

RFQVA AMENDMENT	DEPARTMENT OF ECONOMIC SECURITY
RFQVA No: DDD 704012	Agency: Division of Developmental Disabilities
Amendment No: 7	Address: 1789 W. Jefferson, Site Code 791A Phoenix, Arizona 85005
Page 1 of 23	Phone: (602) 542-6874

A signed copy of the signature page 3 of this amendment must be included in the hard copy of the Application, or, if a Qualified Vendor Agreement has been awarded as of the date of issue of this amendment, the Qualified Vendor must return a signed copy of this amendment within 30 days of the date of issue to:

Contract Management Section
Business Operations – Site Code 791A
Division of Developmental Disabilities
Arizona Department of Economic Security
P.O. Box 6123
Phoenix, Arizona 85005

The RFQVA is amended as follows:

Section 1 – NOTICE OF REQUEST FOR QUALIFIED VENDOR APPLICATIONS

Page 1-2, RFQVA Contact Person, is amended to replace the contact information for the RFQVA contact person.

Section 2 – TABLE OF CONTENTS

Page 2-1, Replace “5.11 Application and Use of Rate Book” with “5.11 Application and Use of Rate Book and Billing Manual”

Section 5 – SERVICE REQUIREMENTS/SCOPE OF WORK

Page 5-7, Section 5.10.3, is amended to provide for the consumers access to records

Page 5-7, Section 5.11, is amended to:

Change the section title to “Application and Use of Rate Book and Billing Manual”

Correct the reference to A.R.S. § 36-557.

Include reference to the Division billing instruction manual.

Section 6 – DES/DDD STANDARD TERMS AND CONDITIONS

Page 6-4, Section 6.2.5, Severability, is amended to clarify that provisions within amendments are severable.

Pages 6-5 and 6-6, Section 6.3.2, Non-Discrimination, is amended to clarify non-discrimination requirements.

Page 6-7, Section 6.3.4, Notice, is amended to specify information required on documentation submitted to the Division.

Page 6-7(a), Section 6.3.7.2 is added to include records available to consumers.

Page 6-12, Section 6.4.8.3 is amended to specify information required on documentation submitted to the Division.

Page 6-16, Section 6.6.1 Amendments, is amended to:

Provide for a notice to Qualified Vendors of amendments to the agreement.

Provide options available to Qualified Vendors to comment on, file a request for problem solving on proposed amendments to the agreement or file a notice of protest on proposed amendments to the agreement.

Page 6-16(a), Section 6.6.1.1 is amended to clarify the ability of the Division to withdraw, in whole or in part, a proposed amendment to the agreement.

Page 6-19, Section 6.7.6.1.2 is amended clarify that state agencies are excluded from indemnity requirements.

Pages 6-19 and 6-19 (.1), Section 6.7.6.2.3.1, is amended to specify commercial insurance requirements for Therapy Providers.

Page 6-19 (a), Section 6.7.6.2.3.2, is amended to include information on assistance available to Qualified Vendors with respect to automobile insurance.

Page 6-19 (c), Section 6.7.6.2.8.1 is amended to provide for Developmental Home subcontractors to be covered though the Provider Indemnity Program.

Page 6-24, Section 6.8.7 is amended to correct numbering error.

Page 6-28, Section 6.10.8.1, Termination for Any Reason, is amended to add "in whole or in part" after "Division".

Pages 6-28 to 6-31, Section 6.11 Agreement Claims, is amended to:

Clarify the processes that are applicable to agreement claims.

Clarify the provisions for a grievance, protest or appeal of a proposed amendment to the agreement.

The following pages are attached:

Revised SECTION 1 – NOTICE OF REQUEST FOR QUALIFIED VENDOR APPLICATIONS, page 1-2

Revised SECTION 2 – TABLE OF CONTENTS, page 2-1

Revised SECTION 5 – SERVICE REQUIREMENTS/SCOPE OF WORK, page 5-7

Revised SECTION 6 – DES/DDD STANDARD TERMS AND CONDITIONS, pages 6-4, 6-5, 6-6, 6-7, 6-7(a), 6-12, 6-16, 6-16(a), 6-19, 6-19(.1), 6-19(a), 6-19(c), 6-24 and 6-28 through 6-31

By Mail to:

DDD Contract Unit
Business Operations – Site Code 791A
Division of Developmental Disabilities
Arizona Department of Economic Security
P.O. Box 6123
Phoenix, Arizona 85005

Services:

Specialized Habilitation with Music Component
Specialized Habilitation, Behavioral-B
Specialized Habilitation, Behavioral-M
Specialized Habilitation, Communication

Persons with a disability may request a reasonable accommodation by contacting the RFQVA contact person. (For TDD/TTY call through the Arizona Relay Service at 800 367-8939). Requests should be made as early as possible to allow time to arrange the accommodation.

Agreement Type: Qualified Vendor Agreement with Published Rate

Agreement Term: 12 months beginning no sooner than 7/1/03, with five one-year options for the Division to extend or renew the agreement, with all agreements ending 6/30/09. The agreement can be terminated as specified in Section 6, DES/DDD Terms and Conditions.

RFQVA Contact Person (email)

Contracts Manager (DDDDContractsManager@azdes.gov)

DDD Procurement Specialist

Date

AN EQUAL EMPLOYMENT OPPORTUNITY AGENCY

**SECTION 2
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2. The Qualified Vendor shall maintain a file on each consumer. A consumer's file should include the following, as applicable:
 - 2.1 Pertinent documents related to the consumer's ISP such as the consumer's ISP, the consumer's support plan, and the consumer's behavioral health treatment plan.
 - 2.2 Record of services rendered (including administration of medications) and the consumer's response to services.
 - 2.3 Documentation of communications with consumer/consumer's representative, other service providers, support coordinator, etc.
 - 2.4 Copy of the orientation document.
 - 2.5 Copy of attendance sheets.
 - 2.6 Copy of the monthly progress reports.
 - 2.7 Documentation of incidents related to the consumer and/or complaints related to the Qualified Vendor's care of the consumer and documentation of resolution.
 - 2.8 All required consents, such as General Consent and/or Consent for Use of Behavior Modifying Medications.

3. All records created and maintained by the Qualified Vendor shall be made available to the consumer or their legal representative. Upon request, the Qualified Vendor shall produce a legible copy of any or all such records at no cost to the consumer or their legal representative. All records created and maintained by the Division shall be made available to the consumer or their legal representative from the Division.

5.11 Application and Use of Rate Book and Billing Manual

In accordance with A.R.S. § 36-557.K, the Division has published a rate book describing the rates and rate structure for services described in this RFQVA. The rate book is available on the Division's website. The rate book, including any updates, is incorporated by reference into this RFQVA. Qualified Vendors shall be paid the applicable rates as reflected in the rate book.

The Division acknowledges that the rate models used to determine the Benchmark Rates on Schedule 5.1 do not necessarily reflect actual cost profiles. Actual patterns of expenditures by Qualified Vendors may be different from those outlined in a given rate model. The Division recognizes that assumptions in the rate models may need to be updated over time.

The Division has also published a billing instruction manual. The manual specifies the billing requirements that must be followed by providers in order to file a claim for services under this RFQVA. The billing instruction manual is available on the Division's website. The billing instruction manual, including any updates, is incorporated by reference into this RFQVA.

- 6.2.5 Severability.
The provisions of this agreement and any amendments to the agreement are severable. Any term or condition deemed illegal or invalid shall not affect any other term or condition of the agreement or the amendment.
- 6.2.6 No Parol Evidence.
This agreement is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms used in this document.
- 6.2.7 No Waiver.
Either party's failure to insist on strict performance of any term or condition of the agreement 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.
- 6.2.8 Headings.
The section headings used in the agreement are for reference and convenience only and shall not enter into any interpretation of the agreement.

6.3 Agreement Administration and Operation

- 6.3.1 Records.
- 6.3.1.1 Under A.R.S. § 35-214 and A.R.S. § 35-215, the Qualified Vendor shall retain and shall contractually require each subcontractor to retain all data and other records ("records") relating to the acquisition and performance of the agreement for a period of five years after the completion of the agreement. All records shall be subject to inspection and audit by the State at reasonable times. Upon request, the Qualified Vendor shall produce a legible copy of any or all such records.
- 6.3.1.2 Records that relate to grievances, disputes, litigation or the settlement of claims arising out of the performance of this agreement, or costs and expenses of this agreement as to which exception has been taken by the State, shall be retained by the Qualified Vendor until such grievances, disputes, litigation, claims or exceptions have been resolved.
- 6.3.1.3 The Qualified Vendor shall provide all reports requested by the Department, the Division and/or the AHCCCS and all information from its records relating to the performance of this agreement that the Department, the Division and/or the AHCCCS may reasonably require. The Qualified Vendor reporting requirements hereunder may include, but are not limited to, timely and detailed utilization statistics, information and reports.
- 6.3.1.4 The Qualified Vendor shall follow all policies and procedures of the Division for the acceptance, retention, disposition, and accounting for client funds. The Qualified Vendor also shall develop and maintain internal policies and procedures for the administration of such funds.
- 6.3.1.5 The Division is responsible for submission of accurate encounters to AHCCCSA for all agreement services rendered to eligible members by the Qualified Vendor and any subcontractor. Claims filed by the Qualified Vendor are the basis of the encounter submission by the Division.

- 6.3.1.6 Agreement service records will be maintained in accordance with this agreement. Records shall, as applicable, meet the following standards:
- 6.3.1.6.1 Adequately identify the service provided;
 - 6.3.1.6.2 Include personnel records, which contain applications for employment, job titles and descriptions, hire and termination dates, a copy of the fingerprint clearance card, wage rates, and effective dates of personnel actions affecting any of these items;
 - 6.3.1.6.3 Include time and attendance records for individual employees to support all salaries and wages paid and claims for payment from the Division;
 - 6.3.1.6.4 Include records of the source of all receipts and the deposit of all funds received by the Qualified Vendor;
 - 6.3.1.6.5 Include original copies of invoices, statements, sales tickets, billings for services, deposit slips, etc., and a cash disbursement journal and cancelled checks to reflect all disbursements applicable to the agreement;
 - 6.3.1.6.6 Include a complete general ledger with accounts for the collection of all costs and/or fees applicable to the agreement; and
 - 6.3.1.6.7 Include copies of lease/rental contracts, mortgages and/or any other contracts, which in any way may affect agreement expenditures.
- 6.3.2 Non-Discrimination.
The Qualified Vendor shall comply with State Executive Order No. 99-4 and all other applicable Federal and State laws, rules and regulations, including the Americans with Disabilities Act and including:
- 6.3.2.1 Unless exempt under Federal law, the Qualified Vendor shall comply with Title VII of the Civil Rights Act of 1964 as amended, which prohibits discrimination on the basis of race, sex, national origin or religion. The Qualified Vendor shall comply with the Age Discrimination in Employment Act, which prohibits discrimination based on age. The Qualified Vendor 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 Qualified Vendor shall comply with the requirements of the Fair Labor Standards Act of 1938, as amended.
 - 6.3.2.2 If Qualified Vendor is an Indian Tribal Government, Qualified Vendor shall comply with the Indian Civil Rights Act of 1968. It shall be permissible for an Indian Tribal Qualified Vendor to engage in Indian preference in hiring.
 - 6.3.2.3 The Qualified Vendor shall comply with Title VI of the Civil Rights Act of 1964, which prohibits the denial of benefits of, or participation in, services on the basis of race, color, or national origin. The Qualified Vendor 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 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 programs, services and activities.

- 6.3.2.4 The following which shall be included in all publications, forms, flyers, etc. that are distributed to consumers:
“Under Titles VI and VII of the Civil Rights Act of 1964 and the Americans with Disabilities Act of 1990 (ADA), Section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975, the *(insert Qualified Vendor name here)* prohibits discrimination in admissions, programs, services, activities or employment based on race, color, religion, sex, national origin, age, and disability. The *(insert Qualified Vendor name here)* must make a reasonable accommodation to allow a person with a disability to take part in a program, service, or activity. For example, this means that if necessary, the *(insert Qualified Vendor 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 Qualified Vendor 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. Please contact: *(insert Qualified Vendor contact person and phone number here)*”
- 6.3.3 Audit.
- 6.3.3.1 Pursuant to ARS § 35-214, at any time during the term of this agreement and five years thereafter, the Qualified Vendor’s and/or any subcontractor’s books and records shall be subject to audit by the State and, where applicable, the Federal Government, to the extent that the books and records relate to the performance of the agreement or subcontract.
- 6.3.3.2 All Qualified Vendors are subject to the programmatic and fiscal monitoring requirements of each Department program to insure accountability of the delivery of all goods and services, as required under the Federal Single Audit Act. A minimum fiscal requirement for all Qualified Vendors receiving more than \$500,000 from all sources is an annual financial audit, which includes Division agreement numbers and payment amounts. Audits must be conducted in accordance with generally accepted auditing standards (GAAS). The Audit Report, Management Letter and Auditor’s Opinion must be submitted to the Division person designated to receive notices within 30 days after completion of the audit.
- 6.3.3.2.1 Audits of non-profit corporations receiving Federal or State monies required pursuant to Federal or State law must be conducted as provided in 31 U.S.C. Section 7501 et seq. and A.R.S. Section 35-181.03 and any other applicable statutes, rules, regulations, and standards.
- 6.3.3.2.2 The annual financial audit must disclose the Division lines of business (including assets, liabilities, equity, revenue, expenses, and cash flows) independent of any other lines of business in which the Qualified Vendor may be engaged. The financial statements must at least separate the Division lines of business in the form of additional supplemental schedules, if they are not separately presented in the financial statements themselves.

6.3.4 Notices.

Notices to the Qualified Vendor required by this agreement shall be made by the State via email to the email contact indicated on the Qualified Vendor Application form submitted by the Qualified Vendor. Notices to the Qualified Vendor shall be made via email only. Therefore, in order to ensure notice, the Qualified Vendor shall update the email contact and address information in the Qualified Vendor Application and Directory System as necessary. Notices to the State required by the agreement shall be made by the Qualified Vendor to the Division's Contract Manager at the following address:

Contract Management Section
Business Operations – Site Code 791A
Division of Developmental Disabilities
Arizona Department of Economic Security
P.O. Box 6123
Phoenix, Arizona 85005

An authorized Procurement Officer or authorized Procurement Specialist and an authorized Qualified Vendor representative may change their respective person to whom notice shall be given and an amendment to the agreement shall not be necessary. All notices or other documentation supplied to the Division by the Qualified Vendor shall contain the qualified vendor number, agreement number and name of the entity.

6.3.5 Advertising and Promotion of Agreement.

The Qualified Vendor shall not advertise or publish information for commercial benefit concerning this agreement without the prior written approval of the Division.

6.3.6 Property of the State.

- 6.3.6.1 Any materials, including reports, computer programs and other deliverables, created under this agreement are the sole property of the State. The Qualified Vendor is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. The Qualified Vendor shall not use or release these materials without the prior written consent of the State.
- 6.3.6.2 The Federal and State governments reserve a royalty-free, nonexclusive and irrevocable license to reproduce, publish, or otherwise use and to authorize others to use for Federal or State government purposes such materials, reports, data or information system, software, documentation and manuals.
- 6.3.6.3 At the termination of the agreement in whole or in part, the Qualified Vendor shall make available all such relevant materials, reports, data and information to the Division within 30 days following termination of the agreement or such longer period as approved by the Division.

6.3.7 Confidentiality.

6.3.7.1 The Qualified Vendor shall observe and abide by all applicable State and Federal statutes, rules and regulations regarding the use or disclosure of information including, but not limited to, information concerning applicants for and recipients of agreement services. To the extent permitted by law, the Qualified Vendor shall release information to the Department and the Attorney General's Office as required by the terms of this agreement, by law or upon their request.

6.3.7.2 All records created and maintained by the Qualified Vendor shall be made available to the consumer or their legal representative. Upon request, the Qualified Vendor shall produce a legible copy of any or all such records at no cost to the consumer or their legal representative.

- 6.4.7.4 Any amounts paid by the Division for services which duplicate services covered or reimbursed by other specific grants, contracts, or payments;
- 6.4.7.5 Any amounts paid or reimbursed in excess of the agreement or service reimbursement ceiling;
- 6.4.7.6 Any amounts paid to the Qualified Vendor, which are subsequently determined to be defective pursuant to the "Certification of Cost or Pricing Data" section of these terms and conditions;
- 6.4.7.7 Any payments made for services rendered before the agreement begin date or after the agreement termination date (whether in whole or in part); and
- 6.4.7.8 Any amounts received by the Qualified Vendor from the Division that are identified as a financial audit exception.
- 6.4.8 Reporting Requirements.
- 6.4.8.1 Unless otherwise provided in this agreement, reporting shall adhere to the following schedule: no later than the 15th day following the end of each month during the agreement term the Qualified Vendor shall submit required programmatic and financial reports to the Division in the form set forth in the agreement or as required by the Division. Failure to submit accurate and complete reports by the 15th day following the end of a month may result, at the option of the Division, in retention of payment. Failure to provide such report within 45 days following the end of a month may result, at the option of the Division, in a forfeiture of such payment.
- 6.4.8.2 No later than the 45th day following the termination of this agreement in whole or in part, the Qualified Vendor shall submit to the Division a final program and fiscal report. Failure to submit the final program and fiscal report within the above time period may result, at the option of the Division, in forfeiture of final payment.
- 6.4.8.3 All records or other documentation supplied to the Division by the Qualified Vendor shall contain the qualified vendor number, agreement number, name of the entity, and be submitted to the person designated by the Division.
- 6.4.8.4 Earned income reports for employment-related services shall be submitted to the Division by the Qualified Vendor no later than the 15th day of each month. This also applies to Qualified Vendors who contract with another division to provide employment-related services to the Division's clients.
- 6.4.8.5 The Qualified Vendor shall comply with any other reporting requirements as specified in the agreement or as required by the Division.
- 6.4.9 Substantial Interest Disclosure.
- 6.4.9.1 The Qualified Vendor 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 the Qualified Vendor's organization or with which the Qualified Vendor (or one of its directors, officers, owners, trust certificate holders or a relative thereof) has a substantial interest, unless the Qualified Vendor has made a full written disclosure of the proposed payments, including amounts, to the Division.
- 6.4.9.2 Leases or rental contracts or purchase of real property which would be covered by 6.4.9.1 of this section shall be in writing and accompanied by an independent commercial appraisal of fair market rental, lease, or purchase value, as appropriate.

- 6.5.9.2 Any other sanctions imposed against the Division by AHCCCSA in accordance with applicable AHCCCS rules, policies, and procedures that would not have been imposed but for the Qualified Vendors action or lack thereof will be assessed dollar for dollar against the Qualified Vendor.
- 6.5.9.3 Sanctions imposed against the Division by AHCCCSA for failure of a Qualified Vendor or any subcontractor to submit requested disclosure statements will be assessed dollar for dollar against the Qualified Vendor.
- 6.5.10 Fair Hearings and Consumers' Grievances.
- 6.5.10.1 The Qualified Vendor shall advise all consumers who receive services of their right, at any time and for any reason, to present to the Qualified Vendor and to the Division any grievances arising from the delivery of services, including, but not limited to, ineligibility determination, reduction of services, suspension or termination of services, or quality of services. The Division may assert its jurisdiction to hear the grievance or refer the matter to the appropriate authority.
- 6.5.10.2 The Qualified Vendor shall maintain a system, subject to review upon request by the Division, for reviewing and adjudicating grievances by members or subcontractors concerning the actual provision of services and payment for same by or on behalf of the Qualified Vendor. This system shall follow the grievance procedure agreed to by AHCCCSA and the Division in the current AHCCCS/Division intergovernmental agreement and the Division rules and policies.
- 6.5.11 Merger or Acquisition.
A proposed merger, reorganization, affiliation, or change in ownership of the Qualified Vendor shall require prior approval of the Division.

6.6 Agreement Changes

6.6.1 Amendments.

This agreement is issued under the authority of the Procurement Officer who signed this agreement. The agreement may be modified only through an agreement amendment within the scope of the agreement unless otherwise permitted by the Terms and Conditions. The Division shall provide notice to Qualified Vendors not less than thirty days prior to the issuance of an amendment to this agreement. During the thirty day posting period Qualified Vendors may submit comments on the proposed amendment to the Division, or, pursuant to section 6.11.2 herein may file a Request for Problem Solving with the Division Assistant Director or a Notice of Protest with the Department Procurement Officer. Unless otherwise provided in this agreement, after an amendment has been posted at least 30 days, the Division may issue the amendment to the agreement in whole or in part. Changes to the agreement, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by an unauthorized State employee or made unilaterally by the Qualified Vendor are violations of the agreement and of applicable law. Such changes, including unauthorized written agreement amendments shall be void and without effect, and the Qualified Vendor shall not be entitled to any claim under this

agreement based on those changes. If an amendment requires the signature of the Qualified Vendor, and the Qualified Vendor fails to sign and return the amendment in the form and within the timeframe specified by the Division, the Division may terminate the agreement in whole or in part.

- 6.6.1.1 The Division Assistant Director may withdraw an amendment in whole or in part before it has been issued, if it is determined to be in the best interest of the State.

decree. It is the specific intention of the parties that the Indemnatee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnatee, be indemnified by Qualified Vendor from and against any and all claims. It is agreed that Qualified Vendor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. In consideration of the award of this agreement, the Qualified Vendor agrees to waive all rights of subrogation against the State of Arizona, its officers, officials, agents and employees for losses arising from the work performed by the Qualified Vendor for the State of Arizona.

6.7.6.1.2 This indemnity shall not apply if the Qualified Vendor or subcontractor(s) is/are State of Arizona agencies, boards, commissions or universities.

6.7.6.2 *Insurance Requirements*

6.7.6.2.1 Qualified Vendor and subcontractors shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this agreement, 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 Qualified Vendor, his agents, representatives, employees or subcontractors.

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

6.7.6.2.3 Minimum Scope and Limits of Insurance: Qualified Vendor shall provide coverage with limits of liability not less than those stated below:

6.7.6.2.3.1 Commercial Scope and Limits of Insurance- Occurrence Form

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

For Qualified Vendors that provide occupational, physical or speech therapy services:

- General Aggregate \$2,000,000
- 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 the following additional insured language: *“The State of Arizona and the Department of Economic Security shall be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Qualified Vendor”*.

b. Policy shall contain a waiver of subrogation against the State of Arizona, 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 Qualified Vendor.

This requirement may be satisfied if the policy is combined with the Professional Liability policy (item 6.7.6.2.3.4, below), provided that the General Liability coverage is written on an occurrence basis and certified with all of the coverage, limits and additional insured in this requirement. If written with the Professional Liability policy, the General Liability section shall have separate limits from the Professional Liability.

For all other Qualified Vendors:

- 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 and the Department of Economic Security shall be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Qualified Vendor”*.
- c. Policy shall contain a waiver of subrogation against the State of Arizona, 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 Qualified Vendor.

6.7.6.2.3.2 Automobile Liability

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

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

- a. The policy shall be endorsed to include the following additional insured language: *“The State of Arizona and the Department of Economic Security shall be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Qualified Vendor, involving automobiles owned, leased, hired or borrowed by the Qualified Vendor”*.
- b. For additional assistance a Qualified Vendor may contact the Department of Insurance Market Assist hotline at 602-364-3100. The Qualified Vendor may obtain assistance with sources for the Business Auto (BAP) to comply with this agreement and should specify the limit required as well as the Qualified Vendor’s status with the Division.

6.7.6.2.3.3 Worker’s Compensation and Employers’ Liability

Workers’ Compensation Statutory

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, 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 Qualified Vendor.
- b. This requirement shall not apply to: Separately, EACH Qualified Vendor or subcontractor exempt under A.R.S. 23-901, AND when such Qualified Vendor or subcontractor executes the appropriate waiver (Sole Proprietor/Independent Contractor) form.

6.7.6.2.3.4 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 agreement is written on a claims-made basis, Qualified Vendor warrants that any retroactive date under the policy shall precede the effective date of this agreement; 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 agreement is completed.

- 6.7.6.2.7.3 All certificates required by this agreement shall be sent directly to the Division's Contracts Management Section. The State of Arizona project/agreement number and project description shall be noted on the certificate of insurance. The State of Arizona reserves the right to require complete, certified copies of all insurance policies required by this agreement at any time. **DO NOT SEND CERTIFICATES OF INSURANCE TO THE STATE OF ARIZONA'S RISK MANAGEMENT SECTION.**
- 6.7.6.2.8 Subcontractors: Qualified Vendors' certificate(s) shall include all subcontractors as insureds under its policies **or** Qualified Vendor shall furnish to the State of Arizona separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum requirements identified above.
- 6.7.6.2.8.1 Qualified Vendors that utilize subcontractors to provide Developmental Home services will be exempt from providing separate certificates and endorsements if the Qualified Vendor enters into a separate agreement between the Qualified Vendor, the Developmental Home subcontractor and the Division. Such agreement shall provide for the Developmental Home subcontractor to be covered under the Provider Indemnity Program (PIP). A sample format for the agreement may be found on the Division's website at www.de.state.az.us/ddd.
- 6.7.6.2.9 Approval: Any modification or variation from the *insurance requirements* in this agreement shall be made by the Department of Administration, Risk Management Section, whose decision shall be final. Such action will not require a formal agreement amendment, but may be made by administrative action.
- 6.7.6.2.10 Exceptions: In the event the Qualified Vendor or subcontractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a Certificate of Self-Insurance. If the Qualified Vendor or subcontractor(s) is/are a State of Arizona agency, board, commission, or university, none of the above shall apply.

- 6.8.4.6 If the Division determines that a violation has occurred, it shall:
- 6.8.4.6.1 Notify all other contracting authorities of the violation.
 - 6.8.4.6.2 Coordinate a corrective action plan consistent with the severity of the violation.
 - 6.8.4.6.3 Require the corrective action plan to be implemented within 90 days.
- 6.8.4.7 If a licensing deficiency is not corrected in a timely manner to the satisfaction of the licensing authority, the Division may cancel the agreement immediately on notice to the Qualified Vendor and may remove the residents.
- 6.8.5 Service Process for Wards of the State.
In the event that an individual calls or appears at a physical location of the Qualified Vendor seeking to service process (summons and complaint, petition or subpoena, etc.) upon a minor who is in the physical custody of the Qualified Vendor but is a ward of the State of Arizona, Department of Economic Security, Qualified Vendor agrees not to accept service of that/those document(s) and to refer the individual to the child's Support Coordinator. If, by error, Qualified Vendor or its agent accepts any service of process, a copy shall immediately be forwarded to the child's Support Coordinator and shall also contain a transmittal memorandum that indicates the date the legal document was received, the person receiving it and the place of service, as well as the child to whom it refers.
- 6.8.6 Gratuities.
The Qualified Vendor or its representative shall not offer or make employment or a gratuity to any officer or employee of the State for the purpose of influencing the outcome of the procurement or securing the agreement, an amendment to the agreement, or favorable treatment concerning the agreement, including the making of any determination or decision about agreement performance.
- 6.8.7 Suspension or Debarment.
- 6.8.7.1 The Qualified Vendor shall not be debarred, suspended, or otherwise lawfully prohibited from participating in any public procurement activity.
 - 6.8.7.2 The Qualified Vendor shall not employ, consult, subcontract or otherwise reimburse for services any person or entity that is debarred, suspended or otherwise excluded from public procurement activity. This prohibition extends to any person or entity that employs, consults, subcontracts with or otherwise reimburses for services any person or entity substantially involved in the management of another entity that is debarred, suspended or otherwise excluded from public procurement activity.
 - 6.8.7.3 The Qualified Vendor shall not retain as a director, officer, partner or owner of five percent or more of the Qualified Vendor, any person, or affiliate of such a person, who is debarred, suspended or otherwise excluded from public procurement activity.
- 6.8.8 Survival of Rights and Obligations after Agreement Expiration or Termination.
All representations and warranties made by the Qualified Vendor under this agreement 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.

6.10.8 Termination for Any Reason.

- 6.10.8.1 In the event of termination or suspension of the agreement by the Division, in whole or in part, such termination or suspension shall not affect the obligation of the Qualified Vendor to indemnify the Division, the Department and the State for any claim by any other party against the Division, the Department and/or the State arising from the Qualified Vendor's performance of this agreement and for which the Qualified Vendor would otherwise be liable under this agreement. 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 section shall not apply.
- 6.10.8.2 In the event of early termination, any funds advanced to the Qualified Vendor shall be returned to the Division within ten days after the date of termination or upon receipt of notice of termination of the agreement, whichever is earlier.
- 6.10.8.3 In the event the agreement is terminated, in whole or in part, with or without cause, or expires, the Qualified Vendor shall assist the Division in the transition of members to other Qualified Vendors in accordance with applicable rules and policies. Such assistance shall include but shall not be limited to:
 - 6.10.8.3.1 Forwarding 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 shall be borne by the Qualified Vendors.
 - 6.10.8.3.2 Notifying of subcontractors and members.
 - 6.10.8.3.3 Facilitating and scheduling medically necessary appointments for care and services.
 - 6.10.8.3.4 Providing all reports set forth in this agreement.
 - 6.10.8.3.5 Making provisions for continuing all management/administrative services until the transition of members is completed and all other requirements of this agreement are satisfied.
 - 6.10.8.3.6 If required by the Division, extending performance until suitable arrangements have been made by the Division for a replacement Qualified Vendor.
 - 6.10.8.3.7 If required by the Division, at the Qualified Vendor's own expense, assisting in the training of personnel.
 - 6.10.8.3.8 Paying all outstanding obligations for care rendered to members.
 - 6.10.8.3.9 Providing the following financial reports to the Division until the Division is satisfied that the Qualified Vendor has paid all such obligations: (a) a monthly claims aging report by provider/creditor including Incurred But Not Reported (IBNR) amounts; (b) a monthly summary of cash disbursements; and (c) copies of all bank statements received by the Qualified Vendor in the preceding month for Qualified Vendor's bank accounts. All reports in this section shall be due on the fifth day of each succeeding month for the prior month.
- 6.10.9 In the event the agreement is terminated in part, the Qualified Vendor shall continue the performance of the agreement to the extent not terminated.

6.11 Agreement Claims

- 6.11.1 Protests of the posting of a Request for Qualified Vendor Application, or the denial of one or more services included in the Qualified Vendor Application shall be resolved according to A.A.C. R-6-6-2115, and claims under this agreement shall be resolved according to A.A.C. R6-6-2116.
- 6.11.2 Pursuant to A.R.S. 36-557(I) all grievances, protests, and appeals relating to the notice, issuance, or content of an amendment to an Agreement shall be resolved according to the procedures in this section.
 - 6.11.2.1 A Qualified Vendor may protest the notice, issuance or content of an amendment to an agreement by filing:
 - a. A written Request for Problem Solving with the Division Assistant Director after notice of the amendment has been posted and before issuance of the amendment, or
 - b. A Notice of Protest with the Department procurement officer.
 - 6.11.2.2 Request for Problem Solving.
 - 6.11.2.2.1 The Qualified Vendor shall include the following information in the Request for Problem Solving:
 - a. Name, address, and telephone number of the protester,
 - b. Signature of the protester or its representative,
 - c. Identification of the notice of amendment and the RFQVA number, ,
 - d. The specific numbered provision(s) of the amendment being protested,
 - e. A statement of the legal and factual grounds of the intended protest, including copies of any relevant documents, and
 - f. The relief requested.
 - 6.11.2.2.2 The Qualified Vendor shall file the Request for Problem Solving with the Division within 30 days of the posting of the notice of amendment.
 - 6.11.2.2.3 The Request for Problem Solving is deemed filed when the Division receives the written document. The Assistant Director shall reach a determination on the Requests for Problem Solving before issuing the amendment. No amendment may be issued until 10 days after the Assistant Director has notified the Qualified Vendor filing a Request for Problem Solving that resolution was reached or that resolution cannot be reached.
 - 6.11.2.2.4 If resolution is reached and documented, the Qualified Vendor shall not be entitled to pursue further legal remedies with regard to the amendment at issue. If the specific numbered provision(s) of the amendment being protested is deleted from the amendment, the Request for Problem Solving shall be considered resolved.
 - 6.11.2.2.5 If resolution cannot be reached, the Assistant Director shall issue written verification to the Qualified Vendor that the matter was not resolved. To pursue further review the Qualified Vendor may file a Notice of Protest with the Department procurement officer within 5 days of the issuance of verification.
 - 6.11.2.3 Notice of Protest.
 - 6.11.2.3.1 The protester shall include the following information in the Notice of Protest:
 - a. Name, address, and telephone number of the protester,

- b. Signature of the protester or its representative,
 - c. Identification of the notice of amendment and the RFQVA number,
 - d. The specific numbered provision(s) of the amendment being protested,
 - e. A statement of the legal and factual grounds of the intended protest including copies of any relevant documents, and
 - f. The relief requested.
- 6.11.2.3.2 The Qualified Vendor shall file the Notice of Protest with the Department procurement officer within 30 days of the posting of the notice of amendment, or within 5 days of issuance of the verification of non-resolution through the Problem Solving process from the Assistant Director.
- 6.11.2.3.3 The Notice of Protest is deemed filed when the Department procurement officer receives the written document.
- 6.11.2.3.4 If the Department procurement officer makes a written determination within 5 days of receipt of the Notice of Protest that there is reasonable probability that the protest will be sustained and it serves the best interests of the state, the Department procurement officer shall notify the Division Assistant Director that the amendment may not be issued with the specific numbered provision(s) being protested that have a reasonable probability of being sustained until the Department procurement officer issues a written decision on such specific numbered provisions.
- 6.11.2.3.5 If the specific numbered provision(s) of the amendment being protested is deleted from the amendment, the Division Assistant Director shall notify the Department Procurement Officer, the protest shall be considered resolved, the Department Procurement Officer shall issue a written decision to that effect and the Division may issue the revised amendment.
- 6.11.2.3.6 If applicable, the protester shall include in the Notice of Protest a copy of the original Request for Problem Solving documentation and the written verification of non-resolution from the Assistant Director.
- 6.11.2.3.7 If the Department procurement officer sustains the protest, in whole or in part, and the notice, issuance or content of the amendment does not comply with applicable statutes and rules, the Department procurement officer shall implement an appropriate remedy.
- 6.11.2.3.8 In determining an appropriate remedy, the Department procurement officer shall consider the following:
- a. Circumstances surrounding the amendment,
 - b. The degree of prejudice to other interested parties,
 - c. The degree of prejudice to the integrity of the Qualified Vendor system,
 - d. The good faith of the parties,
 - e. The extent of performance,
 - f. The costs to the state,
 - g. The urgency of the amendment, and
 - h. The impact of the relief on the Department's mission.

- 6.11.2.3.9 Within 21 days of the receipt of the protest, the Department procurement officer shall send a written decision to the protester by certified mail, return receipt requested, or by any other method that provides evidence of receipt and shall send a copy of the decision to the Division. The Department procurement officer shall explain the reasons for the conclusions reached in the decision.
- 6.11.2.3.10 Upon receipt of the decision from the Department procurement officer, the protester may file an appeal with the Department's Office of Appeals as authorized in A.R.S. §§ 41-1991, 41-1992(A) through (C), excluding any references to review by the Appeals Board, and A.R.S. § 41-1993(A).
- 6.11.2.3.11 The protester may proceed to the next level of appeal if the protester does not receive a response from the Department procurement officer within 21 days of receipt by the Department procurement officer of the Notice of Protest.
- 6.11.2.3.12 Upon receipt of the decision Department's Office of Appeals, the protester may appeal pursuant to Title 41, Chapter 6, Article 10, or seek relief through the Superior Court as provided in A.R.S. § 12-901 et seq.
- 6.11.2.3.13 If a Protest of any specific numbered provision of an amendment is upheld pursuant to sections 6.11.2.3.7, 6.11.2.3.10 or 6.11.2.3.11 above, then that specific numbered provision shall be subject to the remedy associated with the Protest decision, but no other provision of the amendment shall be affected.