

ADDITIONAL CONTRACT TERMS AND CONDITIONS

1. DEFINITIONS.

- A. **Contracting Officer.** When the Department has received delegation from the Department of General Services to act as the purchasing agency, the sole person designated to act for the Department in the processing of this Contract and receipt of written notices of controversy or claims pertaining to the Contract. The person so designated is the Deputy Secretary for Administration or his or her designee.
- B. **Project Officer.** The person designated to act for the Department in otherwise administering this Contract.
- C. **Department.** The Pennsylvania Department of Health.

2. INSURANCE AND TAXES.

The Contractor shall provide public liability, property damage and workers' compensation insurance, insuring as they may appear, the interests of all parties to the Agreement against any and all claims which may arise out of Contractor's operations under the terms of this Agreement. The Contractor shall accept full responsibility for the payment of premiums for workers' compensation and social security as well as all income tax deductions and any other taxes or payroll deductions required by law for its employees who are performing services specified by this Agreement.

3. SUBCONTRACT APPROVALS.

The officials who are authorized to give approval for the Department in regard to subcontracting, are the Secretary, the appropriate Deputy Secretary, the Contracting Officer or the Project Officer. Any such approval must be in writing to be valid.

4. OTHER CONTRACTORS.

The Department may undertake or award other contracts for additional or related work, and the Contractor shall fully cooperate with other contractors and Department employees and carefully fit its work to such additional work. The Contractor shall not commit or permit any act which will interfere with the performance of work by any other contractor or by Department employees.

This paragraph shall be included in the contracts of all contractors with whom the Contractor will be required to cooperate. The Department shall equitably enforce this paragraph as to all contractors to prevent the imposition of unreasonable burdens on any contractor.

5. AVAILABILITY OF INFORMATION.

During the period of this Agreement, all information obtained by the Contractor through work on the project shall be made available to the Department immediately upon demand.

6. FISCAL AND PROGRAM RECORDS.

- A. Contractor agrees to maintain program records required by the Department and agrees that a program and facilities review, including meetings with consumers, review of service records, review of service policy and procedural issuances, review of staffing ratios and job descriptions, and meetings with any staff directly or indirectly involved in the provision of services may be conducted at any reasonable time by State and Federal personnel and other persons duly authorized by the Department.
- B. Contractor agrees to maintain program statistical records required by the Department to produce program narrative and statistical data at times prescribed by, and on forms furnished by the Department.

- C. Contractor agrees to maintain books, records, documents, sub-contracts and other evidence pertaining to the costs and expenses of this Agreement (hereinafter referred to in this paragraph 6 as "the records"), to the extent and in such detail as will properly reflect all net costs, direct and indirect, of labor, materials, equipment, supplies and services and other costs and expenses of whatever nature for which reimbursement is claimed under the provisions of this contract. If Contractor is not a public body, Contractor agrees to maintain books, records, documents and other evidence in accordance with accounting procedures and practices which meet generally accepted accounting principles.
- D. If this Agreement provides funding for a clinic or program which receives income or funding other than directly through this Agreement (such as, but not limited to, third party reimbursement for patients), Contractor agrees that all parts of this paragraph 6 of these Standard General Terms and Conditions shall also apply to Contractor's records pertaining to such other sources of funding or income supporting the clinic or program.
- E. Contractor agrees to make available at the Office of the Contractor at all reasonable times during the term of this Agreement and the period set forth in Paragraph 7 below, any of the records for inspection, audit or reproduction by any authorized representative of the Department, the Department's Comptroller, the Auditor General, the Inspector General or Federal auditors.
- F. The provisions of this paragraph 6 shall be applicable to and included in each sub-contract entered into by the Contractor in the performance of this Agreement. The term "sub-contract" as used in this paragraph excludes purchase orders not exceeding \$1,000 and sub-contracts or purchase orders for public utility services at rates established for uniform applicability to the general public.
- G. Contractor agrees to collect statistical data of a fiscal nature on a regular basis and to make fiscal statistical reports at times prescribed by, and on forms furnished by the Department.

7. RECORD RETENTION REQUIREMENTS.

All records kept pursuant to Paragraph 6 shall be retained pursuant to the provisions of this Paragraph 7.

- A. The Contractor shall preserve and make available its records for a period of four years from the date of final payment under this Agreement, and for such period, if any, as is required by applicable statute, by any other paragraph of this Agreement, or by sub-paragraphs (1) or (2) below.
 - (1) If this Agreement is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for a period of five years from the date of any resulting final payment.
 - (2) Records which relate to litigation or the settlement of claims arising out of the performance of this Agreement, or costs and expenses of this Agreement as to which exception has been taken by the auditors, shall be retained by the Contractor until such litigation, claims, or exceptions have been disposed of.
- B. Except for the records described in sub-paragraph A (2) above, the Contractor may, in fulfillment of its obligation to retain its records as required by this paragraph, substitute photographs, microphotographs, or other authentic reproductions of such records, after the expiration of two years following the last day of the month of reimbursement to the Contractor of the invoice or voucher to which such records relate, unless a shorter period is authorized by the Department, with the concurrence of the auditors.

8. EVALUATION COMPONENT.

All work performed under this contract shall include an evaluation component. Contractor agrees to collect, maintain and provide data for evaluation purposes as specified in the Work Statement and in any other provisions of this Contract.

9. FEDERAL FUNDS.

The Contractor certifies that the Federal funds provided by this Agreement do not replace or supplant in

any way any other funds, whether state, local or private, being used to provide already existing services. Contractor further certifies that the services to be provided under this Agreement are not already available without cost. Contractor further certifies that the addition of Federal funds will result in a commensurate program expansion.

10. QUALITY ASSURANCE.

Unless otherwise provided herein, the Contractor with due diligence shall furnish all necessary qualified personnel, material and equipment, managing and directing same to complete the work required by this Agreement. The Contractor's work hereunder shall be monitored by the Project Officer and the Project Officer's designated representatives. If requested by the Department, Contractor shall produce or provide special reports to the Department in a timeframe and format specified by the Department.

11. PROGRAM CHANGES.

The Project Officer may at any time, by written order, make changes in the statement of work, provided such changes are within the general scope of the statement of work and provided further that the total cost of this Agreement is not exceeded. The Project Officer and the Contractor shall mutually determine whether the ordered changes can be accomplished within the total contract cost and the extent of change, if any, in delivery schedules required by the ordered changes. The Project Officer may not change the scope of work or increase the total cost of this Agreement.

12. WRITTEN COMMITMENT.

Any written commitment or representation of the Contractor made within the scope of this Agreement shall, if accepted by the Project Officer in writing, be binding upon the Contractor and shall be incorporated as a part of this Agreement.

13. KEY PERSONNEL.

The personnel specified in this Agreement are considered to be essential to the work being performed hereunder. Prior to diverting any of the specified individuals to other programs, the Contractor shall notify the Project Officer reasonably in advance and shall submit justification including proposed substitutions, in sufficient detail to permit evaluation of the impact on the program. No diversion shall be made by the Contractor without the written consent of the Project Officer.

14. INSPECTION AND ACCEPTANCE.

Final inspection and acceptance of all work required under this Agreement shall be performed by the Project Officer.

15. TRAVEL AND SUBSISTENCE COSTS.

The Department shall not be liable for travel or subsistence costs except as specifically set forth in this Agreement.

16. DATA, COPYRIGHTS, AND DISCLOSURE.

A. Definition: The term "data," as used herein, includes but is not necessarily limited to written reports and analyses, diagrams, maps, system designs, computer programs, flow charts, punched card decks, magnetic tapes, diskettes, drawings, studies, manuals, brochures, advertisements, documents, sketches, papers, files, information, computer documentation, other tangible materials, and work of any similar nature which is required to be performed by or for the Contractor under this Contract or which is incidentally prepared by or for the Contractor in the performance of this Contract. Data includes background material prepared by or for the Contractor incidental to the performance of this Contract. Background material is defined as original work papers, notes, and drafts prepared by or for the Contractor to support conclusions in any final report or product delivered under this Contract, including but not limited to completed questionnaires, and material in electronic data processing form, computer programs, and other tangible materials produced by or for the Contractor during the term of this Contract and directly related to the services being rendered. It does not include Contractor's financial reports or other information incidental to Contract administration.

- B. **Preexisting Materials Brought by Contractor to the Project:** The Department shall have no ownership rights to Contractor's proprietary materials, data, software, methodologies or other intellectual property that Contractor brings to the Project or has previously developed with or obtained from third parties. Notwithstanding the foregoing provision, where materials brought by the Contractor to the Project are necessary to use the deliverables required under this Contract, the Contractor shall, and hereby effectively does, grant to the Department a paid-up, nonexclusive, nontransferable license to use, modify, prepare derivative works, and to grant to third parties engaged by the Commonwealth the right to use, modify, and prepare derivative works, from all or any portion of the material brought by the Contractor to the Project.
- C. **Ownership of Data:** Any Data that fits the definition of "work made for hire," as that term is defined in United States copyright law, shall be considered a "work made for hire." All rights to these Data shall vest in the Department, which shall have sole and exclusive ownership of all Data. In the event that such Data do not fall within the specifically enumerated works that constitute "works made for hire" under the United States copyright laws, Contractor agrees to assign and, upon their authorship or creation, expressly and automatically assigns all copyright interests, proprietary rights, trade secrets, and other right, title and interest in and to such Data to the Department. The Department shall have the rights accorded a holder of copyright under the United States copyright laws including, but not limited to, the exclusive right to reproduce the Data in copies, the right to distribute copies by sale or other transfers, the right to register all copyrights in its own name as author in the United States and foreign countries, the right to prepare derivative works based upon the Data, and the right to display the Data. Upon completion or termination of this Agreement, Contractor shall immediately deliver all working papers, files, background material, and other documentation to the Department. Contractor warrants that the Data are original and do not infringe the rights of any other work.
- D. **Forms Approval:** All forms, questionnaires, survey instruments, etc., developed under this Agreement shall be subject to prior written approval by the Department.
- E. **Data Processing:** All computer programs, tapes, and software developed under this Agreement, and any data or information provided to the Department by diskette or electronic means, shall be compatible with Department computer systems. Specifications, if not included elsewhere in this Agreement, may be obtained from the Project Officer.
- F. **Federal Government Interests:** It is understood that certain funding under this Agreement may be provided by the Federal Government. Accordingly, the rights to Data of Contractors or subcontractors hereunder will be further subject to government rights as set forth in 37 C.F.R. Section 401, and other applicable statutes. Notwithstanding the foregoing, the Department retains the right to share information with the Federal Government relating to Data developed under a wholly state-funded Contract.
- G. **Defense of Infringement Claim:** The Contractor shall hold the Commonwealth harmless for any suit or proceeding brought against the Commonwealth, including the Department, or their officials or employees, on account of any alleged infringement of any United States or foreign copyrights, patents, trademarks, or trade secrets arising out of the performance of this Agreement, including any suit or proceeding relating to all work, services, materials, reports, studies and computer programs provided by the Contractor. The Contractor shall pay all damages and costs awarded therein against the Commonwealth. Pursuant to the Commonwealth Attorney's Act 71 P.S. § 732 – 101, et seq., the Office of Attorney General (OAG) has the sole authority to represent the Commonwealth in actions brought against the Commonwealth. The OAG may, however, in its sole discretion and under the terms it deems appropriate, delegate its right of defense. If information and assistance are furnished by the Commonwealth at Contractor's written request, it shall be at the Contractor's expense, but the responsibility for such expense shall be only that within the Contractor's written request. If any of the data, materials, reports, studies or computer programs provided by the Contractor are held to constitute infringement, and the use of publication thereof is enjoined in such suit or proceeding, the Contractor shall, at its own expense and at its option, either procure the right to publish or continue use of such infringing data, materials, reports, studies or computer programs, replace them with non-infringing items, or so modify them so that they are no longer infringing. If after a reasonable time and good faith effort, the Contractor is unable to comply with the requirements of the immediately

preceding sentence, the Contractor shall return to the Department that portion of contract funds expended by the Contractor in relation to the infringing item. The obligations of the Contractor under this paragraph continue without time limit.

- H. Department Approval and Attribution: All printed material is subject to written preapproval by the Department. "Printed material" includes, but is not limited to, notices, informational pamphlets, press releases, research reports, brochures, manuals, labels, newsletters, artwork, and print advertisements. All printed material must bear the Department logo and the names and titles of the Governor and the Secretary of Health unless otherwise authorized in writing by the Department's Contracting Officer. All material produced for radio and television must also be approved for quality of content and accreditation in writing by the Department's Contracting Officer prior to final production as well as after final production.
- I. Department attribution shall be at the Department's sole discretion. If the Department requires attribution on printed materials, the Contractor shall include the following statement on printed materials released by the Contractor: "This project is funded, in part, under a contract with the Pennsylvania Department of Health. Basic data for use in this study were supplied by the Pennsylvania Department of Health, Harrisburg, Pennsylvania."
- J. The Department takes no part in and is in no way responsible for any analyses, interpretations or conclusions," or another statement approved by the Department. If the Department requires attribution on materials produced for radio and television, the Contractor shall include a statement approved by the Department.

17. CONFIDENTIALITY, SENSITIVE DOCUMENTS AND INFORMATION.

- A. The Contractor shall maintain the confidentiality of medical records of individuals served by the Contractor under this Agreement except to disclose such confidential information to the Department for purposes of consultation or the Department's monitoring of this Agreement.
- B. Sensitive Information: The Contractor shall not publish or otherwise disclose, except to the Department and except matters of public record, any information or data obtained hereunder from private individuals, organizations, or public agencies, in a publication whereby the information or data furnished by or about any particular person or establishment can be identified, except with the informed consent of such person or establishment.
- C. The Contractor shall not release any sensitive documents or information without the prior written approval of the Department. The term "sensitive documents or information" shall mean a document or information that contains the description, design, operational plan, or other vital information about a critical facility or infrastructure located in Pennsylvania and bordering states (e.g., nuclear power plants, hazardous chemical plant, oil refinery, bridge, dam, tunnel, etc.), or contains information about the operational protocols or emergency response capabilities of state and local agency personnel, the content of which could be used by a terrorist or enemy of the United States to plan an attack upon a critical facility located in Pennsylvania and bordering states or engages in other activities that could cause death or injury to fire, police, medical, military, or other emergency response personnel, public officials, or the general public.

18. COLLECTION OR RECORDING OF INFORMATION.

The Contractor shall submit to the Project Officer for written approval prior to use, copies of each questionnaire and survey plan, including plans for structured interviews and consultations, for the collection of information upon identical items from five or more individuals or organizational elements. The term "structured interview and consultation" is defined as an interview or consultation which follows a predesigned line of questioning that takes approximately the same form for all the respondents being interviewed or consulted.

19. ADDITIONAL TERMINATION PROVISION.

In addition to any other termination provision in this Agreement, this Agreement may be canceled by either

party upon 30 days advance written notice.

20. AVAILABILITY OR SUFFICIENCY OF DEPARTMENT FUNDS.

In addition to any other termination provision within this Contract, the Department may terminate this Agreement at any time in the event funds, including, but not limited to, federal program funds, become unavailable or are insufficient for Department program purposes. In such case, the Department will provide the Contractor with advance notice to the extent reasonable and possible under the circumstances to either terminate the contract overall, or suspend all or a portion of such contract as determined by the Department and set forth in its notice to Contractor. The Department will pay Contractor for satisfactory work completed up until such termination or outside such suspension period, but in no event shall Contractor be entitled to receive loss of profits.

21. NONDISCRIMINATION/SEXUAL HARASSMENT CLAUSE.

In addition to any nondiscrimination clause contained elsewhere within this Contract, Contractor agrees to the following:

- A. The Contractor and any subcontractors shall comply with any federal, state, or local law, as applicable, pertaining to nondiscrimination and equal opportunity in regard to its employees, applicants for employment, independent contractors, or any other person.
- B. In the hiring of any employees for the manufacture of supplies, performance of work, or any other activity required under the Contract or any subcontract, the Contractor, subcontractor or any person acting on behalf of the Contractor or subcontractor shall not by reason of gender, race, creed, color, religion, age, sexual preference, handicap or national origin discriminate against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.
- C. Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate against or intimidate any employee involved in the manufacture of supplies, the performance of work or any other activity required under the Contract on account of gender, race, creed, color, religion, age, sexual preference, handicap or national origin.
- D. The Contractor shall not discriminate by reason of gender, race, creed, color, religion, age, sexual preference, handicap or national origin against any subcontractor or supplier who is qualified to perform the work to which the contract relates.
- E. The Contractor and any subcontractors shall establish and maintain a written sexual harassment policy and shall inform their employees of the policy. The policy must contain a notice that sexual harassment will not be tolerated and employees who practice it will be disciplined.
- F. The Contractor and any subcontractors ensure that any services or benefits available to the public or other third parties by way of this Contract shall not be denied or restricted for such persons due to race, creed, color, religion, sex, sexual preference, age, handicap, or national origin (national origin protections include persons who are limited English proficient) consistent with the provisions of Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act and The Age Discrimination Act of 1975 as well as applicable provisions of the Omnibus Reconciliation Act of 1981.
- G. The Contractor and each subcontractor shall furnish all necessary employment documents and records to and permit access to its books, records, and accounts by the contracting officer and the Department of General Services' Bureau of Contract Administration and Business Development for purposes of investigation to ascertain compliance with the provisions of this Nondiscrimination/Sexual Harassment Clause. If the Contractor or any subcontractor does not possess documents or records reflecting the necessary information requested, it shall furnish such information on reporting forms supplied by the contracting officer or the Bureau of Contract Administration and Business Development.
- H. The Contractor shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subcontract so that such provisions will be binding upon each subcontractor.
- I. The Commonwealth may cancel or terminate the Contract, and all money due or to become due under

the Contract may be forfeited for a violation of the terms and conditions of this Nondiscrimination/Sexual Harassment Clause. In addition, the agency may proceed with debarment or suspension and may place the Contractor in the Contractor Responsibility File.

22. EQUAL OPPORTUNITY FOR THE HANDICAPPED.

- A. The Contractor agrees to abide by Section 504 of the Rehabilitation Act of 1973, as amended (Public Law 93-112, 29 U.S.C. §794, as amended) and implementing federal regulations. The Contractor assures that any benefits, services, or employment, available through the Contractor to the public by way of this Agreement's funds, shall not be denied persons with handicaps who are otherwise qualified or eligible for the benefits, services, or employment available as a result of this Agreement.
- B. The Contractor shall include the provisions of subparagraph A above in every subcontract under this Agreement so that such provision binds each sub-contractor.

23. GENERIC DRUGS.

If under this Agreement the Contractor prescribes or dispenses drugs to consumers, it shall do so in accordance with Act 259 of November 24, 1976, P.L. 1163, 35 P.S. §960.1 et seq., as amended, and prescribe and dispense generically equivalent drugs rather than brand name drugs whenever possible.

24. LAWS AND REGULATIONS.

This Agreement is subject to the provisions of all pertinent federal, state, and local laws and regulations and all amendments made thereto. Definitions of service, eligibility of recipients of service, and other limitations on the purchase of the services established in this Agreement are subject to modification by amendments to federal, state and local laws and regulations without further notice to the Contractor.

25. DISPOSITION OF EQUIPMENT.

- A. Contractor agrees to obtain all supplies and equipment for use in the performance of this Agreement at the lowest practicable cost and to purchase by means of a system of competitive bidding.
- B. Title to all property furnished by the Department shall remain with the Department. Title to all personal property acquired by the Contractor, including purchase by lease-purchase agreement, for the cost of which the Contractor is to be reimbursed under this Agreement, shall vest in the Contractor during the term of this Agreement. Upon cancellation or termination of this Agreement, such purchased personal property which has remaining useful life shall become the property of the Department, or at the election of and with written approval of the Department, may be disposed of by the Contractor in accordance with the following provisions:
 - (1) If the Contractor wishes to retain any items of such purchased property, both parties will arrange for an independent third-party appraisal of these property items and the Contractor will reimburse the Department for the value of the remaining life of the property on the basis of such appraisal. Unless otherwise agreed upon in writing by the Department, the Contractor shall be responsible for the cost of appraisal.
 - (2) Provided the Department is notified ten days in advance of the date of the sale and the Contractor has the prior written permission of the Department and the approval of the Governor's Office of Budget, Contractor may sell the property. Contractor shall reimburse the Department for the Department's appropriate share.
- C. All property furnished by the Department or personal property acquired by the Contractor, including purchase by lease-purchase agreement, for which the Contractor is to be reimbursed under this Agreement shall be deemed Commonwealth property for the purpose of sub-paragraphs D, E, and F of this paragraph.
- D. Contractor shall maintain and administer in accordance with sound business practices a program for the maintenance, repair, protection, preservation and insurance of Commonwealth property so as to

assure its full availability and usefulness.

- E. The Commonwealth property and any property purchased under this Agreement shall, unless otherwise provided herein, or approved in writing by the Department and the Governor's Office of Budget, be used only for the performance of this Agreement.
- F. In the event that Contractor is indemnified, reimbursed or otherwise compensated for any loss or destruction of or damage to the Commonwealth's property, Contractor shall use the proceeds to repair, renovate or replace the Commonwealth property involved, or shall credit such proceeds against the cost of the work covered by the Agreement, or shall otherwise reimburse the Department as directed by the Department.
- G. Should the Contractor purchase equipment pursuant to this Agreement, the Contractor shall complete the Department's Equipment Inventory Form and return it to the Department with the Contractor's invoice which seeks reimbursement for such equipment under this Agreement. The Department will provide the Contractor with the form when this Agreement provides for the purchase of equipment.

26. HUMAN RESEARCH.

The Contractor agrees that all human subject research (which includes but is not limited to the researcher obtaining identifiable private information or data through intervention or interaction with an individual) shall be prohibited unless the Contractor also certifies that prior written approval of its own or another Institutional Review Board (IRB) has been obtained or the research has been exempted, subject to all applicable laws, including but not limited to: 42 U.S. C. Section 3515(b) (relating to prohibitions on funding certain experiments involving human participants) and the regulations there under. Voluntary, informed consent of each subject shall be obtained. If the subject is a minor, or incompetent, the voluntary, informed consent of his or her legal guardian shall be required. The Contractor shall inform each potential subject prior to his or her consent that refusal will not result in the loss of any benefits to which the subject is otherwise entitled from the federal government, the Commonwealth, the Contractor, any subcontractor, or any third party insurer. Additionally, the Contractor agrees that all human subject research funded under this grant shall be submitted for review and approval to the Department of Health IRB on form number HD 1013F prior to the onset of research.