

SAMPLE CONTRACT

This Contract is entered into by and between the State of Arizona, Arizona Auditor General, hereinafter referred to as the Office, and _____, hereinafter referred to as the Firm.

WITNESSETH: In consideration of the mutual promises herein contained, the parties have agreed and do hereby enter into this Contract according to the provisions set out herein:

A. Recitals:

1. In accordance with the authority granted under the laws of the State of Arizona, the Office wishes to procure the services of Firm to assist in conducting follow-up work related to the Office's 2019 performance audit of the Arizona Department of Health Services (Department) long-term care facility complaint and self-report prioritization and investigation process, hereinafter referred to as the auditee.
2. The Firm desires and can assist in such follow-up and provide written documentation on the results of its work.
3. The Firm and the Office desire to enter into and execute a written contract involving said services, and to agree upon the terms thereof.

NOW, THEREFORE, in consideration of the foregoing recitals and of the covenants and agreements by the parties made to be kept and performed, the parties agree as follows:

B. Agreement:

1. Term of agreement

The term of this Agreement shall be for the period beginning on the date signed by the Auditor General and ending on the day all legislative presentations or briefings are concluded. The Office assumes no liability for work performed or costs incurred prior to the beginning date or subsequent to the contract completion date.

2. Services

The Firm must conduct its work in consultation with the Office. The Firm must also seek input from auditee representatives to understand their perspectives on and concerns related to the auditee's operations. The Firm, as an independent contractor and not as an agent of the Office, must provide the following services:

- a. After receiving formal "Notice to Proceed" from the Office, make all necessary off-site preparations for the Firm to execute the project with minimal support from the Office.

- b. Participate in a project entrance conference with representatives from the auditee and the Office. The purpose of this entrance conference is to introduce the Firm, establish workspace as needed, identify liaisons, determine a periodic update meeting schedule, and discuss the scope and time frame for the performance audit follow-up.
- c. Gain an understanding of how the Department prioritizes long-term care facility complaints and self-reports, conducts its complaint and self-report investigations, and reviews and resolves complaints and self-reported incidents and compare these processes against the federal Centers for Medicare & Medicaid Services' (CMS) requirements, as outlined in CMS' [State Operations Manual](#), Chapter 5 - Complaint Procedures. [Note: The *State Operations Manual*, Chapter 5, Section 5010 states that each State survey agency is expected to have written policies and procedures to ensure that the appropriate response is taken for all allegations of noncompliance with Federal and/or State requirements and that are consistent with Federal requirements as well as with procedures in the State Operations Manual]. The Firm is expected to interview Department staff and officials, observe prioritization and investigation processes, and review documents supporting the Department's prioritization, investigation, and resolution processes. The Firm must document its understanding and comparison of these processes against CMS requirements, including documenting any areas where the Department's processes differ from CMS requirements and provide the evidence used to support its understanding, comparison, and conclusions. The Firm must submit the written document of its work for this area to the Office by a mutually agreed upon date (see Section B(3)(c)).
- d. Review the Department's ASPEN Complaints/Incidents Tracking System (ACTS) Complaint/Incident Investigation Report (Investigation Report) for a sample of long-term care complaints and self-reports the Department received on or after January 1, 2023 to determine whether the Department's intake of and priority assignment for the sampled complaints and self-reports complied with CMS requirements outlined in CMS' [State Operations Manual](#), Chapter 5, and follows any documented Department procedures. At a minimum, the Firm's review must include:
- Reviewing the "Provider Information," "Intake Information," "Complainants," "Residents/Patients/Clients," "Alleged Perpetrators," and "Intake Detail" sections of each ACTS Investigation Report in the sample and assessing if Department staff followed the General Intake Process outlined in the State Operations Manual, Chapter 5, Section 5010. For example, the firm should assess if Department staff collected the information necessary to make important decisions about the allegations, including conducting subsequent communication to obtain additional information in instances where written or verbal allegations are received as necessary, as required by Section 5010.1.
 - Reviewing the "Intake Detail" section of each ACTS Investigation Report and assessing if the Department's priority assignment is consistent with the procedures and priority definitions outlined in the State Operations Manual, Chapter 5, Sections 5070 and 5075.

The Firm must document its review and assessment, including noting the reasons for determining whether the Department's intake of and priority assignment for each complaint/self-report meets CMS requirements and follows any documented Department procedures. The Firm must also identify complaint or self-report prioritization examples that help illustrate its conclusions. The Firm must submit a written document of its work for this area to the Office by a mutually agreed upon date (see Section B(3)(c)).

- e. Review the ACTS Investigation Report and any associated documentation (such as worksheets completed during onsite surveys) for a sample of long-term care complaint and self-report investigations the Department and its contracted investigations vendor conducted on or after January 1, 2023 to determine whether the investigations and resolutions (including any actions taken and resolutions reported) comply with requirements outlined in CMS' [State Operations Manual](#), Chapter 5, Sections 5300 to 5390, and align with other states' or best practices for conducting complaint/self-report investigations. The Firm must document its review and assessment, including noting whether the Department's complaint/self-report investigation processes comply with CMS/Department requirements and align with other state or best practices. The Firm must also identify complaint or self-report investigation examples that help illustrate its conclusions. The Firm must submit a written document of its work for this area to the Office by a mutually agreed upon date (see Section B(3)(c)).
- f. Review the ACTS Investigation Report and any associated documentation for a sample of long-term care facilities with a history of noncompliance, including large numbers of complaints, to determine whether the Department has taken enforcement actions or other remedies to correct the noncompliance consistent with procedures and requirements outlined in CMS' [State Operations Manual](#), Chapter 7. The Firm must document its review and assessment, including noting whether the Department's enforcement actions and other remedies taken comply with CMS requirements. The Firm must also identify facility examples that help illustrate its conclusions. The Firm must submit a written document of its work for this area to the Office by a mutually agreed upon date (see Section E(3)).

For Sections B(2)(d) through B(2)(f), the Firm must work with the Office to select samples that will meet the audit follow-up's purposes, including determining whether the Department's processes comply with requirements, and are properly designed, implemented, and operating effectively. Samples will be selected after the Office conducts some preliminary data analyses of the Department's complaint and self-report data.

- g. Identify reasons why any problems noted in B(2)(c) through B(2)(f) are occurring, the real or potential impact of such problems, and make recommendations on how to address the problems and the reasons they are occurring. The Firm must consider all relevant factors that may have contributed to the problems identified, including the number of complaints/self-reports investigated during 1 onsite survey, the Department's

interviewing practices, and how it documents the results of the evidence gathered during its investigations. The Firm must identify the recommendations needed to ensure the Department complies with requirements and long-term care facility residents' health, safety, and welfare are protected. The Firm must submit a written document of conclusions for this area to the Office by a mutually agreed upon date (see Section B(3)(c)).

- h. Provide an expert opinion on the Department's efforts to implement the 9 recommendations from the 2019 performance audit and May 2022 30-month follow-up report, if the Office requests. This may include attending interviews of Department staff with the Office, reviewing Department documentation, and discussing assessments with the Office.
- i. The Firm may be required to perform certain additional auditing procedures in connection with the performance audit follow-up. Within 10 days of receiving notice from the Office that additional auditing procedures are required, the Firm must provide the Office a written estimate of the hours necessary to perform the additional auditing procedures. The Firm must not commence work on the additional auditing procedures until the Office provides written approval of the hours estimated. Costs for any additional procedures shall be paid at the hourly rate specified in Section B(5). In completing any additional auditing procedures, the Firm must submit a written statement to the Office describing all deficiencies and errors noted as a result of the additional auditing procedures performed.
- j. The Office reserves the right to provide guidance for selected Firms, upon the Firm's request or if the Office determines it is necessary, in matters such as the nature and extent of testing procedures, written document content and format, and other areas, as applicable, to ensure the Firm fully addresses the issues identified in Section B(2)(c) through (g).
- k. During the performance audit followup, if requested, the Firm must participate in periodic meetings (at least 1 meeting every 4 weeks) with representatives from the auditee. The purpose of these meetings is to update them on the performance audit followup's progress, including any preliminary conclusions.
- l. Prior to the Office completing the final performance audit follow-up report, the Firm must participate in a draft exit conference, with responsible officials from the auditee. Prior to the draft exit conference, the Firm must provide the Office with written documents containing its conclusions (see Sections B(2)(c) through B(2)(e)). The draft exit conference's purpose is to discuss the draft performance audit follow-up report, identify any potential accuracy concerns, and obtain comments on the performance audit follow-up report's findings and recommendations. Attendance at the draft exit conference is mandatory for the Firm's project manager and any other staff who performed evaluation tasks as listed in the proposal.

- m. The Firm must plan and budget time and resources to participate in presentations or briefings to legislative committees after the Office completes the final follow-up report, if requested. The Firm must allow for at least 1 in-person trip for a presentation to the legislative committees when the Auditor General requires. The Firm may be required to perform several presentations or briefings during 1 trip.

3. Report requirements

- a. The Office requires the Firm to prepare and submit written progress reports every 2 weeks for the purposes of monitoring the status, progress, and direction of the Firm's work, including any preliminary findings, conclusions, and recommendations. The Office may require additional information and/or that the Firm meet to discuss the performance audit followup's status, progress, and direction.
- b. The Office requires the Firm to prepare and submit by December 29, 2023 an overview of the key work it will complete and a project timeline for completing its work. The project's timeline must include deadlines for the key audit follow-up steps and testwork to be completed, including those related to gaining an understanding of how the Department prioritizes long-term care facility complaints and self-reports, conducts its complaint and self-report investigations, and reviews and resolves complaints and self-reported incidents, and documenting final conclusions and potential recommendations.
- c. The Office requires the Firm to provide written documentation on the results of its work, conclusions and recommendations as stated in Sections B(2)(c) though (f). The Firm must work with the Office to establish specific dates for providing this documentation to the Office, and no dates can be later than March 1, 2024.
- d. The selected Firm must retain the documentation supporting its work, conclusions, and recommendations for 5 years from the date the Office issues its performance audit follow-up report and make the documentation available at a location the Office specifies, free of charge, for examination by authorized Office representatives. If the Firm does not desire to retain the documentation for such period, the Firm must give the documentation to the Office for safekeeping.

4. Exit conference

Following the Office's completion of the draft follow-up reports, the Firm must be available to participate in an exit conference with auditee officials. The exit conference shall discuss the draft performance audit follow-up reports with the auditee, identify any errors, and obtain comments on the reports' findings and recommendations. Attendance at the draft exit conference is mandatory for the selected Firm's project manager and any other staff who performed evaluation tasks as listed in section B(2).

5. Payments and compensation

Total compensation for the performance audit follow-up engagement, including travel costs and out-of-pocket expenses, shall be \$_____. If the Office requires additional auditing procedures as outlined in section B(2)(h), the Office shall pay the Firm the hourly rate of \$_____ for the additional audit procedures.

The Office shall pay the Firm in installments based on periodic written progress reports and invoices for the work accomplished to date. The Office will withhold the amount of \$_____ for the Firm's participation in legislative presentations/briefings (Legislative Briefing Fee) until the Firm completes its participation in any requested legislative presentations/hearings.

The Office will withhold the final 20 percent of the total contract amount (plus the Legislative Briefing Fee if not yet due and payable) until the Office publishes the written performance audit follow-up report. The Legislative Briefing Fee will only be paid to the Firm if and when the Firm completes any requested legislative presentations/briefings.

6. Changes in work

In the event significant changes in the scope, character, or complexity of the work occur, the parties may agree to change the contract amount or duties, or both, based upon a written determination that the changes are advantageous to the State. The Auditor General must authorize contract changes defining, increasing, and/or limiting the work and compensation in writing prior to the performance of the work.

C. Insurance requirements:

The Firm and subcontractors shall procure and maintain, until all of their obligations have been discharged, including any warranty periods under this Contract, insurance against claims for injury to persons or damage to property arising from, or in connection with, the performance of the work hereunder by the Firm, its 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 in no way warrants that the minimum limits contained herein are sufficient to protect the Firm from liabilities that arise out of the performance of the work under this Contract by the Firm, its agents, representatives, employees, or subcontractors, and the Firm is free to purchase additional insurance.

1. Minimum scope and limits of insurance

The Firm shall provide coverage with limits of liability not less than those stated below.

I. Commercial General Liability (CGL)—Occurrence Form

- i. Policy shall contain a waiver of subrogation against the State of Arizona and the Auditor General and employees of the Arizona Auditor General for losses arising from work performed by or on behalf of the Firm.
- ii. This requirement shall not apply to: Separately, EACH Firm or subcontractor that is exempt under A.R.S. §23-901, et. seq., AND when such Firm or subcontractor executes the appropriate waiver form (sole proprietor or independent Firm).

IV. Professional Liability (Errors and Omissions Liability)

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

- i. In the event that the Professional Liability insurance required by this Contract is written on a claims-made basis, Firm warrants that any retroactive date under the policy shall precede the effective date of this Contract and 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.
- ii. The policy shall cover professional misconduct or negligent acts for those positions defined in the scope of work of this Contract.

2. Additional insurance requirements

The policies shall include, or be endorsed to include, as required by this written agreement, the following provisions:

The Firm’s policies, as applicable, shall stipulate that the insurance afforded the Firm shall be primary and that any insurance carried by the Arizona Auditor General; its agents, officials, employees; or the State of Arizona shall be excess and not contributory insurance, as provided by A.R.S. §41-621 (E).

Insurance provided by the Firm shall not limit the Firm’s liability assumed under the indemnification provisions of this Contract.

3. Notice of cancellation

Applicable to all insurance policies required within the Insurance Requirements of this Contract, Firm’s insurance shall not be permitted to expire, be suspended, be canceled, or be materially changed for any reason without thirty (30) days’ prior written notice to the Arizona Auditor General. Within two (2) business days of receipt, Firm must provide notice to the Arizona Auditor General if they receive notice of a policy that has been or will be suspended, canceled, materially changed for any reason, has expired, or will be expiring. Such notice shall be sent directly to the Auditor General and shall be mailed, emailed, hand-delivered, or sent by facsimile transmission to Julie Cantrell, 2910 N. 44th St., Ste. 410, Phoenix, AZ 85018.

4. Acceptability of insurers

The Firm's insurance shall be placed with companies licensed in the State of Arizona or hold approved nonadmitted status on the Arizona Department of Insurance List of Qualified Unauthorized Insurers. Insurers shall have 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 Firm from potential insurer insolvency.

5. Verification of coverage

The Firm must furnish the Office with certificates of insurance (valid ACORD form or equivalent approved by the State of Arizona) evidencing that the Firm has the insurance as required by this Contract. An authorized representative of the insurer shall sign the certificates.

All such certificates of insurance and policy endorsements must be received and approved by the Office before work commences.

The State's receipt of any certificates of insurance or policy endorsements that do not comply with this written agreement shall not waive or otherwise affect the requirements of this agreement.

Each insurance policy required by this contract must be in effect at, or prior to, commencement of work under this Contract. 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 Julie Cantrell, 2910 N. 44th St., Ste. 410, Phoenix, AZ 85018. The project description shall be noted on the certificate of insurance. The State of Arizona reserves the right to require complete 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 DIVISION.

6. Subcontractors

The Firm's certificate(s) shall include all subcontractors as insureds under its policies or the Firm shall be responsible for ensuring and/or verifying that all subcontractors have valid and collectable insurance as evidenced by the certificates of insurance and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum insurance requirements identified above. The Office reserves the right to require, at any time throughout the life of this Contract, proof from the Firm that its subcontractors have the required coverage.

7. Approval and modifications

Any modification or variation from the insurance requirements in this Contract shall be made by the Auditor General, whose decision shall be final. Such action will not require a formal contract amendment but may be made by administrative action.

D. Indemnification

To the fullest extent permitted by law, the Firm shall defend, indemnify, and hold harmless the State of Arizona and the Office (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation, and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of the Firm or any of its owners, officers, directors, agents, employees, or subcontractors. This indemnity includes any claim or amount arising out of, or recovered under, the Workers' Compensation Law or arising out of the failure of such Firm to conform to any federal, State, or local law, statute, ordinance, rule, regulation, or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by the Firm from and against any and all claims. It is agreed that the Firm will be responsible for primary loss investigation, defense, and judgment costs where this indemnification is applicable. In consideration of the award of this Contract, the Firm agrees to waive all rights of subrogation against the State of Arizona, its officers, officials, agents, and employees for losses arising from the work performed by the Firm for the State of Arizona.

E. Additional contract terms:

1. Every payment obligation of the Office under this agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of the agreement, this agreement may be terminated by the Auditor General at the end of the period for which funds are available. No liability shall accrue to the Office in the event this provision is exercised, and the Office shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.
2. The Firm must advise and obtain approval from the Auditor General in writing prior to accepting additional engagements for professional services from the auditee. Such disclosure to the Auditor General shall include a description of the services to be rendered and fees to be charged.
3. The Firm warrants that no part of the contract amount provided herein shall be paid directly or indirectly to any officer or employee of the State of Arizona as wages, compensation, or gifts in connection with any work contemplated or performed relative to this Contract.
4. The Firm must have staff and assign staff to this work who are Surveyor Minimum Qualifications Test (SMQT) certified. In addition, the Firm's assigned staff must be knowledgeable of CMS laws, regulations, State Operations Manual, and official guidance memos.
5. The Firm must have no conflict of interest with regard to any other work performed for the State of Arizona or auditee. The Auditor General is the sole authority in determining whether any conflicts of interest or independence issues exist. The Firm attests that it and the

personnel performing services under this Agreement are independent and remain independent during the agreement period consistent with their independence statements included with the Firm's proposal. Further, such personnel are not employees of the subject of the performance audit followup or its governing body or bodies, and the Firm has disclosed that it has no contractual relationship with these entities or the government employers that participate in them.

6. It is expressly understood and agreed that this instrument contains the entire agreement between the parties and that, except as otherwise stated herein, there are no collateral conditions, agreements, or representations, all such having been incorporated and resolved into this agreement. Except as specified herein, no document or communication passing between the parties hereto shall be deemed a part of this agreement.
7. This Contract may be modified at any time only by written amendment executed by all parties hereto. No agent, employee, or other representative of either the Firm or the Office is empowered to alter any of the terms of this Contract unless it is done in writing and signed by the Auditor General, Lindsey Perry, and an authorized representative of the Firm.
8. The provisions of this Contract are severable to the extent that any provision or application held to be invalid shall not affect any other provision or application of the Contract, which shall remain in effect without the invalid provision or application.
9. The Firm will act in its individual capacity and not as an agent, employee, partner, joint venturer, or associate of the Office. An employee, subcontractor, or agent of the Firm shall not be deemed or construed to be the employee or agent of the Office for any purpose.
10. The Firm shall not assign this Contract or any part of it or enter into subcontracts for or delegate any of the work described herein without obtaining the prior written approval of the Auditor General.
11. Time is of the essence in this Contract. In case the Firm fails to perform the agreement at the time fixed for performance by the terms of this Contract, the Office may, at the Auditor General's election, terminate the Contract. Such termination shall be in addition to, and not in lieu of, any other legal remedies provided by this Contract or by law.
12. This Contract and all work hereunder shall be governed and interpreted by the laws, rules, regulations, and decrees of the State of Arizona.
13. The Office, by written notice, may terminate this Contract in whole or in part when, in the sole discretion of the Auditor General, it is deemed in the best interest of the State of Arizona. If this Contract is so terminated, the Firm will be compensated for work performed up to the time of the termination notification. In no event shall payment for such costs exceed the total current contract price.

14. Failure to perform any and all of the terms and conditions of this Contract, including the schedule of work, shall be deemed a substantial breach thereof and give the Office cause to cancel this Contract, which cancellation shall be effective upon written notice to the Firm. In the event of cancellation of this Contract for failure to perform, the Firm shall not be entitled to damages and agrees not to sue the Office for damages therefor. Notwithstanding other legal remedies that may be available to the Office because of the Firm's failure to perform, the Firm agrees to indemnify the Office for its costs in procuring the services of a new firm.
15. Notwithstanding any provision of this Contract, this Contract may be terminated by the Office without penalty or further obligation pursuant to A.R.S. §38-511. Any termination shall be in writing.
16. The parties agree to use arbitration, after exhausting applicable administrative review, to the extent required by A.R.S. §12-1518, except as may be required by other applicable statute to resolve disputes arising out of this agreement. In the event such a dispute is arbitrated, the parties hereby agree that the prevailing party is entitled to recover its attorneys' fees and costs. Attorneys' fees shall be based on the prevailing hourly rate for attorneys in Phoenix, Arizona. The arbitrator shall be selected by the parties, and the arbitrator's decision shall be final and not appealable to any court. Any litigation shall be commenced and prosecuted in an appropriate court of competent jurisdiction within Maricopa County, State of Arizona.
17. The Firm agrees to maintain the confidentiality of the working papers during and after this project and to observe the confidentiality requirements of the Office pursuant to A.R.S. §41-1279.05 and any other applicable confidentiality requirements. The Firm is prohibited from discussing or releasing any findings to anyone other than the auditee or Office without written approval from the Auditor General prior to the findings being published in the applicable auditor reports. All reports and working papers are the property of the Office and are subject to the laws and policies governing the Office's reports and working papers.
18. The Firm shall comply with all applicable federal and State statutes, executive orders, regulations, and other requirements relating to civil rights and nondiscrimination in employment.
19. The Firm shall retain and shall contractually require each subcontractor to retain all data, books, and other records ("records") relating to this agreement for a period of 5 years after completion of the agreement. All records shall be subject to inspection and audit by the State at reasonable times, free of charge, at a location the Office specifies. Upon request, the Firm shall produce the original of any or all such records. If the Firm or subcontractor does not desire to retain the documentation for such period, the Firm or subcontractor shall give the documentation to the Office for safekeeping.

IN WITNESS WHEREOF, the parties have executed this Contract, consisting of 12 pages, to be effective as of the date of signing by the Auditor General.

STATE OF ARIZONA

ARIZONA AUDITOR GENERAL

Lindsey A. Perry, CPA, CFE
Auditor General

Date

FIRM

EIN

Date