

PINAL-GILA COUNCIL FOR SENIOR CITIZENS UNIFORM GENERAL TERMS AND CONDITIONS

1. Definitions As used in these terms and conditions, the following terms have the following meaning:
 - 1.1 **"Annex A"** is the annex to this Contract, which contains a description of the services to be delivered pursuant to this Contract.
 - 1.2 **"Annex B"** is the annex to this Contract, which contains the approved budget, level of service and any conditions for payment for the delivery of service(s) pursuant to this Contract.
 - 1.3 **"Attachment"** means any item the Solicitation requires the Offeror to submit as part of the Offer.
 - 1.4 **"Begin Date"** means the date that the contractor may start to provide services under this contract. The contractor will not be paid or reimbursed for contract services provided prior to the Begin Date. However, payments or reimbursements shall not be made under this contract until the effective date of this contract.
 - 1.5 **"Equipment"** means all vehicles, furniture, machinery, electronic data processing (EDP) equipment, software and all other equipment having an acquisition cost of \$1,000.00 or more, including all normal and necessary expenses incurred to make the equipment ready for its intended use (e.g., tax, freight, installation, assembly and testing charges, etc.), and with a useful life of greater than one year. Equipment as used herein does not include real property (e.g., land, buildings, structures or other facilities; improvements).
 - 1.6 **"Compensation"** means that part of this contract that contains the approved method of payment or reimbursement, which may include a budget or fee or rate for the delivery of service(s) pursuant to this contract. Compensation also means Cost or Price.
 - 1.7 **"Contract"** means the combination of the solicitation, including the Uniform and Special Instruction to offerors, the Uniform and Special Terms and Conditions, and the Specifications and Statement or Scope of Work; the Offer and any Best and Final Offers; and any Solicitation Amendments or Contract Amendments.
 - 1.8 **"Contract Amendment"** means a written document signed by the Procurement Officer that is issued for the purpose of making changes in the Contract.
 - 1.9 **"Contract Expenditures"** means expenditures made by the Contractor during the term of this Contract and pursuant to the approved budget for Contract Services set forth in Annex B.
 - 1.10 **"Contract Services"** means the services to be delivered by the Contractor that are so designated in Annex A.
 - 1.11 **"Contractor"** means any person or entity who has a Contract with Pinal-Gila Council for Senior Citizens.
 - 1.12 **"Days"** means calendar days unless otherwise specified.
 - 1.13 **"Department"** means Pinal-Gila Council for Senior Citizens (PGCSC_).
 - 1.14 **"Eligible Persons"** means the persons determined eligible for contract services in accordance with the criteria set forth herein.
 - 1.15 **"Exhibit"** means any item labeled as an Exhibit in the Solicitation or placed in the Exhibits section of the Solicitation.
 - 1.16 **"Fiscal Year"** means the period beginning with July 1 and ending June 30.
 - 1.17 **"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 of greater value is received.
 - 1.18 **"Materials"** means all property, including equipment, supplies, printing, insurance and leases of property but does not include land, a permanent interest in land or real property or leasing space.

- 1.19 **Procurement Officer** means the Pinal-Gila Council for Senior Citizens President/CEO, who is duly authorized to enter into and administer contract and make written determinations with respect to the contract or his or her designee.
- 1.20 **Reimbursement Ceiling** means the amount so designated in Annex B and is the maximum amount payable by Pinal-Gila Council for Senior Citizens under this contract.
- 1.21 **PGCSC** is Pinal-Gila Council for Senior Citizens , is the designated Area Agency on Aging (AAA) for Region V.
- 1.22 **Scope of Work** means the description of service(s) to be provided pursuant to this contract. Scope of Work also means "Service" .
- 1.23 **Services:** means the furnishing of labor, time or effort by a contractor or subcontractor which does not involve the delivery of a specific end product other than required reports and performance, but does not include employment agreements or collective bargaining agreements.
- 1.24 **Subcontract** means any Contract, express or implied, between the Contractor and another party or between a subcontractor and another party delegating or assigning, in whole or in part, the making or furnishing of any material or any service required for the performance of the Contract.
- 1.25 **Vulnerable adult** means an individual who is eighteen (18) years of age or older who is unable to protect him/herself from abuse, neglect or exploitation by others because of a physical or mental impairment.

2. Contract Interpretation

- 2.1 **Arizona Law.** The Arizona law applies to this Contract including, where applicable, the Uniform Commercial Code as adopted by the State of Arizona and the Arizona Procurement Code, Arizona Revised Statutes (A.R.S.) Title 41, Chapter 23, and its implementing rules, Arizona Administrative Code (A.A.C.) Title 2, Chapter 7.
- 2.2 **Implied Contract Terms.** Each provision of law and any terms required by law to be in this Contract are a part of this Contract as if fully stated in it.
- 2.3 **Contract Order of Precedence.** In event of a conflict in the provisions of the Contract, as accepted by the State and as they may be amended, the following shall prevail in the order set forth below:
 - 2.3.1 Special Terms and Conditions;
 - 2.3.2 Uniform Terms and Conditions;
 - 2.3.3 PGCSC Uniform General Terms and Conditions;
 - 2.3.4 Annex A, Statement or Scope of Work;
 - 2.3.5 Specifications – Methodology;
 - 2.3.6 Annex B, Budget and Conditions of Payment
 - 2.3.7 Attachments;
 - 2.3.8 Exhibits; and
 - 2.3.9 Documents referenced or included in Solicitation.
- 2.4 **Relationship of Parties.** The Contractor under this Contract is an independent Contractor. Neither part to this Contract shall be deemed to be the employee or agency of the other party to the Contract. In the event that the Contractor or its personnel is sued or prosecuted for conduct arising from the contract, the Contractor or their personnel will not be represented by PGCSC.
- 2.5 **Severability.** The provisions of this contract are severable. Any term or condition deemed illegal or invalid shall not affect any other term or condition of the Contract.
- 2.6 **No Parol Evidence.** This Contract is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms used in the document and no other understanding either oral or in writing shall be binding.

- 2.7 **No Waiver.** Either party's failure to insist on strict performance of any term or condition of the Contract shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.

3. Contract Administration and Operation.

- 3.1 **Records.** Under A.R.S. §35-214 and §35-215, the Contractor shall retain and shall contractually require each subcontractor to retain all data and other "records" relating to the acquisition and performance of the Contract for a period of five years after the completion of the Contract. All records shall be subject to inspection and audit by the State and PGCSC at reasonable times. Upon request, the Contractor shall produce a legible copy of any or all such records.

- 3.1.1 Contract service records will be maintained in accordance with this contract. Any such records not maintained shall mandate an audit exception in the amount of the inadequately documented expenditures. Records shall, as applicable, meet the following standards:

- 3.1.1.1 Adequately identify the service provided and each service recipient's application for contract and subcontract activities;

- 3.1.1.2 Include personnel records which contain application for employment, job titles and descriptions, hire and termination dates, wage rates, and effective dates of personnel actions affecting any of these items;

- 3.1.1.3 Include time and attendance records for individual employees to support all salaries and wages paid;

- 3.1.1.4 Include records of the source of all receipts and the deposit of all funds received by the contractor;

- 3.1.1.5 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 contract;

- 3.1.1.6 Include a complete general ledger with accounts for the collection of all costs and/or fees applicable to the contract; and,

- 3.1.1.7 Include copies of lease/rental agreements, mortgages and/or any other agreements which in any way may affect contract expenditures.

- 3.2 **Non-Discrimination.** The Contractor 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.

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

- 3.2.2 If contractor is an Indian Tribal Government, contractor shall comply with the Indian Civil Rights Act of 1968. It shall be permissible for an Indian Tribal contractor to engage in Indian preference in hiring.

- 3.2.3 The contractor shall comply with Title VI of the Civil Rights Act of 1964, which prohibits the denial of benefits of or participation in contract services on the basis of race, color, or national origin. The contractor shall comply with the requirements of Section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of handicap, in delivering contract services; and with Title II of the Americans with Disabilities Act, and the Arizona Disability Act, which prohibit discrimination on the basis of physical or mental disabilities in the provision of contract programs, services and activities.

- 3.2.4 The following shall be included in all publications, forms, flyers, etc. that are distributed to recipients of contract services:

"Under the Americans with Disabilities Act, the (*insert Contractor name here*) must make a reasonable accommodation to allow a person with a disability to take part in a program, service, or activity. For example, this means that if necessary, the (*insert Contractor name here*) must provide sign language interpreters for people who are deaf, a wheelchair accessible location, or enlarged print materials. It also means that the (*insert Contractor name here*) will take any other reasonable action that allows you to take part in and understand a program or activity, including making reasonable changes to an activity. If you believe that you will not be able to understand or take part in a program or activity because of your disability, please let us know of your disability needs in advance if at all possible. Please contact: (*insert Contractor contact person and phone number here*)"

- 3.3 **Audit.** Pursuant to ARS §35-214, at any time during the term of this Contract and five (5) years thereafter, the Contractor's or any subcontractor's books and records shall be subject to audit by the State and PGCSC, and where applicable, the Federal Government, to the extent that the books and records relate to the performance of the Contract or Subcontract.
- 3.3.1 In compliance with the Federal Single Audit Act (31 U.S.C. Sections 7501-7507), as amended by the Single Audit Act Amendment of 1996 (P.L. 104 to 156), contractors designated as subrecipients, as prescribed by the President's Council on Integrity and Efficiency Position Statement No. 6, expending Federal funds from all sources totaling \$300,000 or more (\$500,000 for fiscal years ending after December 31, 2103) must have a yearly audit conducted in accordance with the audit and reporting standards as prescribed in OMB Circular A-133 (A-133). The audit must include the Reporting Package as outlined in A-133. The Department's contract numbers and award amounts must be included in a separate schedule, if not included on the Schedule of Federal Financial Assistance. A copy of the Audit Report, Management Letter and Auditors Opinion must be submitted to the Department's office of Audit and Management Services within thirty (30) days after completion of the audit to the Department person designated to receive notices.
- 3.3.2 All contractors are subject to the programmatic and fiscal monitoring requirement 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 contractors designated as vendors is an annual financial audit, which includes Department contract numbers and award amounts. The Audit Report, Management Letter and Auditor's Opinion must be submitted to the Department person designated to receive notices within thirty (30) days after completion of the audit.
- 3.3.3 As prescribed in OMB Circular A-133, for-profit subrecipients are subject to compliance requirements established by the Department. Methods to ensure compliance for Federal awards made to for-profit subrecipients may include pre-awards audits, Department monitoring during the contract, and post-award audits.
- 3.3.4 Audits of non-profit corporation 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.
- 3.4 **Facilities Inspection and Materials Testing.** The Contractor agrees to permit access to its facilities, subcontractor facilities and the Contractor's processes or services, at reasonable times for inspection of the facilities or materials covered under this Contract. PGCSC shall also have the right to test at its own cost the materials to be supplied under this Contract. Neither inspection at the Contractor's facilities nor materials testing shall constitute final acceptance of the materials or services. If PGCSC determines non-compliance of the materials, the Contractor shall be responsible for the payment of all costs incurred by the State for testing and inspection.
- 3.5 **Notices.** Notices to the Contractor required by this Contract shall be made by the PGCSC to the person indicated on the Offer and Acceptance form submitted by the Contractor unless otherwise stated in the Contract. Notices to PGCSC required by the Contract shall be made by the Contractor to the Solicitation Contact Person indicated on the Solicitation cover sheet, unless otherwise stated in the Contract. An authorized Procurement Officer and an Authorized Contractor representative may change their respective person to whom notice shall be given by written notice and an amendment to the Contract shall not be necessary. In the event that no person is designated to receive notices, then notices shall be sent to the contract signatory. All notices shall reference the contract number.

- 3.5.1 The Contractor shall give written notice to PGCSC of changes to the following, and a written amendment to the contract shall not be necessary and all such notices shall reference the contract number:
 - 3.5.1.1 Change of address of business office;
 - 3.5.1.2 Change of telephone number;
 - 3.5.1.3 Changes in the name and/or address of the person to who notices are to be sent;
 - 3.5.1.4 Changes in contract-related personnel positions of the contractor which do not affect staffing ratios, staff qualifications or specific individuals required under this contract;
 - 3.5.1.5 Change in the name of the contractor, where the ownership or responsible entity remains the same; or
 - 3.5.1.6 In a fixed price with price adjustment contract, whenever there is less than a 10% increase in any budget category; any such increase must be offset by an equal value decrease in another budget category or categories.
 - 3.5.1.7 Where a change does not fall within 3.5 or its subsections, the Contractor must obtain approval from the Procurement Officer prior to effecting the changes.
- 3.6 **Advertising Publishing and Promotion of Contract.** The Contractor shall not use, advertise or promote information for commercials benefit concerning this Contract without the prior written approval of the Procurement Officer.
- 3.7 **Property of PGCSC.** Any materials, including reports, computer programs and other deliverables, created under this Contract are the sole property of PGCSC. The Contractor is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. The Contractor shall not use or release these materials without the prior written consent of PGCSC.
- 3.8 **Ownership of Intellectual Property.** Any and all intellectual property, including but not limited to copyright, invention, trademark, tradename, service mark and/or trade secrets created or conceived pursuant to or as a result of this contract and any related subcontract ("Intellectual Property"), shall be work made for hire and PGCSC shall be considered the creator of such Intellectual Property. PGCSC shall own the entire right, title and interest to the Intellectual Property throughout the world. Contractor shall notify PGCSC, within thirty (30) days, of the creation of any Intellectual Property by it or its subcontractor(s). Contractor, on behalf of itself and any subcontractor(s), agrees to execute any and all document(s) necessary to assure ownership of the Intellectual Property vests in PGCSC and shall take no affirmative actions that might have the effect of vesting all or part of the Intellectual Property in any entity other than PGCSC. The intellectual Property shall not be disclosed by contractor or its subcontractor(s) to any entity not PGCSC without the express written authorization of PGCSC.

4. Costs and Payments

- 4.1 **Payments.** Payments shall comply with the requirements of A.R.S. Titles 35 and 41, Net 30 days. Upon receipt and acceptance of goods or services, the Contractor shall submit a complete and accurate invoice for payment from PGCSC within thirty (30) days.
 - 4.1.1 Payments shall be made according to the methods of compensation defined as follows:
 - 4.1.1.1 **Rate (or) Fixed Price** – The contractor is paid a specified amount for each unit of service or deliverable as designated in the contract, not to exceed the maximum number of units indicated for each contract service/deliverable. PGCSC may authorize unit in incremental amounts throughout the term of the contract by amending the contract.

Fixed Price with Price Adjustment – Reimburse to the contractor is in accordance with actual, allowable costs incurred consistent with each service budget and/or budget summary not to exceed the service reimbursement ceiling. The contractor shall furnish PGCSC with an accounting of actual costs incurred consistent with the categories set forth in the service budget. Budget categories, to include cost items in a

category, may be deleted, added, or modified by a contract amendment, provided that the Total Service Cost shall not increase unless a price increase is permitted by renewal or extension of the contract.

- 4.1.1.2 The contractor shall report contract expenditures to PGCSC in the manner prescribed by the "Reporting Requirements" section of these terms and conditions. Upon receipt of applicable, accurate and complete reports, PGCSC shall authorize payment or reimbursement in accordance with the method(s) indicated by this contract.
- 4.1.1.3 If the contractor is in any manner in default in the performance of any obligation under this contract, or if audit exceptions are identified, PGCSC may, at its option and in addition to other available remedies, either adjust the amount of payment or withhold payment until satisfactory resolution of the default or exception.
- 4.1.1.4 Under no circumstances shall PGCSC make payment to the contractor that exceeds the contract or service reimbursement ceiling without an amendment to this contract. Under no circumstances shall PGCSC make payment to the contractor for service performed prior to or after the term of the contract without timely extension or renewal of the contract.
- 4.1.1.5 The Contractor may offer a price reduction adjustment at any time during the term of the contract. Any price reduction shall be executed by a contract amendment.
- 4.2 **Delivery.** Unless stated otherwise in the Contract, all prices shall be F.O.B. Destination and shall include all freight delivery and unloading at the destination.
- 4.3 **Applicable Taxes.**
- 4.3.1 **Payment of Taxes.** The Contractor shall be responsible for paying all applicable taxes.
- 4.3.2 **State and Local Transaction Privilege Taxes.** PGCSC is subject to all applicable state and local transaction privilege taxes. Transaction privilege taxes apply to the sale and are the responsibility of the seller to remit. Failure to collect taxes from the buyer does not relieve the seller from its obligation to remit taxes.
- 4.3.3 **Tax Indemnification.** Contractor and all subcontractor shall pay all Federal, state and local taxes applicable to its operation and any persons employed by the Contractor. Contractor shall, and require all subcontractors to hold the State and PGCSC harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under Federal, and/or state and local laws and regulations and any other costs including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.
- 4.3.4 **IRS W9 Form.** In order to receive payment the Contractor shall have a current I.R.S. W9 Form on file, unless not required by law.
- 4.4 **Availability of Funds.** PGCSC may reduce payments or terminate this contract without further recourse, obligation or penalty in the event that insufficient funds are appropriated or allocated. PGCSC has sole and unfettered discretion in determining the availability of funds. PGCSC and the contractor may mutually agree to reduce reimbursement to the contractor when the payment type is Fixed Price with Price Adjustment by executing a contract amendment.
- 4.5 **Availability of Funds for the Next Fiscal Year.** Funds may not presently be available for performance under this Contract beyond the current fiscal year. No legal liability on the part of the PGCSC for any payment may arise under this Contract beyond the current fiscal year until funds are made available for performance of this Contract. PGCSC shall make reasonable efforts to secure such funds. PGCSC may reduce or terminate this contract without further recourse, obligation or penalty in the event that insufficient funds are appropriated. The PGCSC President/CEO shall have the sole and unfettered discretion in determining the availability of funds.
- 4.6 **Availability of Funds for the Current Fiscal Year.** Should the Legislature (State and/or Federal) or any funding source take action and reduce the appropriations or for any reason and these goods or services are not funded, PGCSC may take any of the following actions:
 - 4.6.1 Accept a decrease in price offered by the contractor;

- 4.6.2 Cancel the contract;
- 4.6.3 Cancel the contract and re-solicit the requirements.

5. Contract Changes

5.1 **Amendments.** This Contract is issued under the authority of the Procurement Officer who signed this Contract. The Contract may be modified only through a Contract Amendment within the scope of the Contract. Changes to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by a person who is not specifically authorized by the procurement officer in writing or made unilaterally by the Contractor are violations of the Contract and of applicable law. Changes, including unauthorized written Contract Amendments shall be void and without effect, and the Contractor shall not be entitled to any claim under this Contract based on those changes.

- 5.1.1 Change in the reimbursement ceiling;
- 5.1.2 Contract term, if extended and/or reduced without terminating the contract;
- 5.1.3 Service delivery methodology, the scope of work (change in the location of the delivery of service), or the level of service to be provided;
- 5.1.4 Ownership or legal entity responsible for the contract;
- 5.1.5 Personnel of the contractor, when the individual is indicated by name or qualification, in the contract;
- 5.1.6 Any other changes in the terms and conditions of the contract which Pinal-Gila Council for Senior Citizens deems substantial; or,
- 5.1.7 Except where contract special terms and conditions provide otherwise.

5.2 **Subcontracts.** The Contractor shall not enter into any Subcontract under this Contract for the performance of this contract without advance written approval of the Procurement Officer. The Contractor shall clearly list any proposed subcontractors and the subcontractor's proposed responsibilities. The Subcontract shall incorporate by reference the terms and conditions of this Contract.

5.2.1 The Contractor shall provide copies of subcontracts relating to the provision of contract services to PGCSC, upon request.

5.3 **Assignment and Delegation.** The Contractor shall not assign any right nor delegate any duty under this Contract without the prior written approval of the Procurement Officer. PGCSC shall not unreasonable withhold approval.

6. Risk and Liability

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

6.2 **Indemnification.**

6.2.1 **Contractor/Vendor Indemnification (Not Public Agency).** The parties to this contract agree that PGCSC shall be indemnified and held harmless by the contractor for the vicarious liability of the State as a result of entering into this contract. However, the parties further agree that PGCSC shall be responsible for its' own negligence. Each party to this contract is responsible for its' own negligence.

6.2.2 **Public Agency Language Only.** Each party (as 'indemnitor') agrees to indemnify, defend, and hold harmless the other party (as 'indemnitee') from and against any and all claims, losses, liability, costs or expenses

(including reasonable attorney's fees) hereinafter collectively referred to as 'claims') arising out of bodily injury of any person (including death) or property damage but only to the extent that such claims which result in vicarious/derivative liability to the indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the indemnitor, its' officers, officials, agents, employees, or volunteers.

6.3 Indemnification – Patent and Copyright. The Contractor shall indemnify and hold harmless PGCSC against any liability, including costs and expenses, for infringement of any patent, trademark or copyright arising out of Contract performance or use by PGCSC of materials furnished or work performed under this Contract. PGCSC shall reasonably notify the Contractor of any claim for which it may be liable under this paragraph. If the contractor is insured pursuant to A.R.P. § 41-621 and § 35-154, this section shall not apply.

6.4 Force Majeure

6.4.1 Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of Force majeure. The term "force majeure" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes acts of God; acts of the public enemy; war; riots; strikes; mobilization; labor disputes; civil disorders; fire; flood; lockouts; injunction-intervention-acts; or failure or refusals to act by government authority; and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence.

6.4.2 Force Majeure shall not include the following occurrences:

6.4.2.1 Late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, or an oversold condition of the market;

6.4.2.2 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

6.4.2.3 Inability of either the Contractor or any subcontractor to acquire or maintain any required insurance, bonds, licenses or permits.

6.4.3 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 working day, of the commencement thereof and shall specify the causes of such delay in such notice. Such notice shall be delivered or mailed certified-return receipt and shall make a specific reference to this article, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by Contract Amendment for a period of time equal to the time that results or effect of such delay prevent the delayed party from performing in accordance with this Contract.

6.4.4 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.

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

7. Warranties

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

7.2 **Quality.** Unless otherwise modified elsewhere in the terms and conditions, the Contractor warrants that, for one year after acceptance by PGCSC of the materials, they shall be;

- 7.2.1 Of a quality to pass without objection in the trade under the Contract description;
- 7.2.2 Fit for the intended purposes for which the materials are used;
- 7.2.3 Within the variations permitted by the Contract and are of even kind, quantity, and quality within each unit and among all units;
- 7.2.4 Adequately contained, packaged and marked as the Contract may require; and
- 7.2.5 Conform to the written promises or affirmations of fact made by the Contractor.
- 7.3 **Fitness.** The Contractor warrants that any material supplied to PGCSC shall fully conform to all requirements of the Contract and all representations of the Contractor, and shall be fit for all purposes and uses required by the Contract.
- 7.4 **Inspection/Testing.** The warranties set forth in subparagraphs 7.1 and 7.3 of this paragraph are not affected by inspection or testing of or payment for the materials by PGCSC.
- 7.5 **Year 2000**
 - 7.5.1 Notwithstanding any other warranty or disclaimer of warranty in this Contract, the Contractor warrants that all products delivered and all services rendered under this Contract 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 Contract. In addition, the defense of force majeure shall not apply to the Contractor's failure to perform specification requirements as a result of any date-related data Year 2000 issues.
 - 7.5.2 Additionally, notwithstanding any other warranty or disclaimer of warranty in this Contract, the Contractor warrants that each hardware, software, and firmware product delivered under this Contract shall be able to accurately process date/time data (including but not limited to calculation, comparing, and sequencing) from, into, and between the twentieth and twenty-first 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 Contract properly exchanges date-time data with it. If this Contract 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 Contract. In addition, the defense of force majeure shall not apply to the failure of the Contractor to perform any specification requirements as a result of any date-related data Year 2000 issues.
- 7.6 **Compliance With Applicable Laws.** The materials and services supplied under this Contract shall comply with all applicable Federal, state and local laws, and the Contractor shall maintain all applicable license and permit requirements.
 - 7.6.1 In accordance with A.R.S. § 36-557 (Purchase of community developmental disabilities services; application; contracts; limitation), as applicable, all recipients of contract services shall have all of the same specified rights as they would have if enrolled in a service program operated directly by PGCSC.
 - 7.6.2 Nothing in this contract shall be construed as a waiver of an Indian Tribe's sovereign immunity; nothing shall be construed as an Indian Tribe's consent to be sued, or as consent by an Indian Tribe to jurisdiction of any State Court.
 - 7.6.3 The Contractor shall comply with the requirements related to reporting to a peace officer or child protective services incidents of crimes against children as specified in A.R.S. § 13-3620.
 - 7.6.4 The Contractor shall comply with P.L. 101-121, Section 319 (21 U.S.C. section 1352) and 29 C.F.R. Part 93 which prohibit the use of Federal funds for lobbying at which state, in part: Except with the express authorization of

Congress, the Contractor, its employees or agents, shall not utilize any Federal funds under the terms of this contract to solicit or influence, or to attempt to solicit or influence, directly or indirectly, any member of Congress regarding pending or prospective legislation. Indian tribes, tribal organizations and any other Indian organizations are exempt from these lobbying restrictions with respect to expenditures that are specifically permitted by other Federal law.

7.6.5 The Contractor shall comply with all applicable state and federal statutes and regulations. This shall include A.R.S. §23-722.01 relating to new hire reporting, A.R.S. §23-722.02 relating to wage assignment orders to provide child support, and A.R.S. §25-535 relating to administrative or court-ordered health insurance coverage for children.

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

7.7.1 **Contractor's Representations and Warranties.** All representations and warranties made by the Contractor under this Contract shall survive the expiration or termination hereof. In addition, the parties hereto acknowledge that pursuant to A.R.S. § 12-510, except as provided in A.R.S. § 12-529, the State is not subject to or barred by any limitations of actions prescribed in A.R.S., Title 12, Chapter 5.

7.7.2 **Purchase Orders.** The Contractor shall, in accordance with all terms and conditions of the Contract, fully perform and shall be obligated to comply with all purchase orders received by the Contractor prior to the expiration or termination hereof, unless otherwise directed in writing by the Procurement Officer, including, without limitation, all purchase orders received prior to but not fully performed and satisfied at the expiration or termination of this Contract.

8 PGCSC's Contractual Remedies

8.1 **Right to Assurance.** If PGCSC in good faith has reason to believe that the Contractor does not intend to, or is unable to perform or continue performing under this Contract, the Procurement Officer may demand in writing that the Contractor give a written assurance of intent to perform. Failure by the Contractor to provide written assurance within the number of Days specified in the demand may, at PGCSC's options, be the basis for terminating the Contract under the Uniform Terms and Conditions, PGCSC Uniform General Conditions or other rights and remedies available by law or provided by the contract.

8.2 **Stop Work Order.**

8.2.1 PGCSC may, at any time, by written order to the Contractor, require the Contractor to stop all or any part, of the work called for by this Contract for a period(s) of days indicated by PGCSC after the order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage.

8.2.2 If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the Contractor shall resume work. The Procurement Officer shall make an equitable adjustment in the delivery schedule or Contract price, or both, and the Contract shall be amended in writing accordingly.

8.3 **Non-exclusive Remedies.** The rights and the remedies of PGCSC under this Contract are not exclusive.

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

8.5 **Right of Offset.** PGCSC shall be entitled to offset against any sums due the Contractor, any expenses or costs incurred by PGCSC, or damages assessed by PGCSC concerning the Contractor's non-conforming performance or failure to perform the Contract, including expenses, costs or damages described in the Uniform Terms and Conditions and PGCSC Uniform General Conditions.

9 Contract Termination

- 9.1 **Cancellation for Conflict of Interest.** Pursuant to A.R.S. § 38-511, PGCSC may cancel this Contract within three (3) years after Contract execution without penalty or further obligation of any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of PGCSC is or becomes at any time while the Contract or an extension of the Contract is in effect an employee of or a consultant to any other party to this Contract with respect to the subject matter of the Contract. The cancellation shall be effective when the Contractor receives written notice of the cancellation unless the notice specifies a later time. If the Contractor is a political subdivision of the State, it may also cancel this Contract as provided in A.R.S. § 38-511.
- 9.2 **Gratuities.** PGCSC may, by written notice, terminate this Contract, in whole or in part, if PGCSC determines that employment or a Gratuity was offered or made by the Contractor or a representative of the Contractor to any officer or employee of PGCSC for the purpose of influencing the outcome of the procurement or securing the Contract, an amendment to the Contract, or favorable treatment concerning the Contract, including the making of any determination or decision about contract performance. PGCSC, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three times the value of the Gratuity offered by the Contractor.
- 9.3 **Suspension or Debarment.** PGCSC may, by written notice to the Contractor, immediately terminate this Contract if PGCSC determines that the Contractor has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body. Submittal of an offer or execution of a contract shall attest that the contractor is not currently suspended or debarred. If the contractor becomes suspended or debarred, the contractor shall immediately notify PGCSC. The Contractor shall submit the Certification Regarding Debarment, Suspension and Voluntary Exclusion Lower Tier Covered Transactions form.
- 9.4 **Termination for Convenience.** PGCSC reserves the right to terminate the Contract, in whole or in part at any time, when in the best interests of PGCSC without penalty or recourse. Upon receipt of the written notice, the Contractor shall immediately stop all work, as directed in the notice, notify all subcontractors of the effective date of the termination and minimize all further costs to PGCSC. In the event of termination under this paragraph, all documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to PGCSC. The Contractor shall be entitled to receive just and equitable compensation for work in progress, work completed and materials accepted before the effective date of the termination. The cost principles and procedures provided in A.A. C. R2-7-701 shall apply.
- 9.5 **Termination for Default.**
- 9.5.1 In addition to the rights reserved in the Uniform Terms and Conditions and PGCSC Uniform General Conditions, PGCSC reserves the right to terminate the Contract in whole or in part due to the failure of the Contractor to comply with any term or condition of the Contract, to acquire and maintain all required insurance policies, bonds, licenses and permits, or to make satisfactory progress in performing the Contract. The Procurement Officer shall provide written notice of the termination and the reasons for it to the Contractor.
- 9.5.2 Upon termination under this paragraph, all goods, materials, documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to PGCSC on demand.
- 9.5.3 PGCSC may, upon termination of this Contract, procure, on terms and in the manner that it deems appropriate, materials or services to replace those under this Contract. The Contractor shall be liable to the State for any excess costs incurred by the State in procuring materials or services in substitution for those due from the Contractor.
- 9.5.4 The contract may immediately be terminated if PGCSC determines that the health or welfare or safety of service recipients is endangered.

- 9.6 **Continuation of Performance Through Termination.** The Contractor shall continue to perform, in accordance with the requirements of the Contract, up to the date of termination, as directed in the termination notice.
- 10 **Contract Claims.** All contract claims or controversies under this Contract shall be resolved according to A.R.S. Title 41, Chapter 23, Article 9, and rules adopted thereunder.
- 11 **Arbitration.** The parties to this Contract agree to resolve all disputes arising out of or relating to this contract through arbitration, after exhausting applicable administrative review, to the extent required by A. R. S. §12-1518, except as may be required by other applicable statutes (Title 41).
- 12 **Certification of Cost or Pricing Data.** By signing the offer and contract award form, the contract, change order, contract amendment or other official form, the Contractor is certifying that, to the best of the Contractor's knowledge and belief, any cost or pricing data submitted is accurate, complete and current as of the date submitted or other mutually agreed upon date. Furthermore, the price to PGCSC shall be adjusted to exclude any significant amounts by which PGCSC finds the price was increased because the contractor furnished cost and pricing data was inaccurate, incomplete or not current as of the date of certification. Such adjustment by PGCSC may include overhead, profit or fees. The certifying of cost or pricing data does not apply when contract rates are set by law or regulation.
- 13 **Fees and Program Income.** The contractor shall impose no fees or charges of any kind upon recipients for specific services authorized under this contract.
- 13.1 The Contractor shall solicit voluntary donations from program participants for services received. The Contractor shall not deny service to any program participant solely because of a refusal to make a donation.
- 13.2 Any income received by the Contractor or PGCSC, from participants contributions for services received, shall be reported in accordance with controlling law and regulation.
- 13.3 Contract Nutrition Providers must utilize Senior Center Nutrition Site Councils to assist in developing a suggested donation amount(s). Suggested donation amount(s) must be posted in a visible location at the Nutrition Site.
- 13.4 Solicitation of membership fees/dues is not permitted for services funded under this contract.
- 14 **Competitive Bidding.** The Contractor is authorized to purchase the supplies and equipment itemized in the contract for utilization in the delivery of contract services. Contractor shall procure all such supplies and equipment at the lowest practicable cost and shall purchase all non-expendable items having a useful life of nor more than one year and a acquisition cost of \$1,000 or more, through generally accepted and reasonable competitive bidding processes. Any procurement in violation of this provision shall be considered a financial audit exception.
- 15 **Confidentiality.** The Contractor 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 contract services. To the extent permitted by law, the contractor shall release information to PGCSC as required by the terms of this contract, by law or upon their request.
- 16 **Contract Extension.** PGCSC has no obligation to extend or renew this contract. However, this contract may be extended or renewed for multiple periods, or may be established as a multi-year contract in its entirety or in part at the sole option of PGCSC. The Procurement Officer may provide written notice to the Contractor that the contract is being extended for the period specified and a written amendment to the contract signed by both parties shall not be necessary. Any extension must be made prior to the end of the contract period specified in this contract.
- 17 **Contract Term.** The term of the resultant contract shall commence upon award and shall remain in effect for one (1) year or otherwise specified date, unless terminated, cancelled, or extended as otherwise provided herein.
- 17.1 PGCSC has no obligation to extend or renew this contract. However, this contract may be extended or renewed for multiple periods, or may be established as a multi-year contract in its entirety or in part at the sole option of PGCSC.

- 17.2 PGCSC shall have the unilateral right to extend the contract period for 3 additional one-year periods or portions thereof for a total contract term not to exceed 4 years. The terms and conditions of any such contract extension shall remain the same as the original contract.
- 17.3 Any extension or renewal must be made prior to the end of the contract period specified in this contract.
- 17.4 The Contractor shall not provide services prior to contract term commencing or after the end date of the contract. (No billable activity outside the effective contract dates.)
- 18 **Cooperation.** PGCSC may undertake or award other contracts for additional work related to the work performed by the Contractor, and the Contractor shall fully cooperate with such other Contractors and PGCSC employees, and carefully fit its own work to such other Contractor's work. The Contractor shall not commit or permit any act which will interfere with the performance of work by any other contractor or by PGCSC employees. The Contractor shall cooperate as PGCSC deems necessary, with the transfer of work, services, case records and files performed or prepared by the Contractor to other Contractor's.
- 19 **Equipment.**
- 19.1 If the Contractor is authorized to purchase equipment, it shall be itemized in the contract for utilization in the delivery of contract services. If equipment is purchased as authorized by this contract, the Contractor shall maintain complete and up-to-date inventory records for all equipment purchased hereunder. Equipment specifically designated within this contract, to be purchased in whole or part with PGCSC funds, shall be reported in accordance with PGCSC inventory policies and procedures. The contractor shall report equipment purchased with contract funds to PGCSC within thirty (30) days of purchase, perform an annual inventory of all equipment purchased with PGCSC funds and submit the equipment inventory form to PGCSC person designated to receive notices.
- 19.2 PGCSC shall retain an equitable interest equal to the purchase price paid, or a fair estimate or appraisal of current market value, whichever is greater, in all equipment purchased under this contract. PGCSC shall be included as a co-insured on any insurance policy which covers equipment purchased under this contract.
- 19.3 The Contractor shall not dispose of any equipment purchased under this contract without the prior written consent of PGCSC during and after the contract term. Such consent, if given, may include direction as to the means of disposition and the utilization of proceeds, including any necessary adjustment to the contract.
- 19.4 Upon termination of this contract, any equipment purchased under this contract shall be disposed of as directed by PGCSC and, if sold, PGCSC shall be compensated in the amount of its equitable interest.
- 20 **Evaluation.** PGCSC may evaluate, and the Contractor shall cooperate in the evaluation of, contract services. Evaluation may assess the quality and impact of contract services, either in isolation or in comparison with other similar services, and assess the contractor's progress and/or success in achieving the goals, objectives and deliverables set forth in this contract.
21. **Fair Hearings and Service Recipients' Grievances.**
- 21.1 The Contractor shall advise all applicants for and recipients of contract services of their right, at any time and for any reason, to present to the contractor and to PGCSC any grievances arising from the delivery of contract services, including, but not limited to, ineligibility determination, reduction of services, suspension or termination of services, or quality of services. PGCSC may assert its jurisdiction to hear the grievance or refer the matter to the appropriate authority.
- 21.2 The Contractor, whenever authorized by law, shall maintain a formal system acceptable to and approved by PGCSC for reviewing and adjudicating grievances by service recipients or subcontractors arising from the contract.
- 22 **Fingerprinting.** The provisions of A.R.S. § 46-141 (as may be amended) are hereby incorporated in their entirety as provisions of this contract. For reference, these provisions include, but are not limited to the following:
- 22.1 Personnel who are employed by the Contractor, whether paid or not, and who are required or allowed to provide services directly to juveniles or vulnerable adults shall submit a full set of fingerprints for the purpose of

- obtaining a state and federal criminal records check pursuant to section 41-1750 and Public Law 92-544 or shall apply for fingerprint clearance card within seven working days of employment.
- 22.2 The provider shall assume the costs of fingerprint check and may charge these costs to it fingerprinted personnel. PGCSC may allow all or part of the cost of fingerprint checks to be included as an allowable cost in a contract.
- 22.3 Except as provided in A.R.S.§46-141, this contract may be cancelled or terminated immediately if a person employed by the Contractor and who has contact with juveniles certifies pursuant to the provisions of A.R.S. § 46-141 (as may be amended) that the person is awaiting trial or has been convicted of any of the offenses listed therein in this state, or of acts committed in another state that would be offenses in this state, or if the person does not possess or is denied issuance of a valid fingerprint clearance card.
- 22.4 Personnel who are employed by any provider, whether paid or not, and who are required or allowed to provide services directly to juveniles shall certify on forms provided by the Department of Economic Security and notarized whether they are awaiting trial on or have ever been convicted of any of the offenses described in A.R.S. § 46-141 (F) (as may be amended).
- 22.5 Personnel who are employed by any provider, whether paid or not, and who are required or allowed to provide services directly to juveniles shall certify on forms provided by the Department of Economic Security and notarized whether they have ever committed any act of sexual abuse of a child, including sexual exploitation and commercial sexual exploitation, or any act of child abuse.
- 22.6 Federally recognized Indian Tribes or military bases may submit and the Department of Economic Security shall accept certifications that state that no personnel who are employed or who will be employed during the contract term have been convicted of, have admitted committing or are awaiting trial on any offenses as described in A.R.S. § 46-141 (F) (as may be amended).

23 **Insurance.**

INDEMNIFICATION CLAUSE: The parties to this contract agree that Pinal-Gila Council for Senior Citizens, the State of Arizona and the Department of Economic Security (DES) shall be indemnified and held harmless by Contractor for the vicarious liability of PGCSC, the State and/or DES as a result of entering into this contract. However, the parties further agree that PGCSC, the State of Arizona and DES shall each be responsible for its own negligence. Each party to this contract is responsible for its own negligence.

INSURANCE REQUIREMENTS:

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

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

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

23.1.1 **Commercial General Liability – Occurrence Form**

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

- General Aggregate \$2,000,000
- Products – Completed Operations Aggregate \$1,000,000
- Personal and Advertising Injury \$1,000,000
- Blanket Contractual Liability – Written and Oral \$1,000,000

- Fire Legal Liability \$ 50,000
- Each Occurrence \$1,000,000

- a. The policy shall be endorsed to **include coverage for sexual abuse and molestation.**
- b. The policy shall be endorsed to include the following additional insured language: ***"Pinal-Gila Council for Senior Citizens, The State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees shall be named as additional insured with respect to liability arising out of the activities performed by or on behalf of the Contractor". In addition, providers of Home Delivered Meals must also name (the current ALTCS provider agency) as additional insured. Providers in Gila County of Congregate Meals must name Gila County Government as an additional insured. All Providers utilizing the 5310 transportation vehicles leased by Pinal-Gila Council for Senior Citizens must also name the Arizona Department of Transportation as additional insured.***
- 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 Contractor.

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

23.1.2 Automobile Liability

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

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

- a. The policy shall be endorsed to include the following additional insured language: ***"Pinal-Gila Council for Senior Citizens, The State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees shall be named as additional insured's with respect to liability arising out of the activities performed by or on behalf of the Contractor, involving automobiles owned, leased, hired or borrowed by the Contractor". In addition, providers of Home Delivered Meals must also name (the current ALTCS provider agency) as additional insured. Providers in Gila County of Congregate Meals must name Gila County Government as an additional insured. All Providers utilizing the 5310 transportation vehicles leased by Pinal-Gila Council for Senior Citizens must also name the Arizona Department of Transportation as additional insured.***

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

23.1.4 Professional Liability (Errors and Omissions Liability)

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

- a. In the event that the professional liability insurance required by this Contract is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective

date of this Contract; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years beginning at the time work under this Contract is completed.

- b. The policy shall cover professional misconduct or lack of ordinary skill for those positions defined in the Scope of Work of this contract.

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

- a. The Contractor's insurance coverage shall be primary insurance with respect to all other available sources.
- b. Coverage provided by the Contractor shall not be limited to the liability assumed un the indemnification provisions of this contract.

23.3 **NOTICE OF CANCELLATION:** Each insurance policy required by the insurance provisions of this Contract shall provide the required coverage and shall not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty (30) days prior written notice has been given to the State of Arizona. Such notice shall be sent directly to **(Pinal-Gila Council for Senior Citizens, 8969 W. McCartney Rd., Casa Grande, AZ 85294-7432 and to State of Arizona Department Representative's Name & Address** and shall be sent by certified mail, return receipt requested.

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

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

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

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

All certificates required by this Contract shall be sent directly to **(Pinal-Gila Council for Senior Citizens,, 8969 W. McCartney Rd., Casa Grande, AZ 85222-7432, and AZ DES –Department of Aging & Community Services, Contracts Management Unit, 1789 West Jefferson 2NW (086Z) Phoenix, AZ 85007.** The project/contract number and project description shall be noted on the certificate of insurance. PGCSC and the State of Arizona reserves the right to require complete, certified copies of all insurance policies required by this Contract at any time. **DO NOT SEND CERTIFICATES OF INSURANCE TO THE STATE OF ARIZONA'S RISK MANAGEMENT SECTION.**

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

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

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

In the event that Contractor determines that it may not be able to comply fully with the insurance requirements set forth in paragraph 18 of the DES Special Terms and Conditions, the Contractor may request that the insurance requirements be modified pursuant to paragraph 18.2.2(G), provided that such request be delivered in writing to PGCSC at least 10 days prior to the solicitation due date or, if not a solicitation, prior to contract execution. Contractor shall include with such request Contractor's justification for the modification with supporting documentation.

Modifications that are approved will be done so on a case-by-case basis and shall not affect the insurance requirements of other Contractors for whom modifications have not been approved. If a Contractor's request has not been approved or a Contractor fails to deliver its request prior to the applicable deadline, then the Contractor shall be required to comply fully with the insurance requirements set forth in DES ST&C paragraph 18.

24. **Levels of Service.**

24.1 If the Contractor determines service recipient eligibility, the Contractor shall maintain and regulate the units or services set forth in this contract to ensure continuity and availability of services to eligible persons during the term of this contract during any transition to a subsequent contractor.

24.2 PGCSC makes no guarantee to purchase specific quantities of goods or services, or to refer eligible persons as may be identified or specified herein. Further, it is understood and agreed that this contract is for the sole convenience of PGCSC and that PGCSC reserves the right to obtain like goods or services from other sources when such need is determined necessary by Pinal-Gila Council for Senior Citizens.

24.3 PGCSC Administration may obtain services under this contract.

24.4 Contract services may be moved or expanded to other site locations within the geographic area awarded only by a written contract amendment.

24.5 PGCSC makes no guarantee to purchase all of the service units authorized or to provide any number of referrals. If quantities of units are specified, they are estimates only and PGCSC may decrease and/or increase them by providing written notice to the contractor.

24.6 When the method of compensation for the service is Fixed Price with Price Adjustment, the contract may be amended, by mutual agreement, to purchase additional services by increasing the contract service budget and/or budget summary.

25 **Monitoring.** Pinal-Gila Council for Senior Citizens may monitor the Contractor or subcontractor and they shall cooperate in the monitoring of services delivered, facilities maintained and fiscal practices.

26 **Payment Recoupment.** The Contractor must reimburse Pinal-Gila Council for Senior Citizens upon demand or PGCSC may deduct from future payments the following:

26.1 Any amounts received by the Contractor from PGCSC for contract services which have been inaccurately reported or are found to be unsubstantiated;

26.2 Any amounts paid by the Contractor to a subcontractor not authorized in writing by PGCSC.

- 26.3 Any amount or benefit paid directly or indirectly to an individual or organization not in accordance with the "Substantial Interest" section of these terms and conditions.
- 26.4 Any amounts paid by PGCSC for services which duplicate services covered or reimbursed by other specific grants, contracts, or payments.
- 26.5 Any amounts expended for items or purposes determined unallowable by PGCSC when this contract provides for the reimbursement of costs, see the "Unallowable Costs" section of these terms and conditions;
- 26.6 Any amounts paid by PGCSC for which the contractor's books, record, and other documents are not sufficient to clearly substantiate that those amounts were used by the contractor to perform contract services;
- 26.7 Any amounts received by the Contractor from PGCSC which are identified as a financial audit exception;
- 26.8 Any amounts paid or reimbursed in excess of the contract or service reimbursement ceiling;
- 26.9 Any amounts paid to the contractor which is subsequently determined to be defective pursuant to the "Certification of Cost or Pricing Data" section of these terms and conditions.
- 26.10 Any payments made for services rendered before the contract begin date or after the contract termination date.
- 27 **Personnel.** The Contractor's personnel shall satisfy all qualifications, carry out all duties, work the hours and receive the compensation set forth in this contract.
- 28 **Predecessor and Successor Contracts.** The execution or termination of this contract shall not be considered a waiver by PGCSC of any rights it may have for damages suffered through a breach of this or a prior contract with the Contractor.
- 29 **Professional Standards.** The Contractor shall deliver contract services in a humane and respectful manner and in accordance with any and all applicable professional accreditation standards. Levels of staff qualifications, professionalism, numbers of staff and individuals identified by name must be maintained as presented in the contract.
- 30 **Reporting and Client Referral Requirements.**
- 30.1 Unless otherwise provided in this contract, reporting shall adhere to the following schedule: no later than the 10th day following each month during the contract term the Contractor shall submit programmatic and financial reports to PGCSC in the form set forth in the contract. Failure to submit accurate and complete reports by the 10th day following the end of a month may result, at the option of PGCSC, in retention of Payment. Failure to provide such report within 30 days following the end of a month may result, at the option of PGCSC, in a forfeiture of such payment.
- 30.2 The Contractor shall utilize a standardized assessment process for eligible persons including an instrument that meets at a minimum certain functional status requirements established by PGCSC and DES A&AA. PGCSC and DES A&AA must review and approve the instrument to be employed prior to implementation or usage of an assessment instrument.
- 30.3 The Contractor shall support the goals of PGCSC and DES A&AA of comprehensive client tracking by utilizing the Aging Information Management System (AIMS for both the input client assessment and service authorization data) said data being extracted from the Arizona Standardized Client Assessment Plan. In addition, all client supporting data for case managed service unit delivered (including case management) and expenditure billed shall also be imputed into AIMS.
- 30.4 All potential clients for senior services will be directed to PGCSC's Central Intake Department for initial screening and appropriate referral. Senior Services include, but are limited to: Legal, Home Delivered Meals, Respite, Home Care, Family Caregiver Program, and Case Management.
- 30.5 Contractors of Congregate Meals shall support the goal of PGCSC and DES A&AA of comprehensive client tracking by utilizing the Participant Registration Form and the Nutritional Screening Tool for input into the AIMS system.

- 30.6 No later than the 30th day following the termination of this contract, Contractor shall submit to PGCSC 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 PGCSC, in forfeiture of final payment.
- 30.7 All reports shall reference the contract number, Contractor name and contact person, and be submitted to the person designated by PGCSC.
- 31 **Substantial Interest Disclosure.**
- 31.1 Contractor shall not make any payments, either directly or indirectly, to any person, partnership, corporation, trust, or any other organization which has a substantial interest in contractor's organization or with which contractor (or one of its directors, officers, owners, trust certificate holders or a relative thereof) has a substantial interest, unless contractor has made a full written disclosure of the proposed payments, including amounts, to PGCSC.
- 31.2 Leases or rental agreements or purchase of real property which would be covered by Paragraph 29.1 of this section shall be in writing and accompanied by an independent commercial appraisal of fair market rental, lease, or purchase value, as appropriate.
- 31.3 For the purpose of this Section, "relative" shall have the same meaning as in A.R.S. §38-502.
- 32 **Supporting Documents and Information.** In addition to any documents, reports or information required by any other section of this contract, Contractor shall furnish PGCSC with any further documents and information deemed necessary by PGCSC. Upon receipt of a request for information from PGCSC, the Contractor shall provide complete and accurate information no later than fifteen (15) days after the receipt of the request.
- 33 **Technical Assistance.** PGCSC may, but shall not be obligated to, provide technical assistance to the Contractor in the administration of contract services, or relating to the terms and conditions, policies and procedures governing this contract. Notwithstanding the foregoing, the Contractor shall not be relieved of full responsibility and accountability for the provision of contract services in accordance with the terms and conditions set forth herein.
- 34 **Termination for Any Reason.**
- 34.1 In the event the contract is terminated, with or without cause, or expires, the Contractor, whenever determined appropriate by PGCSC, shall assist PGCSC in the transition of services or eligible persons to other contractors. Such assistance and coordination shall include, but not be limited to, the forwarding of program and other records as may be necessary to assure the smoothest possible transition and continuity of services. The cost of reproducing and forwarding such records and other materials shall be borne by the contractor. The contractor must make provisions for continuing all management/administrative services until the transition of service or eligible persons is complete and all other requirements of this contract are satisfied.
- 34.2 In the event of termination or suspension of the contract by PGCSC, such termination or suspension shall not affect the obligation of the Contractor to indemnify PGCSC for any claim by any other party against PGCSC arising from the Contractor's performance of this contract and for which the Contractor would otherwise be liable under this contract. To the extent such indemnification is excluded by A.R.S. §41-162 et seq. or an obligation is unauthorized under A.R.S. §35-154, the provisions of this paragraph shall not apply.
- 34.3 In the event of early termination, any funds advanced to the contractor shall be returned to the Department within ten (10) days after the date of termination or upon receipt of notice of termination of the contract, whichever is earlier.
- 35 **Unallowable Costs.** The cost principles set forth in the Code of Federal Regulations, 48 CFR, Chapter 1, Subchapter e, Part 31, (October 1, 1991), excluding later amendments and editions, on file with the Secretary of State and incorporated by this reference, shall be used to determine the allowability of incurred costs for the purpose of reimbursing costs under contract provisions that provide for the reimbursement of costs. Those costs

which are specifically defined as unallowable therein will not be submitted for reimbursement by the Contractor and may not be reimbursed with PGCSC funds.

In addition, the Contractor shall comply with the following publications, as applicable:

- 35.1 OMB Circular A-87 for State, local and Indian Tribal Governments.
- 35.2 OMB Circular A-122 for private nonprofit organizations other than institutions of higher education, hospitals or others specified in A-122.
- 35.3 OMB Circular A-21 for educational intuitions.
- 35.6 OMB Circular A-133 for audits of institutions of fighter education and other non-profit institutions.
- 36 **Visitation, Inspection and Copying.** Contractor's or subcontractor's facilities, services, books and records pertaining to the contract shall be available for visitation, inspection and copying by PGCSC and any other appropriate agent of the State or Federal Government. At the discretion of PGCSC, visitation, inspection and copying may be at any time during regular business hours, announced or unannounced. If PGCSC deems it to be an emergency situation, it may at any time visit and inspect the Contractor's or subcontractor's facilities and services, as well as inspect and copy their contract-related books and records.
- 37 **Offshore Performance of Work Prohibited.** Due to security and identity protection concerns, all services under this contract 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.
- 38 **Certification Regarding Lobbying.** The Contractor agrees by submittal of the Certification Regarding Lobbying form, compliance with 49 CFR part 20.
- 39 **Federal Immigration and Nationality Act.**
 - 39.1 By entering into the Contract, the Contractor warrants compliance with the Federal Immigration and Nationality Act. (FINA) and all other Federal immigration laws and regulations related to the immigration status of its employees. The Contractor shall obtain statements from its subcontractors certifying compliance and shall furnish the statements to the Procurement Officer upon request. These warranties shall remain in effect through the term of the Contract. The Contractor and its subcontractors shall also maintain Employment Eligibility Verification forms (I-9) as required by the U.S. Department of Labor's Immigration and Control Act, for all employees performing work under the contract. I-9 forms are available for download at USCIS.GOV.
 - 39.2 The PGCSC may request verification of compliance for any Contractor or subcontractor performing work under the Contract. Should PGCSC suspect or find that the Contractor or any of its subcontractors are not in compliance, PGCSC may pursue any and all remedies allowed by law, including, but not limited to: Suspension of work, termination of the Contract for default, and suspension and/or debarment of the Contractor. All costs necessary to verify compliance are the responsibility of the Contractor.
- 40. **Inclusive Contractor.** Contractor is encouraged to make every effort to utilize subcontractors that are small, women-owned and/or minority owned business enterprises. This could include subcontractors for a percentage of the administrative or direct service being proposed. Contractor who is committing a portion of its work to such subcontractors shall do so by identifying the type of service and work to be performed by providing detail concerning the Contractor's utilization of small, women-owned and/or minority business enterprises. Emphasis should be placed on specific areas that are subcontracted and percentage of contract utilization and how this effort will be administered and managed, including reporting requirements.
- 41. **Pandemic Contractual Performance.** PGCSC shall require a written plan that illustrates how the contractor shall perform up to contractual standards in the event of a pandemic. PGCSC may require a copy of the plan at anytime prior or post award of a contract. At a minimum, the pandemic performance plan shall include:
 - 1. Key succession and performance planning if there is a sudden significant decrease in contractor's workforce.
 - 2. Alternative methods to ensure there are services or products in the supply chain.
 - 3. An up to date list of company contacts and organizational chart.

- 41.1 In the event of a pandemic, as declared by the Governor of Arizona, U.S. Government or the World Health Organization, which makes performance of any term under this contract impossible or impracticable, PGCSC shall have the following rights:
1. After the official declaration of a pandemic, the State may temporally void the contract(s) in whole or specific sections if the contractor cannot perform to the standards agreed upon in the initial terms.
 2. PGCSC shall not incur any liability if a pandemic is declared and emergency procurements are authorized by the Director of the Arizona Department of Administration per A.R.S. § 41-2537 of the AZ Procurement Code.
 3. Once the pandemic is officially declared over and/or the contractor can demonstrate the ability to perform, PGCSC, at its sole discretion may reinstate the temporarily voided contract(s).
42. **Rate Increase.** The Contractor may submit a request for a rate increase a minimum of 45 days prior to the contract extension date. The request shall be in writing and include supportive justification for the proposed increase. The rate increase shall only be considered at time of contract extension. PGCSC will review the request and shall determine if the increase shall be granted or if an alternative option is in the best interests of PGCSC. The rate increase adjustment, if approved, will be effective and executed via a contract amendment. Any approved rate increase shall be applied to the specific rate(s) in effect prior to the contract extension period.
43. **Responsibility for Payments Indemnification.** The Contractor shall be responsible for issuing payment for services performed by the Contractor's employees, subcontractors, suppliers, or any other third party incurred in the furtherance of the performance or the arising out of the contract and will indemnify and save PGCSC harmless for all claims whatsoever out of the lawful demands of such parties. The Contractor shall, at the Department's request, furnish satisfactory evidence that all obligations and the nature hereinabove designated have been paid, discharged or waived.
44. **Transfer of Knowledge.** The Contractor shall, whenever feasible, share strategies and techniques with PGCSC staff to transfer the skills and knowledge acquired in the delivery of the contracted service.
45. **Transition of Activities.** In the event that a contract is awarded to a new contractor for services similar to those being performed by Contractor under this contract, there shall be a transition of services period. During this period, the contractor under this contract, shall work closely with the new contractor's personnel and/or PGCSC staff to ensure a smooth and complete transfer of duties and responsibilities. PGCSC's authorized representative will coordinate all transition activities. A transition plan will be developed in conjunction with the existing contractor to assist the new contractor and/or PGCSC staff to implement the transfer of duties. PGCSC reserves the right to determine which projects/service delivery nearing completion will remain with the current Contractor of record.
46. **Warranty of Service.** The Contractor warrants that all services provided under this contract shall conform to the requirements stated herein and any amendments hereto. PGCSC's acceptance of services provided by the Contractor shall not relieve the Contractor from its obligations under this warranty. In addition to its other remedies, the PGCSC Procurement Officer may, at the Contractor's expense, require prompt correction of any services failing to meet the Contractor's warranty herein. Services corrected by the Contractor shall be subject to all of the provisions of this contract in the manner and to the same extent as the services originally furnished.