply with A.R.S. 41-3531 and 3532 as may be amended and Section 508 of the Rehabilitation Act of 1973, which requires that employees and members of the public shall have access to and use of information technology that is comparable to the access and use by employees and members of the public who are not individuals with disabilities.
44. **Levels of Service.**
 - a. If the contractor determines service recipient eligibility, the contractor shall maintain and regulate the units or services set forth in this contract to ensure continuity and availability of services to eligible persons during the term of this contract and during any transition to a subsequent contractor.
 - b. PCOA makes no guarantee to purchase specific quantities of goods or services, or to refer eligible persons as may be identified or specified herein. Further, it is understood and agreed that this contract is for the sole convenience of PCOA and PCOA reserves the right to obtain like goods or services from other sources when such need is determined necessary by PCOA.
 - c. Contract services may be moved or expanded to other site locations within the geographic area awarded only by a written contract amendment.
 - d. PCOA makes no guarantee to purchase all of the service units authorized or to provide any number of referrals. If quantities of units are specified, they are estimates only and PCOA may decrease and/or increase them by providing written notice to the contractor.
 - e. When the method of compensation for the service is **Fixed Price with Price Adjustment**, the contract may be amended, by mutual agreement, to purchase additional services by increasing the contract service budget and/or budget summary.
45. **Limited English Proficiency** The Contractor shall ensure that all services provided are culturally relevant and linguistically appropriate to the population to be served following the ADES, Policy, Limited English Proficiency, DES 1-01-34.
46. **Monitoring.** AAA-PCOA will be entitled to monitor the contractor or subcontractor and they shall cooperate in the monitoring of services delivered, facilities and records maintained and fiscal practices.

47. Non-Discrimination. The contractor shall comply with state Executive Order No. 2009-09 and all other applicable federal and state laws, rules and regulations, including the Americans with Disabilities Act. The contractor shall take affirmative action to ensure that applicants for employment and employees are not discriminated against due to race, creed, color, religion, sex, national origin or disability.

Contractor shall comply with Title VII of the Civil Rights of 1964 as amended, the Age Discrimination in Employment Act. The contractor shall comply with the Rehabilitation Act of 1973, as amended, which prohibits discrimination in the employment or advancement in employment of qualified persons because of physical or mental handicap. The contractor shall comply with the requirements of the Fair Labor Standards Act of 1938, as amended.

The contractor shall comply with Title VI of the Civil Rights Act of 1964, which prohibits the denial of benefits of or participation in contract services on the basis of race, color, or national origin. The contractor shall comply with the requirements of Section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of handicap, in delivering contract services; and with Title II of the Americans With Disabilities Act, and the Arizona Disability Act, which prohibit discrimination on the basis of physical or mental disabilities in the provision of contract programs, services and activities. If contractor is an Indian Tribal government, contractor shall comply with the Indian Civil Rights Act of 1968. It shall be permissible for an Indian Tribal contractor to engage in Indian preference in hiring.

The following shall be included in all publications, forms, flyers, etc. that are distributed to recipients of contract services: "under Titles VI and VII of the Civil Rights Act of 1964 (Title VI and VII) and the Americans with Disabilities Act of 1990 (ADA) Section 504 of the Rehabilitation Act of 1973 and the Age Discrimination Act of 1975 (*insert Contractor name here*) prohibits discrimination in admissions, programs, services, activities or employment based on race, color, religion, sex, national origin, age and disability. The (*insert Contractor name here*) must make a reasonable accommodation to allow a person with a disability to take part in a program, service, or activity. Auxiliary aids and services are available upon request to individuals with disabilities. For example, this means that if necessary, the (*insert Contractor name here*) must provide sign language interpreters for people who are deaf, a wheelchair accessible location, or enlarged print materials. It also means that the (*insert Contractor name here*) will take any other reasonable action that allows you to take part in and understand a program or activity, including making reasonable changes to an activity.

If you believe that you will not be able to understand or take part in a program or activity because of your disability, please let us know of your disability needs in advance if at all possible. To request this document in alternative format or for further information about this policy please contact: (*insert Contractor contact person and phone number here*) Para obtener este documento en otro formato u obtener informacion adicional sobre esta politica, (*insert Contractor contact person and phone number here*)"

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

49. **Nonexclusive Remedies.** The rights and the remedies of AAA-PCOA under this contract are not exclusive.

50. **Notices.** All notices under this contract shall be directed in writing to the persons and addresses specified for such purpose in this contract, or to such other persons and/or addresses as either party may designate to the other by notice. In the event that no person is designated to receive notices then notices shall be sent to the contract signatory.

The Contractor shall give written notice to AAA-PCOA of changes to the following, and a written amendment to the contract shall not be necessary:

- (1) Change of telephone number;
- (2) Changes in the name and/or address of the person to whom notices are to be sent;
- (3) Changes in contract-related personnel positions of the Contractor which do not affect staffing ratios, staff qualifications or specific individuals required under this contract; or
- (4) In a fixed price with price adjustment contract, a written amendment shall not be necessary to shift costs among budget categories. The Contractor shall give written notice to the AAA-PCOA that includes justification for the changes and receive written approval from AAA-PCOA. Any such increase must be offset by an equal value decrease in any budget category or categories.

51. **Offshore Performance of Work Prohibited.** Due to security and identity protection concerns, direct services under this contract shall be performed within the borders of the United States. Any services that are described in the specifications or scope of work that directly serve the State of Arizona or its clients and may involve access to secure or sensitive data or personal client data or development or modification of software for the State shall be performed within the borders of the United States.

Unless specifically stated otherwise in the specifications, this definition does not apply to indirect or "overhead" services, redundant back-up services or services that are incidental to the performance of the contract. This provision applies to work performed by subcontractors at all tiers.

52. **Pandemic Contractual Performance:**

- a. PCOA/the State shall require a written plan that illustrates how the contractor shall perform up to contractual standards in the event of a pandemic. PCOA/the state may require a copy of the plan at anytime prior or post award of a contract. At a minimum, the pandemic performance plan shall include:
 - (1) Key succession and performance planning if there is a sudden significant decrease in contractor's workforce.
 - (2) Alternative methods to ensure there are services or products in the supply chain.
 - (3) An up to date list of company contacts and organizational chart.
- b. In the event of a pandemic, as declared by the Governor of Arizona, U.S. Government or the World Health Organization, which makes performance of any term under this contract impossible or impracticable, PCOA/the State shall have the following rights:
 - (1) After the official declaration of a pandemic, PCOA/the State may temporarily void the contract(s) in whole or specific sections if the contractor cannot perform to the standards agreed upon in the initial terms.

- (2) PCOA/the State shall not incur any liability if a pandemic is declared and emergency procurements are authorized by the Director of the Arizona Department of Administration per A.R.S. § 41-2537 as may be amended of the Arizona Procurement Code.
- (3) Once the pandemic is officially declared over and/or the contractor can demonstrate the ability to perform, PCOA/the State, at its sole discretion may reinstate the temporarily voided contract(s).

53. Payments. The contractor shall be paid as specified in the contract. The payment must comply with requirements of A.R.S. Title 35 and 41, net 30 days.

Payments shall be made according to the methods of compensation defined as follows:

- a. Rate - The contractor is paid a specified amount for each unit of service or deliverable as designated in the contract, not to exceed the maximum number of authorized units indicated for each contract service.

By signing the offer and acceptance form or contract signature form or change order or contract amendment or other official form the contractor is certifying that to the best of their knowledge and belief that any cost or pricing data submitted was accurate, complete and current.

Furthermore, the price to AAA-PCOA shall be adjusted to exclude any significant amounts by which AAA-PCOA finds the price was inaccurate because the contractor-furnished cost or pricing data was inaccurate, incomplete or not current. Such adjustment by AAA-PCOA may include profit or fees. The contractor shall keep all cost or pricing data submitted current and shall report any changes to AAA-PCOA. AAA-PCOA shall be allowed to recoup such amounts of unallowable costs as determined by a financial audit.

- b. Fixed price with price adjustment - Reimbursement to the contractor is in accordance with actual, allowable costs incurred consistent with each Service Budget not to exceed the service reimbursement ceiling. The contractor shall furnish AAA-PCOA with an accounting of actual costs incurred consistent with the categories set forth in the service budget. Budget categories to include cost items in a category, may be deleted, added, or modified by a contract amendment, provided that the total PCOA Service Cost shall not increase unless a price increase is permitted by renewal or extension of the contract.
- c. Any change to the service reimbursement ceiling shall be reflected in a contract amendment.
- d. The contractor shall report contract expenditures to AAA-PCOA in the manner prescribed by the "Reporting Requirements" section of these terms and conditions. Upon receipt of applicable, accurate and complete reports, AAA-PCOA shall authorize payment or reimbursement in accordance with the method(s) indicated by this contract.
- e. If the contractor is in any manner in default in the performance of any obligation under this contract, or if audit exceptions are identified, AAA-PCOA, at its option and in addition to other available remedies, can either adjust the amount of payment or withhold payment until satisfactory resolution of the default or exception.

- f. Under no circumstances shall AAA-PCOA authorize payment to the contractor that exceeds the contract or service reimbursement ceiling without an amendment to this contract, nor shall AAA-PCOA authorize payment to the contractor until after receipt of reports in accordance with the "Reporting Requirements" section of these terms and conditions. Under no circumstances shall PCOA make payment to the Contractor for services performed prior to or after the term of the contract without timely extension or renewal of the contract.
 - g. The Contractor may offer a price reduction adjustment at any time during the term of the contract. Any price reduction shall be executed by a contract amendment.
- 54. **Payment Recoupment.** Contractor must reimburse AAA-PCOA upon demand or AAA-PCOA may deduct from future payments the following:
 - a. Any amounts received by contractor from AAA-PCOA for contract services which have been inaccurately reported or are found to be unsubstantiated;
 - b. Any amounts paid by the contractor to a subcontractor not authorized in writing by AAA-PCOA;
 - c. Any amount or benefit paid directly or indirectly to an individual or organization not in accordance with the "Substantial Interest" section of these terms and conditions;
 - d. Any amounts paid by AAA-PCOA for services which duplicate services covered or reimbursed by other specific grants and contracts, or payments;
 - e. Any amounts expended for items or purposes determined unallowable by AAA-PCOA. See the "Unallowable Costs" section of these terms and conditions;
 - f. Any amounts paid by AAA-PCOA for which the contractor's books, records, and other documents are not sufficient to clearly substantiate that those amounts were used by the contractor to perform contract services;
 - g. Any amounts identified as a financial audit exception;
 - h. Any amounts paid or reimbursed in excess of the contract or service reimbursement ceiling.
 - i. Any payment made for services rendered before the contract begin date or after the contract termination date; and.
 - j. Any amounts paid to the contractor which are subsequently determined to be defective pursuant to the "Certification of Cost or Pricing Data" section of these Uniform Terms and Conditions.
- 55. **Personnel.** The contractor's personnel shall satisfy any qualifications and carry out any duties, and shall work the hours and receive the Compensation set forth in this contract. Personnel policies and practices shall be uniform for all employees of the contractor. If contract services are not delivered by employees or volunteers of the contractor, any agreement between the contractor and anyone ultimately delivering the direct service shall be in writing pursuant to Section 7 Assignment and Delegation.

56. **Predecessor and Successor Contracts.** The execution or termination of this contract shall not be considered a waiver by AAA-PCOA of any and all rights it may have for damages suffered through a breach of this or prior contract with the contractor.

57. **Professional Standards.** The contractor shall deliver contract services in a humane and respectful manner and in accordance with any and all applicable professional accreditation standards. Levels of staff qualifications and professionalism and numbers of staff and individuals identified by name must be maintained as presented in the contract.

The Contractor may be required to utilize a standardized assessment process including an instrument which meets, at a minimum, certain functional status requirements established by Pima Council on Aging. Prior to implementation or usage of an assessment instrument, Pima Council on Aging will review and approve the instrument to be employed.

58. **Property of AAA-PCOA.** Any materials, including reports, computer programs and other deliverables, created under this contract are the sole property of AAA-PCOA. The contractor is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. The contractor shall not use or release these materials without the prior written consent of AAA-PCOA.

Any and all intellectual property, including but not limited to copyright, invention, trademark, trade name, service mark, and/or trade secrets created or conceived pursuant to or as a result of this contract and any related subcontract ("Intellectual Property"), shall be work made for hire and the State shall be considered the creator of such Intellectual Property.

The agency, department, division, board or commission of the State of Arizona requesting the issuance of this contract through Pima Council on Aging shall own (for and on behalf of the State) the entire right, title and interest to the Intellectual Property throughout the world. Contractor shall notify PCOA, within thirty (30) days, of the creation of any Intellectual Property by it or its subcontractor(s). Contractor, on behalf of itself and any subcontractor(s), agrees to execute any and all document(s) necessary to assure ownership of the Intellectual Property vests in the State and shall take no affirmative actions that might have the effect of vesting all or part of the Intellectual Property in any entity other than the State. The Intellectual Property shall not be disclosed by contractor or its subcontractor(s) to any entity not the State without the express written authorization of the agency, department, division, board or commission of the State of Arizona requesting the issuance of this contract.

59. **Rate or Budget Certification.** Contractor certifies that the contract Rate or Budget set forth in this contract was prepared in accordance with applicable AAA-PCOA guidelines and procedures. The contractor further certified that:

- a. The information which was provided to AAA-PCOA by the contractor for use as a basis in approving the compensation budget or rate is accurate and in accordance with the "Unallowable Costs" section of these terms and conditions;
- b. Similar types of costs were accorded consistent accounting treatment in the development of the compensation section; and

- c. No costs are included as both direct and indirect costs. The contractor agrees that the funds received under this contract will be expended to achieve the purposes of this contract and to meet costs defined as allowable in applicable federal or state laws, rules, regulations and guidelines. Any costs deemed unallowable as determined by a financial audit shall be subject to recoupment pursuant to paragraph 51. The contractor shall be entitled to appeal such determination through AAA-PCOA's appeal process.

60. **Records.** Under A.R.S. §35-214 and 35-215, as may be amended, the contractor shall retain and shall contractually require each subcontractor to retain all data and other "records" relating to the acquisition and performance of the contract for a period of five years after the completion of the contract. All records shall be subject to inspection and audit by AAA-PCOA at reasonable times. Upon request, the contractor shall produce a legible copy of any or all such records. Contract service records will be maintained in accordance with prescribed AAA-PCOA policies and procedures.

Records shall, as applicable, meet the following standards:

- a. Adequately identify the service provided and each service recipient's application for contract and subcontract activities;
- b. Include personnel records which contain applications for employment, job titles and descriptions, hire and termination dates, copy of fingerprint clearance card, wage rates, effective dates of personnel actions affecting any of these items;
- c. Include time and attendance records for individual employees to support all salaries and wages paid;
- d. Include records of the source of all receipts and the deposit of all funds received by the contractor;
- e. Include original copies of invoices, statements, sales tickets, billings for services, deposit slips, etc., and a cash disbursement journal and canceled checks to reflect all disbursements applicable to the contract;
- f. Include a complete general ledger with accounts for the collection of all costs and/or fees applicable to the contract;
- g. Include a copy of a written, approved cost allocation plan to reflect the manner in which costs were to be charged to the contract; and,
- h. Include copies of lease/rental agreements, mortgages and/or any other agreements which in any way may affect contract expenditures.

Any such records not maintained shall mandate an audit exception in the amount of the inadequately documented expenditures.

Contractor shall preserve and make available all records for a period of five (5) years from the date of final payment under the contract except if subject to Health Insurance Portability & Accountability Act which is six (6) years from the date of final payment.

AAA-PCOA acknowledges that Pima County maintains its own record management policies pursuant to Arizona Revised Statutes. Such record management policies, procedures and retention schedules of Pima County shall satisfy the requirements of this agreement.

- a. If this contract is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for a period of five years from the date of such termination.
- b. Records which related to disputes, litigation or the settlement of claims arising out of the performance of this contract, or costs and expenses of this contract to which exception has been taken by the state, shall be retained by the Contractor until such disputes, litigations, claims or exceptions have been disposed of.

61. **Relationship of Parties.** The contractor under this contract is an independent contractor. Neither party to this contract shall be deemed to be the employee or agent of the other party to the contract. In the event that the Contractor or its personnel is sued or prosecuted for conduct arising from this contract, the Contractor or their personnel will not be represented by the Department of the Attorney General. Taxes or Social Security payments will not be withheld from a State payment issued hereunder and the Contractor shall make arrangements to directly pay such expenses, if any.
62. **Reporting Requirements.** Unless otherwise provided in this contract, reporting shall adhere to the following schedule: no later than the 15th day following each month during the contract term the contractor shall submit to AAA-PCOA programmatic and financial reports in the form set forth in the contract. Failure to submit accurate and complete reports by the 15th day following the end of a month may result, at the option of AAA-PCOA in retention of payment. Failure to provide such report within 45 days following the end of a month may result, at the option of AAA-PCOA in a forfeiture of such payment.

No later than the 30th day following the end of the contract term, contractor shall submit to AAA-PCOA a final program and fiscal report. The final fiscal report for the contract term shall include all adjustment to prior financial reports submitted for the contract term. Failure to submit the final program and fiscal report within the above time period may result, at the option of AAA-PCOA in forfeiture of final payment.

All reports shall reference the contract number and be submitted to the person designated by the AAA-PCOA.

The Contractor shall support the goal of DES/Division of Aging and Adult Services of comprehensive client tracking and cost containment by cooperating in the implementation of the DAARS.

63. **Right to Assurance.** If AAA-PCOA in good faith has reason to believe that the contractor does not intend to perform, or is unable to perform or continue performing this contract, the procurement officer may demand in writing that the contractor give a written assurance of intent to perform. The demand shall be sent to the contractor by certified mail, return receipt required. Failure by the contractor to provide written assurance within the number of days specified in the demand may at AAA-PCOA's option, be the basis for terminating the contract under the Uniform Terms and Conditions or other rights and remedies available by law or provided by the contract.

64. **Right of Offset.** AAA-PCOA shall be entitled to offset against any sums due the contractor any expenses or costs incurred by AAA-PCOA or damages assessed by AAA-PCOA concerning the contractor's nonconforming performance or failure to perform the contract, including expenses, costs and damages described in Uniform Terms and Conditions.

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

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

67. **Stop Work Order.**

- AAA-PCOA may, at any time, by written order to the Contractor, require the Contractor to stop all or any part, of the work called for by this Contract for period(s) of days indicated by PCOA after the order is delivered to the Contractor. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage.
- If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the Contractor shall resume work. The Procurement Officer shall make an equitable adjustment in the delivery schedule or Contract price, or both, and the contract shall be amended in writing accordingly.

68. **Subcontracts.** The contractor shall not enter into any subcontract under this contract for the performance of this contract without the advance written approval of the procurement officer. The subcontract shall incorporate by reference the terms and conditions of this contract. The contractor shall provide copies of subcontracts to AAA-PCOA upon request. The Contractor shall clearly list any proposed subcontractors and the subcontractor's proposed responsibilities.

69. **Substantial Interest Disclosure.**

- Contractor shall not make any payments, either directly or indirectly, to any person, partnership, corporation, trust, or any other organization which has a substantial interest in contractor's organization or with which contractor (or one of its directors, officers, owners, trust certificate holders or a relative thereof) has a substantial interest, unless contractor has made a full written disclosure of the proposed payments to AAA-PCOA and has received written approval therefor.
- Any request for approval of leases or rental agreements or purchase of real property as set forth in paragraph A of this section shall be in writing and accompanied by an independent commercial appraisal of fair market rental, lease, or purchase value, as appropriate.
- For the purpose of this Section, the terms "substantial interest" and "relative" shall have the same meanings as in A.R.S. §38-502, as may be amended.

70. **Supporting Documents and Information.** In addition to any documents, reports or information required by any other section of this contract, contractor shall furnish AAA-PCOA with any further documents and information deemed necessary by AAA-PCOA. Upon receipt of a request for information from PCOA, the Contractor shall provide complete and accurate information no later than fifteen (15) days after the receipt of the request.

71. **Survival of Rights and Obligations after Contract Expiration or Termination.**

- Offeror's Representation and Warranties.** All representations and warranties made by the Contractor under this Contract shall survive the expiration or termination hereof. In addition, the parties hereto acknowledge that pursuant to A.R.S. § 12-510, except as provided in A.R.S. § 12-529, the State is not subject to or barred by any limitations of actions prescribed in A.R.S., Title 12, chapter 5.
- Purchase Orders.** In accordance with all terms and conditions of the Contract, the Contractor shall fully perform and be obligated to comply with all purchase orders received by the Contractor prior to the expiration or termination hereof, including, without limitation, all purchase orders received prior to but not fully performed and satisfied at the expiration or termination of this Contract, unless otherwise directed in writing by the Procurement Officer.

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

73. **Technical Assistance.** AAA-PCOA will provide technical assistance to the Contractor in the administration of contract services, or relating to the terms and conditions, policies and procedures governing this contract. Notwithstanding the foregoing, the contractor shall not be relieved of full responsibility and accountability for the provision of contract services in accordance with the terms and conditions set forth herein.

74. **Termination for Any Reason.** In the event the contract is terminated, with or without cause, or expires, the contractor whenever determined appropriate by AAA-PCOA shall assist AAA-PCOA in the transition of services or eligible persons to other contractors. Such assistance and coordination shall include, but not be limited to, the forwarding of program and other records as may be necessary to assure the smoothest possible transition and continuity of services.

The cost of reproducing and forwarding such records and other materials shall be borne by the contractor. The contractor must make provisions for continuing all management/administrative services until the transition of services or eligible persons is complete and all other requirements of this contract are satisfied.

In the event of termination or suspension of the contract by AAA-PCOA, such termination or suspension shall not affect the obligation of the contractor to indemnify AAA-PCOA and the state for any claim by any other party against AAA-PCOA or the state arising from the contractor's performance of this contract and for which the contractor would otherwise be

liable under this contract.

To the extent such indemnification is excluded by A.R.S. §41-621 et seq. or an obligation is unauthorized under A.R.S. §35,154, the provisions of this paragraph shall not apply.

In the event of early termination, any funds advanced to the contractor shall be returned to AAA-PCOA within ten (10) days after the date of termination or upon receipt of notice of termination of the contract whichever is the earliest date.

75. **Termination for Convenience.** Either party reserves the right to terminate the Contract in whole or in part at anytime without penalty or recourse. Upon receipt of the written notice, the terminating party shall stop all work, as directed in the notice, notify all sub-contractors of the effective date of the termination and minimize all further costs to AAA-PCOA. In the event of termination under this paragraph, all documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to AAA-PCOA upon demand.

The Contractor shall be entitled to receive just and equitable compensation for work in progress, work completed and materials accepted before the effective date of the termination. The cost principles and procedures provided in Arizona Administrative Code R2-7-701 shall apply.

76. **Termination for Default.**

- a. In addition to the rights reserved in the contract, either party reserves the right to terminate the contract in whole or in part due to the failure of the non-performing party to comply with any term or condition of the contract, to acquire and maintain all required insurance policies, bonds, licenses and permits, or to make satisfactory progress in performing the contract. The Director shall mail written notice of the termination and the reasons for it to the non-performing party by certified mail, return receipt requested.
- b. Upon termination under this paragraph, all goods, materials, documents, data and reports prepared by the contractor under the contract shall become the property of and be delivered to AAA-PCOA on demand.
- c. AAA-PCOA may, upon termination of this contract, procure, on terms and in the manner that it deems appropriate, materials or services to replace those under this contract. The contractor shall be liable to PCOA for any excess costs incurred by PCOA in procuring the materials or services in substitution for those due from the contractor.
- d. This contract is voidable and subject to immediate termination by AAA-PCOA upon the contractor becoming insolvent or filing proceedings in bankruptcy or reorganization under the United States Code, or upon assignment or delegation of the contract and/or any rights thereunder without AAA-PCOA's prior written approval.
- e. This contract may immediately be terminated if AAA-PCOA determines that the health or welfare or safety of service recipients is endangered.

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

78. Transfer of Knowledge. The Contractor shall, whenever feasible, share strategies and techniques with PCOA staff to transfer the skills and knowledge acquired in the delivery of the contracted service.

79. Transition of Activities. In the event that a contract is awarded to a new contractor for services similar to those being performed by Contractor under this contract, there shall be a transition of services period. During this period, the contractor under this contract, shall work closely with the new contractor's personnel and/or PCOA staff to ensure a smooth and complete transfer of duties and responsibilities. PCOA authorized representative will coordinate all transition activities. A transition plan will be developed in conjunction with the existing contractor to assist the new contractor and/or PCOA staff to implement the transfer of duties. PCOA reserves the right to determine which projects/service delivery nearing completion will remain with the current Contractor of record.

80. Unallowable Costs. The cost principles set forth in the Code of Federal Regulations, Title 2, Subtitle A, OMB Guidance for Grants and Agreements shall be used to determine the allowability of incurred costs for the purpose of reimbursing costs under contract provisions that provide for the reimbursement of costs. Those costs which are specifically defined as unallowable therein will not be submitted for reimbursement by the contractor and may not be reimbursed with AAA-PCOA funds. In a rate contract the contractor shall not expend funds for costs which are unallowable pursuant to these cited regulations.

81. Visitation, Inspection and Copying. Contractor's or subcontractor's facilities, services and individuals served, books and records pertaining to the contract shall be available for visitation, inspection and copying by AAA-PCOA and any other appropriate agent of the state or federal government.

At the discretion of AAA-PCOA, visitation, inspection and copying may be at anytime during regular business hours, announced or unannounced. If AAA-PCOA deems it to be an emergency situation, it may at anytime visit and inspect the contractor's or subcontractor's facilities and services, as well as inspect and copy their contract-related books and records.

82. Warranty of Service. The Contractor warrants that all services provided under this contract shall conform to the requirements stated herein and any amendments hereto. PCOA's acceptance of services provided by the Contractor shall not relieve the Contractor from its obligations under this warranty. In addition to its other remedies, PCOA's Procurement Officer may, at the Contractor's expense, require prompt correction of any services failing to meet the Contractor's representation herein. Services corrected by the Contractor shall be subject to all of the provision of this contract in the manner and to the same extent as the services originally furnished.

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

- b. Quality. Unless otherwise modified elsewhere in these terms and conditions, the Contractor warrants that, for one year after acceptance by the AAA-PCOA of the materials, they shall be:
 - (1) of a quality to pass without objection in the trade under the Contract description;
 - (2) fit for the intended purposes for which the materials are used;
 - (3) within the variations permitted by the Contract and are of even kind, quantity, and quality within each unit and among all units;
 - (4) adequately contained, packaged and marked as the Contract may require; and
 - (5) conform to the written promises or affirmations of fact made by the Contractor.
- c. Fitness. The Contractor warrants that any material supplied to the AAA-PCOA shall fully conform to all requirements of the Contract and all representations of the Contractor, and shall be fit for all purposes and uses required by the Contract.
- d. Inspection/Testing. The warranties set forth in subparagraphs A through C of this paragraph are not affected by inspection or testing of or payment for the materials by the AAA-PCOA.
- e. Exclusions. Except as otherwise set forth in this Contract, there are no express or implied warranties of merchantability or fitness.
- f. Compliance with Applicable Laws. The materials and services supplied under this Contract shall comply with all applicable Federal, state and local laws, and the Contractor shall maintain all applicable license and permit requirements.
- g. Contractor's Representations and Warranties. All representations and warranties made by the Contractor under this Contract shall survive the expiration or termination hereof. In addition, the parties hereto acknowledge that pursuant to A.R.S. §12-510, except as provided in A.R.S. §12-259, the State is not subject to or barred by an limitations of actions prescribed in A.R.S., Title 12, Chapter 8.