

## General Terms and Conditions

- I. DEFINITIONS. As used in the Contract, the following terms shall have the meanings set forth below:
  - A. Contract shall mean the Contract Cover Sheet, these General Terms and Conditions, and all Attachments identified on the Contract Cover Sheet. The Contract shall also include any negotiated and executed amendment to the Contract or any task order negotiated, executed, and implemented pursuant to provisions of the Contract.
  - B. Contract Manager shall mean that person appointed by the Department to administer the Contract on behalf of the Department. "Contract Manager" includes, except as otherwise provided in the Contract, an authorized representative of the Contract Manager acting within the scope of his or her authority. The Department may change the designated Contract Manager from time to time by providing notice to Contractor as provided in the Contract.
  - C. Contractor shall mean that individual, partnership, corporation, or other entity who executes the Contract or performs services under the Contract. Contractor shall include any subcontractor retained by the Contractor as permitted under the terms of the Contract.
  - D. Department shall mean the State of Idaho, Department of Health and Welfare, its divisions, sections, offices, units, or other subdivisions, and its officers, employees, and agents.
- II. CONTRACT EFFECTIVENESS. It is understood that this Contract or any Amendment is effective when it is signed by both parties, or at a later date if specified in the Contract or Amendment. The Contractor shall not render services to the Department until the Contract or Amendment has become effective. The Department will not pay for any services rendered prior to the effective date of the Contract or Amendment.
- III. RENEWAL. The Department reserves the right to extend this contract for additional periods, not to exceed a total of four (4) years, provided the Contractor has demonstrated satisfactory performance in the previous year. Any extension or amendment of this contract shall be in writing, signed by both parties.
- IV. INDEPENDENT CONTRACTOR STATUS.
  - A. Status Contractor's status under the Contract shall be that of an independent contractor and not that of an agent or employee of the Department or the State of Idaho. Contractor shall be responsible for paying all employment-related taxes and benefits, such as federal and state income tax withholding, social security contributions, worker's compensation and unemployment insurance premiums, health and life insurance premiums, pension contributions and similar items. Contractor shall indemnify the Department and hold it harmless from any and all claims for taxes, including but not limited to social security taxes, penalties, attorneys' fees and costs that may be made or assessed against the Department arising out of Contractor's failure to pay such taxes, fees or contributions.
  - B. Reassignment of Contractor Employees The Department shall have the right, after having consulted with the Contractor, to require the Contractor to reassign or otherwise remove from the contract any Contractor employee or subcontractor found in good faith to be unacceptable to the Department.
- V. INDEMNIFICATION.
  - A. Indemnification by the Contractor The Contractor shall indemnify, defend and save harmless the State of Idaho, and the Department, its officers, agents, and employees, from and against all liability, claims, damages, losses, expenses, actions, attorney fees and suits whatsoever, including injury or death of others or any employee of the Contractor or subcontractor caused by

or arising out of the Contractor's negligent or otherwise wrongful performance, act or omission under the Contract or Contractor's failure to comply with any state, federal or local statute, law, regulation, or rule. Nothing in this provision shall extend the Contractor's indemnification of the Department beyond the liability of the Department provided in the Idaho Tort Claim's Act Idaho Code 6-901 et seq., the aggregate of which is limited to \$500,000 by Idaho Code 6-926.

B. Indemnification by the Department The Department shall indemnify, defend and save harmless the Contractor, its officers, agents, employees, and subcontractors from and against all liability, claims, damages, losses, expenses, actions, attorney fees and suits whatsoever, including injury or death of others or any employee of the Department caused by or arising out of the Department's negligent or otherwise wrongful performance, act, or omission of any term of the Contract or the Department's failure to comply with any state, federal or local statute, law, regulation or rule. Nothing in this provision shall extend the liability of the Department beyond that provided in the Idaho Tort Claims Act, Idaho Code 6-901 et seq.

VI. ASSIGNMENT AND SUBCONTRACTING. Contractor shall not subcontract or assign the Contract without the prior written approval of the Department. The Department will not approve subcontracts unless such subcontracts contain all federal and state requirements and such conditions and provisions as the Department may, in its sole judgment, deem necessary. Notwithstanding the Department's approval of any subcontract, the Contractor shall be solely responsible for the satisfactory performance of all subcontractors and subcontracted services and for the compensation of all subcontractors. Contractor shall be and shall remain liable for all damages to the Department caused by negligent performance or non-performance of the subcontracted services.

VII. RECORDS AND DATA.

A. Fiscal Records The Contractor shall maintain fiscal records, including its books, audit papers, documents, and any other evidence of accounting procedures and practices, which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of the Contract.

B. Records Maintenance The Contractor shall maintain all records and documents relevant to the Contract for three (3) years from the date of final payment to Contractor. If an audit, litigation or other action involving records is initiated before the three (3) year period has expired, the Contractor shall maintain records until all issues arising out of such actions are resolved, or until an additional three (3) year period has passed, whichever is later.

C. Termination of Contract If the existence of the Contractor is terminated by bankruptcy or any other cause, all program and fiscal records related to the Contract in Contractor's possession shall become the property of the Department and Contractor shall immediately deliver such records to the Contract Manager.

D. Records Review All records and documents relevant to the Contract, including but not limited to fiscal records, shall be available for and subject to inspection, review or audit, and copying by the Department and other personnel duly authorized by the Department, and by federal inspectors or auditors. Contractor shall make its records available to such parties at all reasonable times, at either the contractor's principal place of business or upon premises designated by the Department.

E. Subcontracts The Contractor shall include the requirements of this section in all approved subcontracts and assignments.

VIII. CONFIDENTIALITY. The Contractor shall comply with all applicable state and federal laws, rules, and regulations concerning confidentiality. The Department will furnish the Contractor with copies of applicable statutes, rules, and regulations upon receipt of a written request from Contractor.

IX. PUBLIC RECORDS. Pursuant to Idaho Code section 9-335 et seq., as amended during the term of  
General Terms and Conditions

the Contract, information or documents received from Contractor may be open to public inspection and copying unless they are exempt from disclosure. Contractor shall clearly designate individual documents as "exempt" and shall indicate the basis for such exemption. Contractor shall indemnify and defend the Department for honoring such a designation. Contractor's failure to designate as exempt any document that is released by the Department shall constitute a complete waiver of any and all claims for damages caused by any such release. If the Department receives a request for materials claimed exempt by Contractor, Contractor shall provide the legal defense for such claim.

X. CUSTOMER SERVICE.

- A. Telephone Contractors who have direct contact with the public in fulfilling this contract shall have their main, published telephone numbers answered by a person during normal business hours. Voice mail for contractor staff shall provide an option for the caller to obtain immediate assistance if necessary. The contractor shall endeavor to return telephone calls the same day, and shall respond to phone calls and e-mails not later than forty-eight (48) hours or two (2) business days after the initial contact, whichever is later.
- B. Correspondence Except for public records requests, the Contractor shall respond to written correspondence within ten (10) days. The Contractor shall provide clear, understandable, timely and accurate written information to Department customers as required by this Contract.
- C. Policies The Contractor shall treat Department staff and customers with respect and dignity, and shall demonstrate a caring attitude to all who ask for assistance. Contractors shall have a written customer service policy that describes how customer service will be incorporated into policies and training.

XI. BINDING EFFECT OF FEDERAL PURCHASE OF SERVICE REGULATIONS. The Contract is subject to the provisions of any relevant federal regulations and any relevant provisions of agreements between the State of Idaho and the United States, including but not limited to State Plans, in effect at the time the Contract is executed, or which thereafter become effective. Such regulations and agreements are on file in the Central Office of the Department and are available for inspection by the Contractor during regular business hours.

XII. FEDERAL AND STATE AUDIT EXCEPTIONS. If a federal or state audit indicates that payments to the Contractor fail to comply with applicable federal or state laws, rules or regulations, the Contractor shall refund and pay to the Department any compensation paid to Contractor arising from such noncompliance, plus costs, including audit costs.

XIII. COMPLIANCE WITH CERTAIN LAWS.

- A. Nondiscrimination The Contractor shall provide all services funded through or affected by the Contract without discrimination on the basis of race, color, national origin, religion, sex, age, and physical or mental impairment, and shall comply with all relevant sections of the following: Title VI of the Civil Rights Act of 1964; Section 504 of the Rehabilitation Act of 1973; The Age Discrimination Act of 1975; and, The Americans with Disabilities Act of 1990. The Contractor shall comply with pertinent amendments to such laws made during the term of the Contract and with all federal and state rules and regulations implementing such laws.
- B. HIPAA The Contractor acknowledges that it may have an obligation, independent of this contract, to comply with the Health Insurance Portability and Accountability Act (HIPAA), Sections 262 and 264 of Public Law 104-191, 42 USC Section 1320d, and federal regulations at 45 CFR Parts 160, 162 and 164. If applicable, Contractor shall comply with all amendments to the law and federal regulations made during the term of the Contract.
- C. Lobbying

1. The Contractor certifies that none of the compensation under the Contract has been paid or

will be paid by or on behalf of the Contractor to any person for influencing or attempting to influence an officer or employee of any governmental agency, a member, officer or employee of Congress or the Idaho Legislature in connection with the awarding, continuation, renewal, amendment, or modification of any contract, grant, loan, or cooperative agreement.

2. If any funds, other than funds provided by the Contract, have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any governmental agency, a member, officer or employee of Congress or the State Legislature in connection with the Contract, the Contractor shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions, and submit a copy of such form to the Department.
3. The Contractor shall require that the language of this certification be included in any subcontract, at all tiers, (including grants, subgrants, loans, and cooperative agreements) entered into as a result of the Contract, and that all sub-recipients shall certify and disclose as provided herein.
4. The Contractor acknowledges that a false certification may be cause for rejection or termination of the Contract, subject Contractor to a civil penalty, under 31 U.S.C. § 1352, of not less than \$10,000.00 and not more than \$100,000.00 for each such false statement, and that Contractor's execution of the Contract is a material representation of fact upon which the Department relied in entering the Contract.

D. Qualification The Contractor certifies to the best of its knowledge and belief that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from performing the terms of the Contract by a government entity (federal, state or local);
2. Have not, within a three (3) year period preceding the Contract, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a government entity (federal, state or local) with commission of any of the offenses enumerated in paragraph 2 of this certification; and
4. Have not within a three (3) year period preceding the Contract had one or more public transactions (federal, state, or local) terminated for cause or default.
5. The Contractor acknowledges that a false statement of this certification may be cause for rejection or termination of the Contract and subject Contractor, under 18 U.S.C. § 1001, to a fine of up to \$10,000.00 or imprisonment for up to 5 years, or both.

E. Faith-Based Organization If the Contractor is a faith-based organization, the contractor and all approved subcontractors shall:

1. Segregate contract funds in a separate account.
2. Serve all participants without regard to religion, religious belief, refusal to hold a religious belief, or refusal to actively participate in a religious practice.
3. Ensure that Department-referred clients' participation in religious activities, including worship,

- scripture study, prayer or proselytization, is only on a voluntary basis.
4. Notify participants of the religious nature of the organization, their right to be served without religious discrimination, their right not to take part in religious activities, their right to request an alternative provider and the process for doing so.
  5. Ensure that contract funds are not expended on inherently religious activities.
  6. Comply with applicable terms of 42 CFR Parts 54, 54a, and 45 CFR Parts 260 and 1050.
- F. Tribes If the Contractor is a Tribe, the Contractor and Department recognize that services performed pursuant to this Contract by the Contractor and all approved subcontractors within reservation boundaries are subject to applicable laws, ordinances and regulations of the Tribe. Nothing in this Contract should be construed as a waiver of sovereign immunity.
- G. Illegal Aliens Contractor warrants that any contract resulting from this Solicitation is subject to Executive Order 2006-40 ([http://gov.idaho.gov/mediacenter/execorders/eo06/eo\\_2006-40.html](http://gov.idaho.gov/mediacenter/execorders/eo06/eo_2006-40.html)); it does not knowingly hire or engage any illegal aliens or persons not authorized to work in the United States; it takes steps to verify that it does not hire or engage any illegal aliens or persons not authorized to work in the United States; and that any misrepresentation in this regard or any employment of persons not authorized to work in the United States constitutes a material breach and shall be cause for termination of its contract.

#### XIV. CONFLICT OF INTEREST.

- A. Public Official No official or employee of the Department and no other public official of the State of Idaho or the United States government who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of the Contract shall, prior to the termination of the Contract, voluntarily acquire any personal interest, direct or indirect, in the Contract or proposed Contract.
- B. Contractor The Contractor covenants that it presently has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of its services hereunder. The Contractor further covenants that in the performance of the Contract, no person who has any such known interests shall be employed.

XV. LICENSES. For the duration of the Contract, the Contractor shall maintain in effect, and have in its possession, all licenses required by federal, state and local laws, rules and regulations, including, but not limited to business and professional licenses.

#### XVI. REMEDIES.

- A. Remedial Action If any of the services do not conform to Contract requirements, the Department shall consult with the Contractor and may at its sole discretion require any of the following remedial actions, taking into account the nature of the deficiency: (1) require the Contractor to take corrective action to ensure that performance conforms to Contract requirements; (2) reduce payment to reflect the reduced value of services received; (3) require the Contractor to subcontract all or part of the service at no additional cost to the Department; or (4) terminate the Contract.
- B. Termination for Convenience The Department or the Contractor may cancel the Contract at any time, with or without cause, upon thirty (30) calendar days written notice to the other party specifying the date of termination.
- C. Termination for Cause Either party may terminate the Contract immediately upon written notice, or upon such notice as such party, in its sole discretion, deems appropriate, if at any time: (a) the other party is in material breach of any warranty, term, condition, covenant or obligation under the

Contract; (b) judicial interpretation of federal or state laws, regulations, or rules renders fulfillment of the Contract infeasible or impossible; (c) Contractor's license or certification required by law is suspended, not renewed, or is otherwise not in effect at the time service is provided; or (d) Contractor fails to comply with any applicable law, regulation, or rule.

- D. Effect of Termination Upon termination by the Department, Contractor shall: (a) promptly discontinue all work, unless the termination notice directs otherwise; (b) promptly return to the Department any property provided by the Department pursuant to the Contract; and, (c) deliver or otherwise make available to the Department all data, reports, estimates, summaries and such other information and materials as may have been accumulated by Contractor in performing the Contract, whether completed or in process. Upon termination by the Department, the Department may take over the services and may award another party a contract to complete the services contemplated by the Contract. Upon termination for cause, the Department shall be entitled to reimbursement from Contractor for losses incurred as a result of the Contractor's breach.
- E. Survival of Terms Any termination, cancellation, or expiration of the Contract notwithstanding, provisions which are intended to survive and continue shall survive and continue, including, but not limited to, the provisions of Sections IV (Independent Contractor Status), V (Indemnification), VII (Records and Data), XII (Federal and State Audit Exceptions), and XIII (Compliance with Certain Laws).

#### XVII. MISCELLANEOUS.

- A. Disposition of Property At the termination of the Contract, Contractor shall comply with relevant federal and state laws, rules and regulations and with federal OMB Circulars concerning the disposition of property purchased wholly or in part with funds provided under the Contract.
- B. Governing Law The Contract shall be governed by and construed under the laws of the State of Idaho.
- C. Officials Not Personally Liable In no event shall any official, office, employee or agent of the State of Idaho or of the Department be liable or responsible for any representation, statement, covenant, warranty or obligation contained in, or made in connection with, the Contract, express or implied.
- D. Time of Performance Time is of the essence with respect to the obligations to be performed under the Contract; therefore, the parties shall strictly comply with all times for performance.
- E. Notices Any notice given in connection with the Contract shall be given in writing and shall be delivered either by hand or by certified mail, return receipt requested, to the other party at the address stated below. Either party may change its address by giving notice of the change in accordance with this section.
- F. Attorney Fees In the event of a legal proceeding of any kind instituted under the Contract or instituted to obtain performance or to remedy a default under the Contract, the prevailing party shall be awarded such additional sums as the court may adjudge for reasonable attorney fees and to pay all costs and disbursements incurred in connection therewith.
- G. Sufficient Appropriation It is understood and agreed that the Department is a governmental entity, and the Contract shall in no way or manner be construed so as to bind or obligate the Department or the State of Idaho beyond the term of any particular appropriation of funds by the State Legislature or United States Congress as may exist from time to time. The Department reserves the right to reduce the contract automatically or terminate the Contract if, in its sole judgment, the legislature of the State of Idaho or the United States Congress fails, neglects, or refuses to appropriate sufficient funds as may be required for the Department to continue payments. Any such reduction or termination shall take effect on thirty (30) days' prior notice and be otherwise effective as provided in the Contract.

- H. Nonwaiver of Breach The failure of the Department to require strict performance of any term or condition of the Contract, or to exercise any option herein, in any one or all instances shall not be construed to be a waiver or relinquishment of any such term or condition. The same shall be and remain in full force and effect unless there is a prior written waiver by the Department.
  
- I. Complete Statement of Terms The Contract constitutes the entire agreement between the parties hereto and shall supersede all previous proposals, oral or written, negotiations, representations commitments, and all other communications between the parties. The Contract may not be released, discharged, changed, extended, modified, subcontracted or assigned in whole or in part, and no claim for additional services not specifically provided herein will be allowed by the Department, except to the extent provided by an instrument in writing signed by a duly authorized representative of the Department and the Contractor.
  
- J. Priority of Contract Documents The Contract consists of and precedence is established by the order of the following documents incorporated into this Contract: 1) the Attachments identified on the Contract Cover Sheet; 2) these General Terms and Conditions; and, 3) the Contract Cover Sheet. These documents are complementary and what is required by one shall be binding as if required by all. In the case of any conflict or inconsistency arising under the documents, a higher priority document shall supersede a lower priority document to the extent necessary to resolve any such conflict or inconsistency. No conflict or inconsistency shall be deemed to occur in the event an issue is addressed in one of the above mentioned documents but is not addressed in another of such documents. No conflict or inconsistency shall be deemed to occur in the event an issue addressed in one of the above mentioned documents is an additional or supplemental requirement to an issue addressed in another of such documents.
  
- K. Severability If any term or provision of the Contract is held by the court to be illegal or unenforceable, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.
  
- L. Headings The captions and headings contained herein are for convenience and reference and are not intended to define or limit the scope of any provision of the Contract.

IN WITNESS WHEREOF, the parties have executed this agreement.

CONTRACTOR:

STATE OF IDAHO:

\_\_\_\_\_  
Name of Organization

Department of Health and Welfare

\_\_\_\_\_  
Name of Signature Authority (printed)

\_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

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Signature

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Signature

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Date

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Contract Number «Contract Number»