

NON-EMERGENCY MEDICAL TRANSPORTATION (NET)
CONTRACT ADDENDUM

This Addendum (“Addendum”) is made to the written agreement, no. 5778, between (the “Broker”) and the Arkansas Department of Human Services (“DHS”), comprising the Request for Proposal No. 710-18-1025 and all attachments, exhibits, and appendices thereto (collectively the “Agreement”), and is effective as of January 1, 2021.

WHEREAS the Broker and DHS have previously entered into the Agreement for the provision of Non-Emergency Medical Transportation Services (NET services) under Arkansas Medicaid.

WHEREAS the Broker and DHS wish to now add certain new terms and conditions to the Agreement and amend certain existing terms and conditions of the Agreement, as outlined herein;

WHEREAS if any terms and conditions in this Addendum conflict with the terms and conditions in the Agreement, the terms and conditions of this Addendum will govern; and

WHEREAS unless otherwise specified in this Addendum, the terms and conditions in the Agreement shall remain in full force and effect.

Section 1: Definitions and Acronyms

Definitions contained in the Agreement apply, unless otherwise defined herein.

CMS means the U.S. Department of Health and Human Services Center for Medicare and Medicaid Services.

Enrollee means a Medicaid beneficiary who is eligible to be enrolled in the Non-Emergency Medical Transportation NET services program and is auto assigned to the Broker.

HHS means the U.S. Department of Health and Human Services.

Large Print means printed in a font size no smaller than 18 point.

Limited English Proficient (LEP) means Enrollees who do not speak English as their primary language and who have a limited ability to read, write, speak, or understand English.

Medical Loss Ratio (MLR) shall have the same meaning as under 42 CFR § 438.8.

MFCU means the Arkansas Attorney General Office’s Medicaid Fraud Control Unit.

OMIG means the Arkansas Office of the Medicaid Inspector General.

Prevalent Language means a non-English language determined to be spoken by a significant number or percentage of Enrollees that are limited English proficient.

Readily Accessible means electronic information and NET services which comply with modern accessibility standards such as section 508 guidelines, section 504 of the Rehabilitation Act, and W3C's Web Content Accessibility Guidelines (WCAG) 2.0 AA and successor versions.

Section 2: Eligibility, Enrollment, and Disenrollment

2.1 Enrollment Discrimination Prohibited.

- 2.1.1. The Broker shall accept individuals in their service area who are eligible to receive NET services.
- 2.1.2. The Broker shall not, on the basis of health status or need for health care services, discriminate against Enrollees.
- 2.1.3. The Broker shall not discriminate against Enrollees on the basis of race, color, national origin, sex, sexual orientation, gender identity, or disability and will not use any policy or practice that has the effect of discriminating on the basis of race, color, or national origin, sex, sexual orientation gender identity, or disability.

2.2 Disenrollment: Requirements and Limitations.

- 2.2.1. Enrollees may only be disenrolled due to loss of eligibility, death, or if they no longer reside in the Broker's service area.
- 2.2.2. The Broker may not request disenrollment of any Enrollee unless the Broker identifies a reason for disenrollment as listed in Paragraph 2.2.1. Once the Broker has requested disenrollment for a reason listed in Paragraph 2.2.1, DHS must verify the reason for disenrollment prior to disenrolling the Enrollee. Disenrollment can only be determined by DHS.

Section 3: Enrollee Information and Services

3.1 Basic Rules

- 3.1.1 The Broker must provide all required information in this section to Enrollees in a manner and format that may be easily understood and is readily accessible by such Enrollees and in accordance with 42 CFR 438.10.
- 3.1.2 The Broker must have in place mechanisms to help Enrollees understand the requirements, benefits, and any benefit limits of NET services provided by the Broker.

3.2 Language and format

- 3.2.1 The Broker shall make written materials that are critical to obtaining NET services, including, at a minimum how to request NET Services and its complaint process, available in English and the prevalent non-English languages in the Broker's service area.
- 3.2.2 The Broker shall make written materials available in alternative formats upon request of the Enrollee at no cost.
- 3.2.3 The Broker shall make auxiliary aids and services available upon request of the Enrollee at no cost.

3.3 Interpretation Services

- 3.3.1 The Broker shall make interpretation services available free of charge to each Enrollee upon request, including oral interpretation, interpretation for the deaf and hearing impaired, and the use of auxiliary aids such as TTY/TDY.
- 3.3.2 Oral interpretation shall be available in all non-English languages, not just those that the State identifies as prevalent.
- 3.3.3 All written and oral information must be provided in alternative formats, when appropriate, and in a manner that takes into consideration an Enrollee's special needs, including any visual impairment, hearing impairment, limited reading proficiency, or limited English proficiency.

3.4 Enrollee Notifications

- 3.4.1 The Broker shall notify Enrollees:
 - a. That oral interpretation is available for any language; and written translation is available in prevalent languages;
 - b. That auxiliary aids and NET services are available upon request and at no cost for Enrollees with disabilities; and
 - c. How to access interpretation and translation services.

3.5 Written Materials for Enrollees

- 3.5.1 The Broker shall provide all written materials for Enrollees consistent with the following:

- a. In easily understood language and format.
- b. In a font size no smaller than 12 point.
- c. Be available in alternative formats and through the provision of auxiliary aids and services in an appropriate manner that takes into consideration the special needs of Enrollees with disabilities or limited English proficiency.
- d. Be available in a large print format.

3.6 Enrollee Handbook.

3.6.1 The content of the Enrollee handbook must include information that enables the Enrollee to understand how to effectively access NET services. This information must include at a minimum:

- a. A description of available NET Services;
- b. How and where to access NET Services;
- c. The amount, duration, and scope of NET Services available under the contract in sufficient detail to ensure that Enrollees understand the NET Services to which they are entitled;
- d. Enrollee rights and responsibilities, including the elements specified in § 3.7;
- e. The right to file complaints and how to access the Broker's and DHS's complaint process.
- f. How to access auxiliary aids and services, including additional information in alternative formats or languages;
- g. The toll-free telephone number for member services, and any other unit providing service directly to Enrollees; and
- h. Information on how to report suspected fraud or abuse.

3.6.2 Information required by this Section to be provided by the Broker will be considered provided if the Broker:

- a. Mails a printed copy of the information to the Enrollee's mailing address.
- b. Provides the information by email after obtaining the Enrollee's agreement to receive the information by email;
- c. Posts the information on the Broker's website and advises the Enrollee in paper or electronic form that the information is available on the internet and includes the applicable internet address, provided that Enrollees with disabilities who cannot access this information online are provided auxiliary aids and services upon request at no cost; or
- d. Provides the information by any other method that can reasonably be expected to result in the Enrollee receiving that information.

3.6.3 The Broker must give each Enrollee notice of any change that the State defines as significant in the information specified in this Section at least thirty (30) days before the intended effective date of the change.

3.7 Enrollee Rights.

3.7.1 The Broker shall have written policies regarding the Enrollee rights specified in this section.

- 3.7.2 The Broker shall comply with any applicable Federal and State laws that pertain to Enrollee rights and ensure that its employees, subcontractors, and subcontractors' employees observe and protect those rights.
- 3.7.3 Enrollees of the Broker have the following rights: The right to--
- a. Receive information in accordance with this Section and 42 CFR § 438.10.
 - b. Be treated with respect and with due consideration for his or her dignity and privacy.
 - c. Be free from any form of restraint or seclusion used as a means of coercion, discipline, convenience or retaliation, as specified in other Federal regulations on the use of restraints and seclusion.
- 3.7.4 Each Enrollee shall be free to exercise his or her rights, and the exercise of those rights shall not adversely affect the way the Broker or its subcontractors treat the Enrollee.
- 3.7.5 The Broker shall comply with any other applicable Federal and State laws, including, but not limited to:
- a. Title VI of the Civil Rights Act of 1964, as implemented by regulations at 45 CFR part 80;
 - b. The Age Discrimination Act of 1975, as implemented by regulations at 45 CFR part 91;
 - c. The Rehabilitation Act of 1973;
 - d. Titles II and 1H of the Americans with Disabilities Act; and
 - e. Section 1557 of the Patient Protection and Affordable Care Act.

3.8 Marketing activities are prohibited. The Broker shall not conduct any marketing activities.

3.9 Availability of Services

- 3.9.1 The Broker shall maintain and monitor its capacity, including the capacity of all subcontractors, to ensure it is sufficient to provide adequate access to all NET services covered under the contract for all Enrollees, including those with limited English proficiency or physical or mental disabilities.
- 3.9.2 The Broker shall comply with the following requirements.
- a. Timely access. The Broker must:
 - i. Meet, and require its subcontractors to meet, State standards for timely access to care and NET services.
 - ii. Establish mechanisms to ensure compliance by subcontractors.
 - iii. Monitor subcontractors regularly to determine compliance.
 - iv. Take corrective action if there is a failure to comply by a subcontractor.

3.9.3 Access and cultural considerations. The Broker shall participate in the State's efforts to promote the delivery of NET services in a culturally competent manner to all Enrollees, including those with limited English proficiency and diverse cultural and ethnic backgrounds, disabilities, and regardless of gender, sexual orientation or gender identity.

3.9.4 Accessibility considerations. The Broker must ensure that subcontractors provide physical access, reasonable accommodations, and accessible equipment for Enrollees with physical or mental disabilities.

3.10 Continued NET services to Enrollees.

3.10.1 DHS shall arrange for NET services to be provided without delay to any Enrollee, if this Agreement is terminated.

3.10.2 DHS shall have in effect a transition of care policy to ensure continued access to NET services during a transition from the Broker to another broker.

a. The transition of care policy shall include the following:

- i. The Enrollee has access to NET services consistent with the access they previously had.
- ii. The Broker shall fully and timely comply with requests for historical utilization data from DHS or the new broker, in compliance with Federal and State law.
- iii. Any other necessary procedures as specified by the Secretary of the U.S. Department of Health and Human Services to ensure continued access to NET services.

3.11 Coverage and authorization of NET services.

3.11.1 The Broker—

- a. Must ensure that NET services are sufficient in amount, duration, and scope to reasonably ensure adequate services for all enrolled members.
- b. May not arbitrarily deny or reduce the amount, duration, or scope of a required service solely because of diagnosis, type of illness, or condition of the beneficiary.

3.12 Alternative Transportation Means

3.12.1 If the Broker or the Broker's subcontractor cannot provide transportation to an Enrollee, the Broker may secure transportation for the Enrollee through gas cards, public transportation, or a publicly available commercial taxi service or ridesharing service, such as Uber or Lyft.

3.12.2 If the Broker secures transportation service for an Enrollee publicly available, commercial taxi service or ridesharing service, as outlined in section 3.12.1 above, then the Broker shall report such fact to DMS, via DMS's contracted Oversight Monitor.

3.12.3 If using ridesharing to provide NET Services, the Broker must submit to DMS for approval, a plan for ensuring enrollee safety.

Section 4: Encounters

4.1 Enrollee Encounter Data.

- 4.1.1 Enrollee encounter data reports must comply with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) security and privacy standards and be submitted in the format required by the Medicaid Statistical Information System, or by any successor system to the Medicaid Statistical information System.
- 4.1.2 The Broker shall cooperate with DMS to fully comply with all encounter data reporting requirements of the Medicaid Statistical Information System or any successor system.
- 4.1.3 The Broker must:
 - a. Collect and maintain sufficient Enrollee encounter data to identify the subcontractors who deliver NET services to Enrollees.
 - b. Submit Enrollee encounter data to the State at a frequency and level of detail to be specified by CMS and the State, based on program administration, oversight, and program integrity needs.
 - c. Submit all Enrollee encounter data that the State is required to report to CMS under 42 CFR § 438.818.
 - d. Submit encounter data to the State in standardized ASC X12N 837 and ASC X12N 835 format as appropriate.
 - e. Collect data on Enrollees and on all NET Services furnished to Enrollees through an encounter data system or other methods as may be specified by the State.
 - f. Ensure that data received from subcontractors is accurate and complete by:
 - i. Verifying the accuracy and timeliness of reported data.
 - ii. Screening the data for completeness, logic, and consistency.
 - iii. Collecting data from subcontractors in standardized formats to the extent feasible and appropriate, including secure information exchanges and technologies utilized for State Medicaid quality improvement and care coordination efforts.
 - g. Make all collected data available to the State and upon request to CMS.

4.2 Minimum Service Cost Requirement

- 4.2.1 The Broker must track and report to DHS the actual service costs on a per member per month basis as compared against the proposed targeted service costs per member per month as described in the proposed Rates (See Appendix ____).
- 4.2.2 If the actual service costs per member per month falls below ninety-five percent (95%) of the targeted service costs per member per month, the Broker must remit payment to DHS in an amount equal to the amount the actual service cost per member per month falls below the targeted service cost per member per month multiplied by the Agreement period member months.

Section 5: Solvency and Liability of Enrollees

5.1 Solvency Standards

5.1.1 The Broker must provide assurances satisfactory to DHS showing that its provision against the risk of insolvency is adequate to ensure that its Enrollees will not be liable for the Broker's debts if the Broker becomes insolvent.

5.2 Liability for Payment

5.2.1 The Broker shall not hold its Enrollees liable for any of the following:

- a. The Broker's debts, in the event of the Broker's insolvency.
- b. Covered NET Services provided to the Enrollee, for which:
 - i. DHS did not pay the Broker; or
 - ii. DHS, or the Broker did not pay the individual or provider that furnished the NET services under a subcontract.
- c. Payments for covered NET services furnished under a subcontract, referral, or other arrangement, to the extent that those payments are in excess of the amount that the Enrollee would owe if the Broker covered the NET services directly.

Section 6: Administration and Management

6.1 Sub-Contractual Relationships and Delegation.

- 6.1.1 Applicability. The requirements of this Section apply to any contract or written arrangement the Broker has with any subcontractor.
- 6.1.2 General Rule.
- a. Notwithstanding any relationship(s) the Broker may have with any subcontractor, the Broker shall maintain ultimate responsibility for adhering to and otherwise fully complying with all terms and conditions of its Agreement with DHS and any applicable Federal or State statutes or regulations; and
 - b. All contracts or written arrangements between the Broker and any subcontractor must meet the requirements of subsection 6.1.3.
- 6.1.3 Each contract or written arrangement described in subsection 6.1.2 must specify that:
- a. If any of the Broker's activities or obligations under its Agreement with DHS are delegated to a subcontractor:
 - i. The subcontractor agrees to perform the delegated activities and reporting responsibilities specified in compliance with the Broker's obligations under the Agreement.
 - ii. The subcontractor agrees to comply with all applicable Medicaid laws and regulations, both Federal and State, including applicable sub-regulatory guidance and contract provisions;
 - iii. The subcontractor agrees that DHS, OMIG, MFCU, CMS, the HHS Inspector General, the U.S. Comptroller General, or their designees have the right to audit, evaluate, and inspect any books, records, contracts, computer or other electronic systems of the subcontractor, or of the subcontractor's contractor, that pertain to any aspect of NET services and activities performed, or determination or amounts payable under the Broker's contract with DHS.
 - b. The subcontractor will make available, for purposes of an audit, evaluation, or inspection under the Agreement, its premises, physical facilities, equipment, books, records, contracts, computer or other electronic systems relating to its Medicaid Enrollees.
 - c. The right to audit pursuant to this Agreement will exist through ten (10) years from the final date of the Agreement period or from the date of completion of any audit, whichever is later.
- 6.1.4 If DHS, OMIG, MFCU, CMS, or the HHS Inspector General determines that there is a reasonable possibility of fraud or similar risk, the State, CMS, or the HHS Inspector General may inspect, evaluate, and audit the subcontractor at any time.

6.2 Information Technology Systems.

- 6.2.1 In accordance with 42 CFR § 438.252(a), the Broker shall maintain a health information system that collects, analyzes, integrates, and reports data and can achieve the objectives of this part. The system must provide information on areas including, but not limited to, utilization, claims, and complaints.

- 6.2.2 The Broker must comply with Section 6504(a) of the Affordable Care Act, which requires that State claims processing and retrieval systems are able to collect data elements necessary to enable the mechanized claims processing and information retrieval systems in operation by the State to meet the requirements of Section 1903(r)(1)(F) of the Act.

Section 7: Prohibited Affiliations

7.1 Prohibited Affiliations

- 7.1.1 The Broker may not knowingly have a relationship of the type described in paragraph 7.1.3 of this Section with the following:
- a. An individual or entity that is debarred, suspended, or otherwise excluded from participating in procurement activities under the Federal Acquisition Regulation or from participating in non-procurement activities under regulations issued under Executive Order No. 12549 or under guidelines implementing Executive Order No. 12549.
 - b. An individual or entity who is an affiliate, as defined in the Federal Acquisition Regulation at 48 CFR § 2.101, of a person described in paragraph (a), above.
- 7.1.2 The Broker may not have a relationship with an individual or entity that is excluded from participation in any Federal health care program under section 1128 or 1128A of the Social Security Act.
- 7.1.3 The relationships described in paragraph 7.1.1 of this Section, are as follows:
- a. A director, officer, or partner of the Broker.
 - b. A subcontractor of the Broker, as governed by 42 CFR § 438.230.
 - c. A person with beneficial ownership of five percent (5%) or more of the Broker's equity or one of the Broker's subcontractor's equity.
 - d. A subcontractor or person with an employment, consulting or other arrangement with the Broker for the provision of items and NET services that are significant and material to the Broker's obligations under its Agreement with DHS.
- 7.1.4 If DHS finds that the Broker is not in compliance with any term set forth in this Section, DHS:
- a. Shall notify the Secretary of CMS of the noncompliance.
 - b. May continue an existing agreement with the Broker unless the Secretary directs otherwise; and
 - c. May not renew or otherwise extend the duration of an existing agreement with the Broker unless the Secretary provides to DHS and to Congress a written statement describing compelling reasons that exist for renewing or extending the agreement despite the prohibited affiliations.
 - d. Nothing in this section shall be construed to limit or otherwise affect any remedies available to the U.S. under sections 1128, 1128A or 1128B of the Social Security Act.
- 7.1.5 Consultation with the Inspector General. Any action by the Secretary described in this Section is taken in consultation with the Inspector General.

Section 8: Audits

8.1 Basic Rules

- 8.1.1 The Broker shall allow DHS, OMIG, MFCU, CMS, the Office of the Inspector General, the Comptroller General, and their designees, at any time, to inspect and audit any of its records or documents inspect its premises, physical facilities, and equipment where Medicaid-related activities or work is conducted.
- 8.1.2 The right to audit under this section exists for ten (10) years from the final date of the contract period or from the date of completion of any audit, whichever is later.
- 8.1.3 All of the Broker's subcontracts must fulfill the requirements of this part, including the same audits and inspections as outlined in subsection E above, for the service or activity delegated under the subcontract.
- 8.1.4 The Broker shall submit audited financial reports specific to this contract on an annual basis. The audit must be conducted in accordance with generally accepted accounting principles and generally accepted auditing standards.
- 8.1.5 The Broker must retain, and require subcontractors to retain, as applicable, the following information:
 - 6.3 Base data as required by 42 CFR § 438.5(c);
 - 6.4 MLR reports as required in 42 CFR § 438.8(k); and
 - 6.5 The data, information, and documentation specified in 42 CFR §§ 438.604, 438.606, 438.608, and 438.610 for a period of no less than ten (10) years.

Section 9: Sanctions

- 9.1 Failure to meet the requirements set out in the Agreement or this Amendment may subject the Broker to the sanctions set out in the Performance Indicators, attached hereto as Attachment B, incorporated herein by reference.

Section 10: Miscellaneous Provisions

10.1 Choice of Law and Venue

10.1.1 The Agreement and this Amendment will be governed by, construed, and enforced in accordance with the laws of the State of Arkansas applicable to contracts to be performed solely within the State. The State and DHS in no way waive the protections of Sovereign Immunity by any language contained in the Amendment.

10.1.2 The parties agree to exclusive jurisdiction of any matter arising out of the Agreement or this Amendment in the State Claims Commission of the State of Arkansas.

10.2 Severability

10.2.1 If any statute or regulation is enacted which requires a change in the Agreement, this Amendment, or any attachment thereto, then both parties will deem the Agreement, this Amendment, or any attachment thereto, as applicable to the required change, to be automatically amended to comply with the newly enacted statute or regulation as of its effective date.

10.2.2 If any provision of the Agreement, Amendment (including items incorporated by reference), or any attachment hereto, is declared or found to be illegal, unenforceable, or void, then both DHS and the Broker will be relieved of all obligations arising under such provision. If the remainder of the Agreement is capable of performance, it will not be affected by such declaration or finding and will be fully performed.

10.2.3 Should any part of the scope of work under this contract relate to a state program that is no longer authorized by law (e.g., which has been vacated by a court of law, or for which CMS has withdrawn federal authority, or which is the subject of a legislative repeal), the broker must do no work on that part after the effective date of the loss of program authority. In such event as outlined in 10.2.3 above:

- a. The state must adjust capitation rates to remove costs that are specific to any program or activity that is no longer authorized by law.
- b. If the broker works on a program or activity no longer authorized by law after the date the legal authority for the work ends, the broker will not be paid for that work.
- c. If the state paid the broker in advance to work on a no-longer-authorized program or activity and under the terms of this contract the work was to be performed after the date the legal authority ended, the payment for that work should be returned to the state. However, if the broker worked on a program or activity prior to the date legal authority ended for that program or activity, and the state included the cost of performing that work in its payments to the broker, the broker may keep the payment for that work even if the payment was made after the date the program or activity lost legal authority.

10.2.4 Amendments

The Agreement may be amended only in writing. All amendments, including this Amendment, are fully incorporated into the Agreement and effective upon the date of signing by both parties.

10.3 Federal Guidelines Regarding Communicable Diseases

10.3.1 The Broker, and its subcontractors, shall comply with applicable CDC guidelines regarding communicable diseases for non-emergency transportation service providers.

Section 11: Signatures

The named parties to the Agreement have approved the terms and conditions herein this Amendment, including all attachments hereto, and by their signatures below hereby agree to the terms and conditions set forth herein.

Arkansas Department of Human Services

Non-Emergency Transportation Broker:

(Name)

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____