

<b>RFQVA AMENDMENT</b>	<b>DEPARTMENT OF ECONOMIC SECURITY</b>
<b>RFQVA No: DDD 704011</b>	<b>Agency: Division of Developmental Disabilities</b>
<b>Amendment No: 6</b>	<b>Address: 1789 W. Jefferson, Site Code 791A Phoenix, Arizona 85005</b>
<b>Page 1 of 22</b>	<b>Phone: (602) 542-6874</b>

**A signed copy of the signature page (page 3) of this amendment must be included in the hard copy of the Application, or, if a Qualified Vendor Agreement has been awarded, the Qualified Vendor must return a signed copy of this amendment 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 3 – INSTRUCTIONS TO APPLICANTS**

Page 3-2, Section 3.2.1, General, 1<sup>st</sup> paragraph after item 5, first sentence, is amended to replace “services” after “both” with “RFQVAs”

Page 3-3, Section 3.2.5, Agreement, 1<sup>st</sup> paragraph, is amended to insert “or designee’s” between “Procurement Officer’s” and “signature”

Page 3-4, Section 3.2.6, Application Updates and Amendments, is amended to delete the 5<sup>th</sup> and 6<sup>th</sup> sentences regarding updated and amended Applications

Page 3-5, Section 3.6, Protests, 1<sup>st</sup> paragraph, last sentence, is amended to replace “Application” with “Applicant”

**Section 5 – SERVICE REQUIREMENTS/SCOPE OF WORK**

Page 5-6, Section 5.9, Transition, is amended to

Replace “another Qualified Vendor” with “another provider”  
Replace “new Qualified Vendor” with “new provider”

Section 6 – DES/DDD STANDARD TERMS AND CONDITIONS

Page 6-2, Section 6.1.21, is amended to include Person Centered Plan

Page 6-2, Section 6.1.24, is amended to include Procurement Specialist

Page 6-6, Section 6.3.2.4, is amended to insert “which” after “The following”

Page 6-6, Section 6.3.3.2, is amended to replace “\$100,000” with “\$500,000,” replace “from the Division” with “from all sources,” and replace “general accepted audit procedures” with “generally accepted auditing standards (GAAS)”

Page 6-7, Section 6.3.4, Notices, is amended to insert “or authorized Procurement Specialist” after “authorized Procurement Officer”

Page 6-8, Section 6.3.9, Agreement Term, is amended to add a new sentence regarding the begin date

Page 6-8, Section 6.3, Agreement Administration and Operation, is amended to add a new section forbidding offshore performance of work

Page 6-15, Section 6.5.7, Monitoring, is amended to add a new section requiring Qualified Vendors to notify consumers about corrective action plans

Page 6-18 to page 6-20, Section 6.7.6, Insurance, is amended to add an indemnification clause and revise the insurance requirements

Section 7 – SERVICE SPECIFICATIONS:

Page 7-31 (a), Day Treatment and Training, Child (After-School), Unit of Service, item 2, is amended to add “Absences do not constitute a billable unit except as provided in item 3 below. An absence factor was built into the model rates.”

Page 7-31 (a), Day Treatment and Training, Child (After-School), Unit of Service, is amended to add new item 3, which allows Qualified Vendors that do not provide transportation to include up to 30 minutes a day when the consumer arrives late or leaves early

Page 7-36 (a), Day Treatment and Training, Child (Summer), item 2, is amended to add “Absences do not constitute a billable unit except as provided in item 3 below. An absence factor was built into the model rates.”

Page 7-36 (a), Day Treatment and Training, Child (Summer), Unit of Service, is amended to add new item 3, which allows Qualified Vendors that do not provide transportation to include up to 30 minutes a day when the consumer arrives late or leaves early

The following pages are attached:

Revised SECTION 3 – INSTRUCTIONS TO APPLICANTS, pages 3-2, 3-3, 3-4, and 3-5

Revised SECTION 5 – SERVICE REQUIREMENTS/SCOPE OF WORK, page 5-6

Revised SECTION 6 – DES/DDD STANDARD TERMS AND CONDITIONS, pages 6-2, 6-6, 6-7, 6-8, 6-8(a), 6-15, and 6-18 to 6-20

Revised SECTION 7 – SERVICE SPECIFICATIONS, pages 7-31(a), 7-36(a)

**EXCEPT AS PREVIOUSLY AMENDED, ALL OTHER PROVISIONS OF THE RFQVA SHALL REMAIN IN THEIR ENTIRETY.**

**NOTE: CONCURRENT WITH THE RELEASE OF THIS AMENDMENT THE DIVISION OF DEVELOPMENTAL DISABILITIES IS PUBLISHING REVISED RATE SCHEDULES (VERSION 5) THAT HAVE BEEN AMENDED TO CONFORM WITH THE AMENDMENT TO THE RFQVA.**

Applicant hereby acknowledges receipt and understanding of the above RFQVA amendment.

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Typed Name and Title

\_\_\_\_\_  
Name of Company

The above referenced RFQVA Amendment is hereby executed this 1st day of June, 2004, at Phoenix, Arizona.

  
\_\_\_\_\_  
DDD Procurement Specialist

In person or by courier:

DDD Contract Unit, 4<sup>th</sup> Floor Southwest  
Business Operations – Site Code 791A  
Division of Developmental Disabilities  
Arizona Department of Economic Security  
1789 West Jefferson Street  
Phoenix, Arizona 85007  
(602) 542-6874

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

The hard copy shall consist of the following in the following order:

1. A completed and signed Application and Qualified Vendor Agreement Award form, which is generated by the Qualified Vendor Application and Directory System (see Section 9, Attachment A for a sample of this form; see Section 9, Attachment B for a discussion of the Qualified Vendor Application and Directory System).
2. A completed and signed Qualified Vendor Application Assurances and Submittals page, which is generated by the Qualified Vendor Application and Directory System (see Section 9, Attachment B).
3. Completed and signed RFQVA amendment signature pages (as applicable).
4. A print-out of all sections of the Application entered by the Applicant into the Qualified Vendor Application and Directory System (see Section 9, Attachment B).
5. All applicable submittals required in the Qualified Vendor Application Assurances and Submittals form. (This form is part of the Qualified Vendor Application and Directory System; see Section 9, Attachment B).

If the Applicant is applying for one or more services covered by another RFQVA, the Applicant may submit one Application for both RFQVAs. The Application shall consist of all items listed above. The Applicant must ensure that the Application includes RFQVA amendment signature pages for all applicable amendments and RFQVAs.

### 3.2.2 Website

The RFQVA and any amendments are available on the Internet at the Division's website at: [www.de.state.az.us/ddd](http://www.de.state.az.us/ddd). The website also contains links to other websites to access materials referenced in the RFQVA.

### 3.2.3 RFQVA Amendments

The signature page for any RFQVA Amendment shall be signed with an original signature by the person signing the Application, and shall be submitted with the original hard copy of the Application.

### 3.2.4 Public Record

Prior to the effective date of the Qualified Vendor Agreement, the Division shall not disclose any information identified by the Applicant as confidential business information or proprietary information without first notifying the Applicant in writing and allowing the Applicant opportunity to respond or protest the planned disclosure.

### 3.2.5 Agreement

An Application does not constitute a Qualified Vendor Agreement nor does it confer any rights to the Applicant regarding the award of a Qualified Vendor Agreement. A Qualified Vendor Agreement is not created until the Application is accepted in writing by the Procurement Officer's or designee's signature on the Application and Qualified Vendor Agreement Award (see Section 9, Attachment A).

The Qualified Vendor Agreement shall consist of the various documents specified in Section 6.1.2. However, the Applicant is only required to submit the Application and Qualified Vendor Agreement and Award form (see Section 9, Attachment A), the required information in the Qualified Vendor Application and Directory System via the Division's website, a print-out of the required information entered by the Applicant into the Qualified Vendor Application and Directory System (see Section 9, Attachment B), and all applicable submittals required in the Qualified Vendor Application Assurances and Submittals form (see Section 9, Attachment B).

Qualified Vendors should maintain a file titled "Agreement" which includes a copy of all of the items listed in Section 6.1.2. This entire file will reflect the total agreement between the Qualified Vendor and the Division of Developmental Disabilities.

### 3.2.6 Application Updates and Amendments

A Qualified Vendor shall update in the Qualified Vendor Application and Directory System the general information section of the vendor contract information component, the Qualified Vendor assurances and submittal form and associated submittals, and the program description section of the service detail information component, including providing hard copies of any applicable submissions, when there is a change or at the request of the Division. Such changes will be subject to approval by the Division and the execution of an agreement amendment. A Qualified Vendor may update all other information in the Qualified Vendor Application and Directory System at any time. The Qualified Vendor may also submit an amended Application to request that additional services be added to the Qualified Vendor Agreement. Only Qualified Vendors will be able to update or amend their Application. The Division shall respond to a request for an amendment to Qualified Vendor Agreements based on the criteria defined in A.A.C. R6-6-2103 and A.A.C. R6-6-2104.

### **3.3 RFQVA Schedule**

Notices for significant events in the processing of RFQVAs, amendments, and changes to the Qualified Vendor Application and Directory System will be posted on the Division's website, [www.de.state.az.us/ddd](http://www.de.state.az.us/ddd).

### **3.4 Independent Providers**

The Division is not accepting applications from independent providers (as defined in Section 6) at this time. The Division will continue contracting with independent providers using Individual Service Agreements (ISAs) for Attendant Care; Habilitation, Support; Housekeeping; Respite; Day Treatment and Training, Adult; Day Treatment and Training, Children (After-School); Day Treatment and Training, Children (Summer); Habilitation, Individually Designed Living Arrangement; and Transportation (Family and Friend). It is planned that independent providers, at their option, will be included in the Directory System when that component of the system is available. When the published independent provider rates (non-agency rates) are finalized, the Division will accept Applications from independent providers to become Qualified Vendors. However, in order to receive a Qualified Vendor Agreement, the Applicant will be required to meet all requirements of the RFQVA, including those relating to insurance. Independent providers that become Qualified Vendors shall be paid using the same methodology as independent providers that have ISAs. They will not receive the “agency” rate.

### **3.5 Verification**

DDD may contact any source available to verify the information submitted in the Application and may use this information and any additional information obtained from the source(s) in evaluating the Application.

### **3.6 Protests**

A protest shall comply with and be resolved according to A.C.C. R6-6-2115. An applicant or Qualified Vendor may protest the posting of a RFQVA, denial of a Qualified Vendor Application in its entirety, or denial of one or more services included in the Application by filing a written Request for Problem Solving with the Division Assistant Director or a Notice of Protest with the Department procurement officer. The Qualified Vendor or Qualified Vendor Applicant shall include the following information in the Request for Problem Solving or in the Notice of Protest:

1. Name, address and telephone number of the protester;
2. The signature of the protester or its representative;
3. Identification of the adverse action by the Division that is in dispute;
4. A statement of the legal and factual grounds of the intended protest including copies of relevant documents; and
5. The form of relief requested.

1. Solicitation of input from consumers, families and/or consumer representatives including input on consumer satisfaction, the hiring and/or evaluation of direct service staff, and the improvement of services.
2. Opportunities provided to consumers/families/consumer representatives to be actively involved in Qualified Vendor operations.
5. Monitoring and evaluation of services provided (i.e., measurement of outcomes as it relates to the ISP objectives) and the improvement of the quality and appropriateness of services.

## **5.9 Transition**

There are a number of circumstances under which a Qualified Vendor will become involved in the transitioning of a consumer to another provider. All Qualified Vendors shall assist the Division in the transition of the consumer to the new provider. This may include working closely with the consumer and family; providing all necessary support services to ensure a smooth transition; and transferring of pertinent records to the new provider. If the Qualified Vendor participates in a transition placement process, it shall maintain documentation of participation and development of the consumer's ISP.

## **5.10 Recordkeeping**

1. The Qualified Vendor shall maintain books and records related to services and expenditures as required by the Division in rule or policy or in this RFQVA, as amended. Documents that the Qualified Vendor shall have on file include but are not limited to:
  - 1.1 Articles of Incorporation, partnership agreements and/or Internal Revenue Service letter, as applicable.
  - 1.2 Copies of all licenses and/or certifications.
  - 1.3 A current organizational chart that outlines the functional structure of the organization, including all program areas and staff positions.
  - 1.4 If applicable, a complete list of the members of its Board of Directors, partners, or owners as applicable, including names, titles, addresses and phone numbers.
  - 1.5 Current written job descriptions, which include minimum qualifications for training and experience, for each position that will be utilized in the provision of a service under the Qualified Vendor Agreement.
  - 1.6 Current resumes/applications for each person who will be providing services under the Qualified Vendor Agreement.
  - 1.7 Current resumes for administrative/management positions.
  - 1.8 If applicable, documentation of inspections and licenses necessary to operate a residential setting.

- 6.1.13 “Community Developmental Disability Services” means any service or support the Division is authorized to purchase on behalf of individuals with developmental disabilities and their families or guardians.
- 6.1.14 “Day” means calendar day unless otherwise specified.
- 6.1.15 “Department” means the Arizona Department of Economic Security (DES), unless otherwise indicated.
- 6.1.16 “Division” or “DDD” means the Division of Developmental Disabilities within the Department of Economic Security.
- 6.1.17 “Effective Date” means the date that the Procurement Officer signs the Qualified Vendor Agreement Award, unless another date is specifically stated in the agreement.
- 6.1.18 “Encounter” means the record of a service submitted to or by the Division and processed by AHCCCS that is rendered by a provider registered with AHCCCS to a member who is enrolled with the Division on the date of service for which the Division incurs a financial liability (A.A.C. R9-22-107.13).
- 6.1.19 “Gratuity” means a payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.
- 6.1.20 “Independent Provider” means a person who does not have any employees other than himself/herself and provides Attendant Care; Habilitation, Support; Housekeeping; Respite; Day Treatment and Training, Adult; Day Treatment and Training, Children (After-School); Day Treatment and Training, Children (Summer); Habilitation, Individually Designed Living Arrangement; or Transportation (Family and Friend).
- 6.1.21 “Individual Support Plan” or “ISP” means a written statement of services to be provided to an individual with developmental disabilities including habilitation goals and objectives and a listing of the services, if any, the consumer is authorized to receive. The ISP incorporates and replaces the Individual Program Plan, the placement evaluation, the individualized service program plan and the service program plan used in A.R.S. § 36-557. ISP incorporates the Individual Family Service Plan (IFSP) as defined in Section 809.1 of the Division’s Policy and Procedures Manual as well as a Person Centered Plan (PCP), which describes the type, frequency, and duration of the services and supports needed to achieve the appropriate outcomes for a consumer.
- 6.1.22 “Individual Support Plan Team” or “ISP Team” means a group of persons including the consumer, the consumer’s representative, and other persons selected by the consumer, assembled by the Division and coordinated by the consumer’s support coordinator in compliance with A.R.S. § 36-551 and 36-560 to develop the consumer’s individual support plan.
- 6.1.23 “May” indicates something that is not mandatory but permissible.
- 6.1.24 “Procurement Officer” or “Department Procurement Officer” or “Procurement Specialist” means the person duly authorized to enter into and administer agreements and make written determinations with respect to the agreement or their designee.
- 6.1.25 “Qualified Vendor” means any person or entity that has an agreement with the Division of Developmental Disabilities.
- 6.1.26 “Shall” or “Must” indicates a mandatory requirement. Failure to meet these mandatory requirements may result in the rejection of an Application or termination of the agreement in whole or in part.

- 6.3.2.4 The following which shall be included in all publications, forms, flyers, etc. that are distributed to consumers:  
“Under the Americans with Disabilities Act, 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 to the person indicated on the Qualified Vendor Application form submitted by the Qualified Vendor unless otherwise stated in the agreement. Notices to the State required by the agreement shall be made by the Qualified Vendor to the Division's Contract Management Section 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 by written notice and an amendment to the agreement shall not be necessary. All notices shall reference the agreement number.

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.

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.

- 6.3.8 Agreement Extension.  
This agreement may be extended or renewed for up to five 12-month terms, with all agreements ending June 30, 2009. The Procurement Officer may exercise the Division's option to extend or renew the contract by unilateral agreement amendment; a written amendment signed by both parties shall not be necessary.
- 6.3.9 Agreement Term.  
The term of this agreement shall be the period of time from the agreement begin date to the agreement termination date as awarded or extended. The begin date of the agreement term is the date that the Qualified Vendor may start to provide services under this agreement. The Qualified Vendor will not be paid or reimbursed for agreement services provided prior to the begin date. However, payments or reimbursements shall not be made under this agreement until the effective date of this agreement. The agreement begin date shall be the date the Procurement Specialist signs the Application and the Qualified Vendor Agreement Award.
- 6.3.10 Cooperation.  
The Division may undertake or award other contracts for additional work related to the work performed by the Qualified Vendor, and the Qualified Vendor shall fully cooperate with such other Qualified Vendor and State employees, and carefully fit its own work to such other Qualified Vendor work. The Qualified Vendor shall not commit or permit any act, which will interfere with the performance of work by any other Qualified Vendor or by State employees. The Qualified Vendor shall cooperate as the State deems necessary, with the transfer of work, services, case records and files performed or prepared by the Qualified Vendor to other Qualified Vendor(s).
- 6.3.11 Technical Assistance.  
The Division may, but shall not be obligated to, provide technical assistance to the Qualified Vendor in the administration of agreement services, or relating to the terms and conditions, policies and procedures governing this agreement. Notwithstanding the foregoing, the Qualified Vendor shall not be relieved of full responsibility and accountability for the provision of agreement services in accordance with the terms and conditions set forth herein.
- 6.3.12 Enrollment; Disenrollment.  
Procedures for enrollment of an individual in Qualified Vendor services and termination of enrollment with the Qualified Vendor shall be in accordance with the agreement and all applicable Division and/or AHCCCS rules and policies.
- 6.3.13 Offshore Performance of Work Prohibited.  
Due to security and identity protection concerns, all services under this agreement shall be performed within the borders of the United States. All storage and processing of information shall be performed within the borders of the United States. This provision applies to work performed by subcontractors at all tiers.

**6.4 Costs and Payments**

6.4.1 Payments.

6.4.1.1 Upon delivery of goods or services, the Qualified Vendor shall submit a complete and accurate invoice to be paid by the State within 30 days of receipt.

6.4.1.2 The Qualified Vendor is paid a specified amount for each unit of service or deliverable as designated in the service specification and published rate or negotiated rate, not to exceed the maximum number of units indicated by the authorization for each agreement service/deliverable.

6.5.6 Supporting Documents and Information.

In addition to any documents, reports or information required by any other section of this agreement, the Qualified Vendor shall furnish the Division with any further documents and information deemed necessary by the Division.

6.5.7 Monitoring.

6.5.7.1 The Division may monitor the Qualified Vendor or any subcontractor and they shall cooperate in the monitoring of services delivered, facilities and records maintained and fiscal practices.

6.5.7.2 The Division will monitor the Qualified Vendor's compliance with the agreement as deemed necessary by the Division. Monitoring may also be conducted, at reasonable times, by parents and consumer representatives, by members of the Developmental Disabilities Advisory Council, and by other recognized, on-going advocacy groups for persons with developmental disabilities. The Qualified Vendor shall adhere to all related policies and procedures the Division deems appropriate to adequately evaluate the quality and impact of services and to establish on-going monitoring of service performance. The Division reserves the right to monitor the actual provision of services for compliance with the DDD Programmatic Standards and to conduct investigations in accordance with the DDD Investigation Standards and to verify staffing levels as authorized by the Division District Administration.

6.5.7.3 If the Division requires the Qualified Vendor to implement a corrective action plan, the Qualified Vendor shall notify all current and prospective consumers that they are operating under a corrective action plan.

6.5.8 Utilization Control/Quality Assurance.

6.5.8.1 The Qualified Vendor shall, at all times during the term of this agreement, maintain an internal quality assurance system in accordance with current applicable AHCCCS rules and policies and Federal rules as specified in the current 42 CFR Part 456, as implemented by AHCCCS and the Division. Qualified Vendor requirements shall include, but are not limited to:

6.5.8.1.1 Completing statistical or program reports as requested by the Division;

6.5.8.1.2 Complying with any recommendations made by the Division's Statewide Quality Management Committee;

6.5.8.1.3 Making records available upon request;

6.5.8.1.4 Allowing persons authorized by the Division access to program areas at any hours of the day or night as deemed appropriate by the Division; and

6.5.8.1.5 Providing program information, upon request, to the Division.

6.5.8.2 The Qualified Vendor shall cooperate with the Division and AHCCCS quality assurance programs and reviews.

6.5.9 Sanctions Against Qualified Vendor.

6.5.9.1 Sanctions imposed against the Division by AHCCCSA for noncompliance with requirements for encounter data reporting, referenced in "Records" of these Terms and Conditions, that would not have been imposed but for the Qualified Vendor's action or lack thereof will be assessed dollar for dollar against the Qualified Vendor.

- 6.7.3.2 Force majeure shall not include the following occurrences:
- 6.7.3.2.1 Late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, or an oversold condition of the market;
  - 6.7.3.2.2 Late performance by a subcontractor unless the delay arises out of a force majeure occurrence in accordance with this force majeure term and condition; or
  - 6.7.3.2.3 Inability of either the Qualified Vendor or any subcontractor to acquire or maintain any required insurance, bonds, licenses or permits.
- 6.7.3.3 If either party is delayed at any time in the progress of the work by force majeure, the delayed party shall notify the other party in writing of such delay, as soon as is practicable and no later than the following business 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 section, 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 agreement 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 agreement.
- 6.7.3.4 Any delay or failure in performance by either party hereto shall not constitute default hereunder or give rise to any claim for damages or loss of anticipated profits if, and to the extent that such delay or failure is caused by force majeure.
- 6.7.4 Third Party Antitrust Violations.  
The Qualified Vendor assigns to the State any claim for overcharges resulting from antitrust violations to the extent that those violations concern materials or services supplied by third parties to the Qualified Vendor, toward fulfillment of this agreement.
- 6.7.5 Predecessor and Successor Agreements.  
The execution or termination of this agreement in whole or in part shall not be considered a waiver by the Division of any rights it may have for damages suffered through a breach of this agreement or a prior contract with the Qualified Vendor.
- 6.7.6 Indemnification and Insurance.
- 6.7.6.1 *Indemnification*
  - 6.7.6.1.1 Qualified Vendor shall indemnify, defend, save and hold harmless the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Qualified Vendor or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of or recovered under the Workers' Compensation Law or arising out of the failure of such Qualified Vendor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court

decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by 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 an agency, board, commission or university of the State of Arizona.

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.

- 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, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees 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
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- a. The policy shall be endorsed to include the following additional insured language: *“The State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees 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”*.

6.7.6.2.3.3 Worker’s Compensation and Employers’ Liability

Workers’ Compensation	Statutory
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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.

- 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.
  - c. The policy shall cover professional misconduct or lack of ordinary skill for those positions defined in the Scope of Work of this agreement.
- 6.7.6.2.4 Additional Insurance Requirements: The policies shall include, or be endorsed to include, the following provisions:
- 6.7.6.2.4.1 The State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees wherever additional insured status is required such additional insured shall be covered to the full limits of liability purchased by the Qualified Vendor, even if those limits of liability are in excess of those required by this agreement.
  - 6.7.6.2.4.2 The Qualified Vendor's insurance coverage shall be primary insurance with respect to all other available sources.
  - 6.7.6.2.4.3 Coverage provided by the Qualified Vendor shall not be limited to the liability assumed under the indemnification provisions of this agreement.
  - 6.7.6.2.5 Notice of Cancellation: Each insurance policy required by the insurance provisions of this agreement 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 State of Arizona. Such notice shall be sent directly to the Division's Contracts Management Section and shall be sent by certified mail, return receipt requested.
  - 6.7.6.2.6 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 Qualified Vendor from potential insurer insolvency.
  - 6.7.6.2.7 Verification of Coverage:
    - 6.7.6.2.7.1 Qualified Vendor shall furnish the State of Arizona with certificates of insurance (ACORD form or equivalent approved by the State of Arizona) as required by this agreement. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.
    - 6.7.6.2.7.2 All certificates and endorsements are to be received and approved by the State of Arizona before work commences. Each insurance policy required by this agreement must be in effect at or prior to commencement of work under this agreement and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this agreement, or to provide evidence of renewal, is a material breach of agreement.

- 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.
- 6.7.6.2.9 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 Warranties**

6.8.1 Year 2000.

6.8.2 Notwithstanding any other warranty or disclaimer of warranty in this agreement, the Qualified Vendor warrants that all products delivered and all services rendered under this agreement shall comply in all respects to performance and delivery requirements of the specifications and shall not be adversely affected by any date-related data Year 2000 issues. This warranty shall survive the expiration or termination of this agreement. In addition, the defense of force majeure shall not apply to the Qualified Vendor's failure to perform specification requirements as a result of any date-related data Year 2000 issues.

6.8.1.2 Additionally, notwithstanding any other warranty or disclaimer of warranty in this agreement, the Qualified Vendor warrants that each hardware, software, and firmware product delivered under this agreement shall be able to accurately process date/time data (including but not limited to calculation, comparing, and sequencing) from, into, and between the 20<sup>th</sup> and 21<sup>st</sup> centuries, and the years 1999 and 2000 and leap year calculations, to the extent that other information technology utilized by the State in combination with the information technology being acquired under this agreement properly exchanges date-time data with it. If this agreement requires that the information technology products being acquired perform as a system, or that the information technology products being acquired perform as a system in combination with other State information technology, then this warranty shall apply to the acquired products as a system. The remedies available to the State for breach of this warranty shall include, but shall not be limited to, repair and replacement of the information technology products delivered under this agreement. In addition, the defense of force majeure shall not apply to the failure of the Qualified Vendor to perform any specification requirements as a result of any date-related data Year 2000 issues.

6.8.2 Compliance With Applicable Laws.

6.8.2.1 The materials and services supplied under this agreement shall comply with all applicable Federal, State and local laws, and the Qualified Vendor shall maintain all applicable license and permit requirements.

6.8.2.2 In accordance with A.R.S. § 36-557 (Purchase of community developmental disabilities services; application; agreements; limitation), as applicable, all consumers

For both consumers and direct service staff, units shall be recorded daily on the *per consumer* and *per direct service staff* basis, shall be expressed in terms of hours and shall be rounded to the nearest hour, as illustrated in examples below:

- ❑ If total hours for a consumer or direct service staff were equal to 3 hours and 5 minutes, round the total to 3 hours
- ❑ If total hours for a consumer or direct service staff were equal to 5 hours and 24 minutes, round the total to 5 hours
- ❑ If total hours for a consumer or direct service staff were equal to 5 hours and 30 minutes, round the total to 6 hours
- ❑ If total hours for a consumer or direct service staff were equal to 6 hours and 48 minutes, round the total to 7 hours

2. Absences do not constitute a billable unit except as provided in item 3 below. An absence factor was built into the model rates. The Division will not compensate Qualified Vendors for any absences. For example, if a consumer stays in the day program for two hours in the morning, then leaves for two hours, and then returns for three hours, and all activity takes place within the same program day, total hours for this consumer shall be equal to five for that day.

If the consumer permanently stops attending the Qualified Vendor's facility, then the Qualified Vendor shall notify the DDD Program Administrator/Manager or designee. The Qualified Vendor shall not bill the Division for vacancies.

3. Qualified Vendors that do not provide transportation for a particular consumer may include up to 30 minutes per day if that consumer arrives after his/her scheduled arrival time on that day or if that consumer leaves before his/her scheduled departure time on that day. The calculation of the daily ratio will use the billable hours. However, if the client is absent for the entire day, the Qualified Vendor may not bill for that client. In no event shall the Qualified Vendor submit a claim for more than the number of hours authorized for that consumer.

For both consumers and direct service staff, units shall be recorded daily on the *per consumer* and *per direct service staff* basis, shall be expressed in terms of hours and shall be rounded to the nearest hour, as illustrated in examples below:

- ❑ If total hours for a consumer or direct service staff were equal to 3 hours and 5 minutes, round the total to 3 hours
- ❑ If total hours for a consumer or direct service staff were equal to 5 hours and 24 minutes, round the total to 5 hours
- ❑ If total hours for a consumer or direct service staff were equal to 5 hours and 30 minutes, round the total to 6 hours
- ❑ If total hours for a consumer or direct service staff were equal to 6 hours and 48 minutes, round the total to 7 hours

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