

SAMPLE CONTRACT TERMS AND CONDITIONS

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9.1 General

The Contract awarded at the end of this process shall be governed by and construed in accordance with the laws of the State of Arkansas. The Contract will include, in part, certain terms and conditions required by CMS, whether or not expressly set forth in the Contract provisions. All contractual provisions required by CMS and the ACA (including any changes) are hereby incorporated by reference. Anything to the contrary notwithstanding, all CMS and ACA mandated terms will be deemed to control in the event of a conflict with other provisions contained in the Contract. The Contract will also be subject to any financial assistance agreement between AHIM and CMS, and all laws, regulations, guidelines, and provisions of the financial assistance agreement will apply to the Contract and will be incorporated by reference as fully set forth herein.

9.2 Applicable Law

The Contract shall be governed by and construed in accordance with the laws of the State of Arkansas, excluding its conflict of law provisions, and any litigation with respect thereto shall be brought in the courts of the State of Arkansas. The Contractor shall comply with applicable federal, state, and local laws and regulations.

9.2.1 Conformance with Federal and State Regulations

The Contractor will be required to conform to all federal and state laws, regulations, and policies as they exist or as amended, and will be required to indemnify AHIM against any claims arising from the Contractor's non-compliance.

Any provision of the contract which is in conflict with federal ACA statutes, regulations, or CMS policy guidance is hereby amended to conform to the provisions of those laws, regulations, and federal policy. Such amendment of the Contract will be effective on the effective date of the statutes or regulations necessitating it, and will be binding on the parties even though such amendment may not have been reduced to writing and formally agreed upon and executed by the parties.

9.3 Terms of Contract

This is a multi-year contract solicitation that has been deemed to be in the best interest of the citizens of the State of Arkansas by AHIM. The contract term shall begin upon execution of the Contract and shall continue its initial term for one (1) year. At the discretion of AHIM, this contract may be extended for three subsequent one year periods on a year to year basis.

The Contractor acknowledges that other unanticipated uncertainties may arise requiring an increase or decrease in the original scope of services from the Contractor awarded this contract. In the event that increase or decrease of services may be required, the Contractor agrees to negotiate in good faith and to enter into a supplemental agreement upon request by AHIM (for the additional work). The

supplemental agreement may also include a respective increase or decrease in compensation.

9.3.1 Stop Work Order

The Executive Director of AHIM may, by written order to the Contractor at any time, and without notice to any surety, require the Contractor to stop all or any part of the work called for by this contract. This order shall be for a specified period not exceeding 90 days after the order is delivered to the Contractor, unless the parties agree to any further period. Any such order shall be identified specifically as a stop work order issued pursuant to this clause. Upon receipt of such an order, the Contractor shall forthwith comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to the work covered by the order during the period of work stoppage. Before the stop work order expires, or within any further period to which the parties shall have agreed, the Executive Director shall either:

- A. Cancel the stop work order; or,
- B. Terminate the work covered by such order as provided in the Termination for Default Clause or the Termination for Convenience Clause of the Contract entered into pursuant to this RFP.

9.3.2 Cancellation or Expiration of the Order

If a stop work order issued under this clause is cancelled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the Contractor shall have the right to resume work. An appropriate adjustment shall be made in the delivery schedule or Contractor price, or both, and the contract shall be modified in writing accordingly, if:

- A. The stop work order results in an increase in the time required for the performance of any part of this contract; and,
- B. The Contractor asserts a claim for such an adjustment within 30 days after the end of the period of work stoppage; provided that, the Executive Director decides the facts justify such action. Any such claim asserted may be received and acted upon at any time prior to final payment under this contract.

If a stop work order is not cancelled and the work covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop work order shall be allowed by adjustment or otherwise.

9.3.3 Termination of the Contract

The Contract may be terminated for the reasons below.

Bankruptcy or Insolvency. AHIM may terminate this Contract, in whole or in part, in the event that the Contractor shall cease conducting business in the normal course, become insolvent, make a general assignment for the benefit of creditors, suffer or permit the appointment of a receiver for its business or its assets or shall avail itself of, or become subject to, any proceeding under the Federal Bankruptcy Act or any other statute of any state relating to insolvency or the protection of the rights or creditors.

Default. AHIM may terminate this Contract, in whole or part, whenever the AHIM determines that the Contractor has failed to satisfactorily perform its contractual duties and responsibilities. The Contractor may be given the opportunity to cure the default at AHIM's discretion.

Convenience. AHIM may terminate this Contract, in whole or part, at any time and for any reason AHIM deems such termination is in the best interest of AHIM.

Non-availability of Funds. The parties understand that the AHIM is an independent body corporate and politic established by Arkansas Code § 23-61-801 *et seq.* The obligations of AHIM are not those of the State of Arkansas. It is expressly understood and agreed that the obligation to proceed under this contract is conditioned upon AHIM's receipt of federal funds. AHIM may terminate this Contract if sufficient federal funds are not received as anticipated by AHIM.

9.3.4 Force Majeure

If a Contractor is prevented from performing any of its obligations hereunder in whole or in part as a result of major epidemic, act of God, war, civil disturbance, court order or any other cause beyond its control, the Contractor shall make a good faith effort to perform such obligations through its then-existing facilities and personnel; and such non-performance shall not be grounds for termination for default.

Neither party to this Contract shall be responsible for delays or failures in performance resulting from acts beyond the control of such party.

Nothing in this section shall be construed to prevent AHIM from terminating this contract for reasons other than default during the period of events set forth above, or for default if such default occurred prior to such event.

9.4 Payment

AHIM shall pay Contractor's invoices within 45 days of AHIM's written acceptance of the deliverables associated with any such invoice. If AHIM is unable to pay because of cash flow limitations arising from AHIM's reliance on release of federal grant funds to pay Contractor, this period shall be extended.

The Contractor shall submit an original invoice and one copy for services performed to:

Amanda Spicer
Director of Finance
Arkansas Health Insurance Marketplace
221 West 2nd Street, Ste. 700
Little Rock, AR 72201

9.4.1 Payment for Design, Development, Testing, Training, Conversion/Migration, and Implementation

AHIM will pay a firm fixed price upon its completion and AHIM's written acceptance of each payment

Milestone listed in *Section 7: Cost Proposal Requirements*. This list represents each and every payment deliverable for all activities described in *Section 4: Scope of Work*. Prices for each payment deliverable will be based on the Bidder's Cost Proposal as finalized in the Contract resulting from this procurement.

Ten percent (10%) of the price of each payment deliverable proposed on *Pricing Schedule B* in the Contractor's Cost Proposal as finalized in the Contract will be retained until completion and AHIM's written acceptance of all implementation activities (requirements definition, design, development, testing, training, conversion/migration, and implementation) as stated in *Section 4: Scope of Work*. AHIM may, at its option, release the ten percent (10%) withholding of each deliverable should a payment deliverable be completed and approved prior to the schedule in the Contract or for any other reason it deems warranted.

9.4.2 Payment for Maintenance and Operations

AHIM will authorize monthly payments of the solution's Maintenance and Operations services upon approved invoices submitted by the Contractor. Maintenance and Operations payments will be contingent upon provisions for Service Level Agreements (SLAs) as described in *Appendix J* of this RFP.

Monthly payments will include the following:

- Maintenance and Operations Services – AHIM shall pay the Contractor a base annual amount for maintenance and operations of the Solution and related systems. The Maintenance and Operations Price will include hosting, operations, maintenance, and related costs. These costs shall be invoiced on a monthly basis at a rate agreed to between AHIM and the successful Bidder. The Maintenance and Operations Price shall be based on the monthly amount proposed in *Price Sheet C* in *Section 7: Cost Proposal Requirements* in the Contractor's Cost Proposal and finalized in the Contract resulting from this procurement.
- AHIM will reimburse the Contractor for any pass-through expenses proposed in the Cost Proposal and approved in the Contract.

9.4.3 Payments for Modification Services

Monthly Maintenance and Operations payments will include costs for modification services provided within the defined section of this RFP and *Price Sheet C* in *Section 7: Cost Proposal Requirements*. In addition, AHIM shall pay the Contractor for any additional modifications of the system that exceed the Modification Hours defined in *Price Sheet C* in *Section 7: Cost Proposal Response Requirements* to reflect additional customer-required changes as prioritized and approved by AHIM. The hourly rate for these services shall be as proposed by *Price Sheet D* in *Section 7: Cost Proposal Requirements* in the Contractor's Cost Proposal and finalized in the Contract resulting from this procurement.

9.4.4 Other Payments

No other payments will be made for deliverables or services provided under this contract without written amendment of the Contract. No separate payment will be made for Project Initiation or Services.

9.5 Damages

9.5.1 Actual Damages and Liquidated Damages

AHIM reserves the right to assess actual or liquidated damages upon the Contractor's failure to provide timely services required pursuant to the Contract. The Contractor shall be given 15 days' notice to respond before AHIM makes the assessment. Any assessment will be offset against the subsequent monthly payment(s) to the Contractor. If liquidated damages are known to be insufficient, then AHIM has the right to pursue actual damages. Assessment of any actual or liquidated damages does not waive any other remedies available to AHIM pursuant to this Contract or state or federal law. Liquidated damages can be found in *Appendix J* of this RFP.

9.5.2 Other Damages

If the Contractor's failure to perform satisfactorily requires AHIM to contract with another person or entity to perform services required of the Contractor under the Contract, upon notice setting forth the services and liquidated damages, AHIM may retain from Contractor payment(s) in an amount commensurate with the costs anticipated to be incurred, as described above. AHIM shall account to the Contractor for costs incurred and return any excess amount to the Contractor. If the amount withheld is not sufficient, the Contractor shall immediately reimburse AHIM the difference or AHIM may offset from any payment(s) due the Contractor. The Contractor will cooperate fully with the supplemental Contractor and provide any necessary assistance to implement the terms of its agreement for services with the supplemental contractor.

9.6 Cost or Pricing Data

The Contractor certifies that the prices submitted in response to this RFP have been arrived at independently and without, for the purpose of restricting competition, any consultation, communication, or agreement with any other bidder, competitor, or conflicted entity relating to those prices, the intention to submit a bid, or the methods or factors used to calculate the prices bid.

9.7 Publicity

News release(s), media interviews or other publicity by a Bidder pertaining to this RFP or any portion of the project shall not be made without the prior written approval of AHIM. Failure to comply with this requirement is deemed to be a valid reason for disqualification of the Bidder's proposal.

The Contractor agrees not to use AHIM's name, trademark, service marks, type treatment, or any data resulting from this RFP or the Contract as part of any commercial advertising or proposal without the express prior written consent of AHIM in each instance.

9.8 Subcontracting

To the fullest extent practicable, the Contractor shall enter into contracts with Arkansas businesses, employ citizens of Arkansas to staff, and provide support and other services for AHIM.

The Contractor is solely responsible for the fulfillment of the contract terms with AHIM. AHIM will make payments only to the Contractor. The Contractor will include all proposed subcontractors in its

response to this RFP.

The Contractor may negotiate and enter into contracts or agreements with subcontractors (with prior written consent of AHIM) to the benefit of the Contractor and the State as long as the subcontractors meet all established criteria and provide the services in a manner consistent with the minimum standards specified. All such agreements shall be in writing and shall specify the activities and responsibilities delegated to the subcontractor. The contracts must also include provisions for revoking delegation or imposing other sanctions if the subcontractor's performance is inadequate. AHIM reserves the right to approve any subcontractor utilized by the Contractor. AHIM reserves the right to inspect all subcontract agreements at any time during the contract period. Any subcontract may be subject to the AHIM's prior review and approval. The Contractor's subcontractor shall submit evidence or other documentation from the Arkansas State Tax Commission, showing all delinquent taxes, if any, levied or accrued under State law against the subcontractor have been paid.

No subcontract or agreement the Contractor enters into with respect to the performance under this contract shall in any way relieve the Contractor of any responsibility for any performance required of it by this contract. The Contractor shall provide AHIM immediate notice in writing by registered or certified mail of any action or suit filed against it by any subcontractor or provider. Furthermore, the Contractor shall make prompt notice of any claim against it or one that might result in litigation related in any way to the contract with the State of Arkansas. The Contractor shall designate itself as the sole point of recovery for any subcontractor.

Any use of subcontractors by the Contractor will not obligate AHIM as a party to the subcontract, nor create any right, claim, or interest for the subcontractor against AHIM, its agents, employees, representatives, or successors.

9.8.1 Anti-Assignment

The Contractor shall not sell, transfer, assign, or otherwise dispose of its benefits, duties, or obligations of this Contract (whether by operation law, reorganization, reverse triangular merger, or otherwise) without the express written consent of AHIM.

9.9 Ownership Rights

9.9.1 Ownership of Proposal

AHIM shall have the right to use, monetize, license, seek patent protection for and otherwise exploit in any manner all ideas presented in any proposal unless a Bidder presents a statement of objection in its proposal. In no event will such objections be considered as valid with respect to the exploitation of such ideas; 1) that are not the proprietary information of the Bidder as evidenced by a filed United States patent application (with a filing date that predates the date of the RFP and is so identified in its proposal); or 2) that were known to AHIM before submission of such proposal; or 3) that properly became known to AHIM, thereafter, through other sources or through acceptance of the Bidder's proposal.

9.9.2 Ownership of Documents

Where activities supported by this Contract produce original writings, sound recordings, pictorial

reproductions, drawings, or other tangible embodiments of creative ideas and works of any similar nature, AHIM shall own all right, title and interest in all intellectual property rights therein, and Contractor hereby assigns and agrees to assign to AHIM any and all right and title in and to such that Contractor may have. Contractor may retain a limited, revocable, personal, non-sublicensable, royalty-free license under AHIM's copyrights to use such materials solely for Contractor's internal business purposes, subject to Contractor's continuing obligation to preserve the confidentiality, if any, of such materials.

9.9.3 Ownership of Information and Data

All data, electronic or otherwise, collected by the Contractor and all documents, notes, programs, databases (and all applications thereof), files, reports, studies, code, software, domain names, trademarks, source identifiers, trade secrets, works of authorship and/or other material authored, invented, conceived, reduced to practice, collected or prepared by the Contractor or its agents, employees, delegates or subcontractors in connection with this Contract, whether completed or in progress (collectively, the "Materials"), shall be the property of AHIM, and Contractor hereby assigns and agrees to assign to AHIM any and all right and title in and to such Materials that Contractor may possess. Accordingly, Contractor shall obtain from all persons engaged or employed by Contractor (under the Contract to perform or create any Materials) an assignment of intellectual property rights. AHIM hereby reserves all rights to the databases and all applications thereof and to any and all information and/or Materials prepared in connection with this Contract. The Bidder and Contractor are prohibited from use of the above described information and/or materials without the express written approval of AHIM.

9.10 Interpretations / Changes / Disputes

9.10.1 Amendment or Modification

Any amendment or modification of the Contract must be written and signed by both parties.

9.10.2 Conflict of Language

In the event of a conflict in language among any of the components of the Contract, this RFP shall govern. AHIM reserves the right to clarify any Contractual relationship in writing and such clarification will govern in case of conflict with the requirements of this RFP. Any ambiguity in this RFP shall be construed in favor of AHIM.

9.10.3 Waiver

No covenant, condition, duty, obligation, or undertaking contained in or made a part of this Contract will be waived except by the written agreement of the parties, and forbearance or indulgence in any other form or manner by either party in any regard whatsoever shall not constitute a waiver of the covenant, condition, duty, obligation, or undertaking to be kept, performed, or discharged by the party to which the same may apply; and until complete performance or satisfaction of all such covenants, conditions, duties, obligations, and undertakings, the other party shall have the right to invoke any remedy available under law or equity, notwithstanding any such forbearance or indulgence.

9.10.4 Severability

If any provision of the Contract (including items incorporated by reference) is declared or found to be illegal, unenforceable, or void, then both AHIM and the Contractor shall be relieved of all obligations arising under such provision; if the remainder of the Contract is capable of performance, it shall not be affected by such declaration or funding and shall be fully performed.

AHIM may at any time, by written order delivered to the Contractor at least 15 days prior to the commencement date of such change, make administrative changes within the general scope of the contract. If such change(s) causes an increase or decrease in the cost of the performance of any part of the work under the contract, an adjustment commensurate with the change in the cost of performance under this contract will be made in the contract price or delivery schedule, or both. Any claim by the Contractor for adjustment under this clause must be asserted in writing to AHIM within 15 days from the date of receipt by the Contractor of the notification of change. Failure of the parties to agree to any adjustment will be a dispute within the meaning of *Section: 9.10.5* herein. Nothing in this case, however, will in any manner excuse the Contractor from proceeding diligently with the contract as changed.

If the parties are unable to reach agreement within 15 days of receipt of the Contractor's cost estimate, AHIM will make a determination of the revised price and the Contractor will proceed with the work according to a schedule approved by AHIM subject to the determination of price pursuant to the *Section:*

9.10.5 herein. Nothing in this section will in any manner excuse the Contractor from proceeding diligently with the contract as changed.

9.10.5 Disputes

If a dispute arises between the parties regarding their rights or obligations under this Agreement, the parties shall first attempt to settle the dispute by direct discussions. If the dispute is not settled by direct discussions, then the parties agree to endeavor to settle the dispute in an amicable manner by mediation administered by the American Arbitration Association under its Commercial Mediation Rules. Thereafter, any unresolved dispute arising from or relating to this Agreement or a breach of this Agreement shall be resolved as provided by this Agreement and by law. The State and federal courts of Arkansas have exclusive jurisdiction, and venue for litigation. All other proceedings shall be located in Pulaski County, Arkansas.

9.10.6 Cost of Litigation

In the event that AHIM deems it necessary to take legal action to enforce any provision of the Contract, the Contractor shall bear the cost of such litigation, as assessed by the court, in which AHIM prevails. AHIM shall not bear any of the Contractor's attorney fees or other cost of litigation for any legal actions initiated by the Contractor against AHIM regarding the provisions of the Contract. Legal action shall include administrative proceedings.

9.10.7 Attorney Fees

The Contractor agrees to pay reasonable attorney fees incurred by AHIM in enforcing this agreement

or otherwise reasonably related thereto.

9.11 Status of the Contractor

9.11.1 Independent Contractor

Contractor's status under this Agreement shall be that of an independent contractor and not that of an employee of AHIM. Nothing contained in this Agreement shall be deemed or construed to create a partnership or joint venture between the parties, an employer-employee relationship or any other relationship between the parties that could result in any liability of AHIM for any indebtedness, liabilities, or obligations of Contractor except as expressly provided in this Agreement.

- A. **Supervision of Contractor:** In accordance with Contractor's status as an independent contractor, AHIM shall not have the right to control the means or methods by which Contractor performs the services, as set forth in this Agreement. Notwithstanding the foregoing, AHIM shall have the right to control or direct Contractor as to the result to be accomplished under this Agreement and with respect to the services provided herein.
- B. **As an independent contractor:** 1) Contractor shall be solely responsible for all federal, state, and local payment, withholding, and filing requirements for payroll, income, self-employment, retirement, disability, or unemployment taxes, assessments, or regulations, and 2) Contractor shall be ineligible for any vacation, sick leave, pension, bonus, insurance, or other benefit now or in the future established by AHIM for employees of AHIM. All applicable tax payments and withholdings, if any, with respect to services rendered under this Agreement are the sole responsibility of Contractor, which responsibility Contractor agrees to carry out as required by applicable law. Contractor shall indemnify and hold AHIM harmless from any and all loss or liability arising from Contractor's failure to make any appropriate income tax payments, self-employment tax payments or other payments required on behalf of Contractor.

9.11.2 Employment Practices

The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, gender, national origin, age, marital status, political affiliations, or disability. The Contractor must act affirmatively to ensure that employees, as well as applicants for employment, are treated without discrimination because of their race, color, religion, gender, national origin, age, marital status, political affiliation, or disability. Such action shall include, but is not limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

The Contractor shall comply with the non-discrimination clause contained in Federal Executive Order 11246, as amended by Federal Executive Order 11375, relative to Equal Employment Opportunity for all persons without regard to race, color, religion, sex, or national origin, and the implementing rules and regulations prescribed by the Secretary of Labor and with Title 41, Code of Federal Regulations, Chapter 60. The Contractor shall also comply with the Civil Rights Act of

1964 and related State laws and regulations, if any.

If AHIM finds that the Contractor is not in compliance with any of these requirements at any time during the term of this Contract, AHIM reserves the right to terminate this Contract or take such other steps as it deems appropriate, in its sole discretion.

9.11.3 Conflict of Interest

A bid shall not be considered for award if the price in the bid was not arrived at independently without collusion, consultation, communication, or agreement as to any matter relating to such prices with any other Bidder or with any competitor or conflicted entity.

A bidder shall include a certified statement in the proposal certifying that the bid was arrived at without any conflict of interest, as described above. Should a conflict of interest be detected at any time during the term of the Contract, the Contract shall be null and void and the Bidder shall assume all costs of this project until such time that a new Bidder is selected.

9.12 Risk Management

9.12.1 Indemnification

The Contractor agrees to indemnify, defend, save, and hold harmless AHIM, their officers, agents, employees, representatives, assignees, and Contractors from any and all claims and losses accruing or resulting to any and all the Contractor employees, agents, subcontractors, laborers, and any other person, association, partnership, entity, or corporation furnishing or supplying work, services, materials, or supplies in connection with performance of this Contract, and from any and all claims and losses accruing or resulting to any such person, association, partnership, entity, or corporation who may be injured, damaged, or suffer any loss by the Contractor in the performance of the Contract.

The Contractor agrees to indemnify, defend, save, and hold harmless AHIM, their officers, agents, employees, representatives, assignees, and Contractors against any and all liability, loss, damage, costs, or expenses that AHIM may sustain, incur, or be required to pay: 1) by reason of any person suffering personal injury, death, or property loss or damage of any kind either while participating with, or receiving services from, the Contractor under this Contract, or while on premises owned, leased, or operated by the Contractor or while being transported to or from said premises in any vehicle owned, operated, leased, chartered, or otherwise Contracted for or in the control of the Contractor or any officer, agent, or employee thereof; or

2) by reason of the Contractor or its employee, agent, or person within its scope of authority of this Contract causing injury to, or damage to the person or property of a person including, but not limited to, AHIM or the Contractor, their employees or agents, during any time when the Contractor or any officer, agent, employee thereof has undertaken or is furnishing the services called for under this Contract.

The Contractor agrees to indemnify, defend, save, and hold harmless AHIM, their officers, agents, employees, representatives, assignees, and Contractors against any and all liability, loss, damages, costs or expenses which AHIM or the State may incur, sustain or be required to pay by reason of the

Contractor, its employees, agents or assigns: 1) failing to honor copyright, patent or licensing rights to software, programs, or technology of any kind in providing services to AHIM; or 2) breaching in any manner the confidentiality or privacy obligations required pursuant to federal and state law and regulations, including but not limited to HIPAA or ACA.

The Contractor agrees to indemnify, defend, save, and hold harmless AHIM, their officers, agents, employees, representatives, assignees, and Contractors from all claims, demands, liabilities, and suits of any nature whatsoever arising out of the Contract because of any breach of the Contract by the Contractor, its agents or employees, including, but not limited to, any occurrence of omission or commission or negligence of the Contractor, its agents, or its employees.

If, in the reasonable judgment of AHIM, a default by the Contractor is not so substantial as to require termination and reasonable efforts to induce the Contractor to cure the default are unsuccessful and the default is capable of being cured by AHIM or by another resource without unduly interfering with the continued performance of the Contractor, AHIM may provide or procure such services as are reasonably necessary to correct the default. In such event, the Contractor shall reimburse AHIM for the cost of those services. AHIM may deduct the cost of those services from the Contractor's monthly administrative invoices. The Contractor shall cooperate with AHIM or those procured resources in allowing access to facilities, equipment, data, or any other Contractor resources to which access is required to correct the default. The Contractor shall remain liable for ensuring that all operational performance standards remain satisfied.

9.12.2 Insurance

Contractor shall provide the Insurance described in *Appendix L*.

9.12.3 Limitation of Liability

In recognition of the relative risks and benefits of the project to both the Contractor and AHIM, the risks have been allocated such that AHIM agrees, to the fullest extent permitted by law, to limit the liability of the Contractor to the Consultant for any and all claims, losses, costs, damages of any nature whatsoever or claims expenses from any cause or causes, including attorneys' fees and costs and expert witness fees and costs, so that the total aggregate liability of the Contractor to AHIM shall not exceed 1 ½ the total amount of the contract term including all phases. It is intended that this limitation apply to any and all liability or cause of action however alleged or arising, unless otherwise prohibited by law.

9.13 Confidentiality of Information

The Contractor shall comply with all obligations of privacy or confidentiality that may arise from any State and federal privacy laws. No information, documents or other material provided to or prepared by the Contractor deemed confidential by AHIM pursuant to State and federal privacy laws, shall be made available to any person or organization without the prior approval of AHIM. Any liability resulting from the wrongful disclosure of confidential information on the part of the Contractor shall rest with the Contractor.

9.14 Right of Inspection

AHIM, CMS, the U.S. Department of Health and Human Services (DHHS), the General Accounting Office (GAO), the Comptroller General of the United States, the Office of the Inspector General (OIG), or their authorized representatives shall, during normal business hours, have the right to enter into the premises of a Bidder and/or all subcontractors and providers, or such other places where duties under the contract are being performed, to inspect, monitor, or otherwise evaluate the work being performed. The Bidder must provide access and assistance as required by AHIM, and refusal by the Bidder to allow access to all such documents, papers, letters, electronic files, or any and all other materials will constitute a breach of any resulting contract. All inspections and evaluations shall be performed in such a manner as to not unduly delay the Contractor's work.

9.15 Contractor Compliance Issues

The Contractor agrees that all work performed as part of this Contract will comply fully with administrative and other requirements established by federal and state laws, regulations, and guidelines, and assumes responsibility for full compliance with all such laws, regulations, and guidelines, and agrees to fully reimburse AHIM for any loss of funds, resources, overpayments, duplicate payments, or incorrect payments resulting from noncompliance by the Contractor, its staff, or agents, as revealed in any audit.

9.15.1 Federal, State, and Local Taxes

Unless otherwise provided herein, the Contract price shall include all applicable federal, state, and local taxes.

The Contractor shall pay all taxes lawfully imposed upon it with respect to this Contract or any product delivered in accordance herewith. AHIM makes no representation whatsoever as to exemption from liability to any tax imposed by any governmental entity on the Contractor.

9.15.2 License Requirements

AHIM does not tolerate the possession or use of unlicensed copies of proprietary software. Contractor warrants that it has or shall obtain any license/permits that are required prior to and during the performance of work under this Contract. The Contractor shall be responsible for any penalties or fines imposed as a result of unlicensed or otherwise defectively titled software or other third-party intellectual property.

The Contractor, without exception, shall indemnify, defend and hold harmless AHIM and its agents, officers, attorneys, directors, and employees from liability of any nature or kind, including cost and expenses for or on account of any claim or allegation that any of the Materials infringe the intellectual property rights of any third party. AHIM will provide prompt written notification of any such claim.

Further, if such a claim is made or is pending, the Contractor shall procure for AHIM the right to continue use of, replace, or modify the implicated Material(s) to render it (them) non-infringing while retaining

satisfactory functionality, as determined by AHIM. If none of the alternatives are reasonably available, the Contractor agrees to take back the Material(s) and refund the total amount AHIM has paid the Contractor under this Contract for preparation or use of such Material(s).

If the Contractor purports or proposes to use any third-party intellectual property in the performance of its duties under the Contract, it is mutually agreed and understood without exception that the proposed prices for Contract performance shall include all royalties or costs arising from the use of such design, device, or materials in any way involved in the work. This shall be without prejudice to AHIM's right to full intellectual property indemnification hereunder.

9.15.3 Records Retention Requirements

The Contractor shall maintain detailed records evidencing all expenses incurred pursuant to the Contract, the provision of services under the Contract, and complaints, for the purpose of audit and evaluation by AHIM and other federal or State personnel. All records, including training records, pertaining to the Contract must be readily retrievable within three (3) workdays for review at the request of AHIM and its authorized representatives. All records shall be maintained and available for review by authorized federal and State personnel during the entire term of the Contract and for a period of five (5) years thereafter, unless an audit is in progress or there is pending litigation. When an auditor pending litigation has not been completed at the end of the five (5) year period, records shall be retained until all issues are finally resolved.

9.15.4 HIPAA Compliance

The Contractor must ensure that all of its work complies with the HIPAA Privacy and Security Rules.

9.15.5 Bribes, Gratuities, and Kickbacks Prohibited

The receipt or solicitation of bribes, gratuities, considerations, and kickbacks is strictly prohibited.

No elected or appointed officer or other employee of the federal government, the State of Arkansas or the AHIM Board of Directors or staff shall benefit financially or materially from this Contract. No individual employed by AHIM, no member of the AHIM Board of Directors, or no employee or officer of the State of Arkansas shall be permitted any share or part of this Contract or any benefit that might arise therefrom.

9.15.6 Small and Minority Businesses

AHIM encourages the employment of small business and minority business enterprises. Therefore, the Contractor shall report, separately, the involvement in this Contract of small businesses and businesses owned by minorities and women. Such information shall be reported on an invoice annually on the Contract anniversary and shall specify the actual dollars Contracted to-date with such businesses, actual dollars expended to date with such businesses, and the total dollars planned to be contracted for with such businesses on this Contract.

9.15.7 Suspension and Debarment

The Contractor certifies that it is not suspended or debarred under federal law and regulations or any

other State's laws and regulations.

9.16 Project Work Schedule

During the project initiation, Contractor and AHIM will develop a mutually agreed upon work schedule including the division of responsibility between AHIM's staff and Contractor's staff. It is understood by the parties that the project work schedule must be in place prior to any work being performed. Once this mutually agreed upon work schedule, which will identify specific time frames and deliverable target dates for this project, has been developed, it will be incorporated into and made a part of the contract. The dates in the work schedule will define the agreed upon period of performance. The parties acknowledge that the work schedule will evolve and change from time to time upon the mutual written agreement of both parties. The parties agree that the deliverables and schedule set forth in the latest version of the work schedule will take precedence over any prior plans.

9.17 Warranty

Contractor represents and warrants that all work performed hereunder, including but not limited to Marketplace technology solution services, consulting, conversion, training, and technical support shall be performed by competent personnel, shall be of professional quality consistent with generally accepted industry standards for the performance of such services, and shall comply in all respects with the requirements of this RFP. For any breach of this warranty, the Contractor shall, for a period of ninety (90) days from the performance of service, perform the services again at no cost to AHIM, or if the Contractor is unable to perform the services as warranted, the Contractor shall reimburse AHIM the fees paid to the Contractor for the unsatisfactory services.

9.17.1 Warranty of Fiscal Integrity

The Contractor warrants that it is of sufficient financial solvency to assure AHIM of its ability to perform the requirements of the contract. The Contractor shall provide sufficient financial data and information to prove its financial solvency pursuant to *Section 6: Technical Proposal Requirements*.

9.17.2 Warranty of Solution

The Contractor shall provide a warranty on the implemented solution. The warranty shall encompass correction of defective software, functionality, and procedures that were considered to be within the scope of this procurement at no additional cost to AHIM. The warranty period will begin upon AHIM's Final Acceptance of the implemented solution for a period of three (3) years.

9.18 Federal Contract Clauses

The required *Federal Contract Clauses* for Expenditure of Federal Grant Funds is attached as *Appendix M* are incorporated by reference into this Agreement. To the extent the terms in the body of this Agreement directly conflict with any provision of the Federal Contract Clauses, the body of this Agreement shall govern.