



SPECIAL TERMS AND CONDITIONS

Contract No: ADHS11-004573

federal fiscal year or federal grant period. Contract continuation is subject to the following conditions:

4.1 Availability of funds; and

4.2 Scope of Work and Contract rates negotiated and agreed to by both parties

H. Cancellation or Suspension:

1. The department may cancel or suspend a loan repayment contract based on unavailability of monies for the program.
2. The ADHS shall not be liable for any damages arising out cancellation or suspension of a contract with the ADHS.
3. The ADHS may suspend the Contract during the summer school break

I. Conflict of Interest

The Contractor covenants that it presently has no interest and shall not acquire any interest, directly or indirectly, which would conflict in any manner or degree with the performance of the services hereunder. The Contractor further covenants that no person having any such known interest shall be employed or conveyed an interest, directly or indirectly, in the Contract.

J. Indemnification Clause:

Contractor shall indemnify, defend, save and hold harmless the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees (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 Contractor 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 contractor 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 Contractor from and against any and all claims. It is agreed that Contractor 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 Contractor 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 Contractor for the State of Arizona.

This indemnity shall not apply if the contractor or sub-contractor(s) is/are an agency, board, commission or university of the State of Arizona.

K. Insurance Requirements:

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

The *insurance requirements* herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The State of Arizona in no way warrants that the minimum



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Contract No: ADHS11-004573

limits contained herein are sufficient to protect the Contractor from liabilities that might arise out of the performance of the work under this contract by the Contractor, its agents, representatives, employees or subcontractors, and Contractor is free to purchase additional insurance

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

1.1 Commercial General Liability – Occurrence Form

- 1.1.1 Policy shall include bodily injury, property damage, personal injury and broad form contractual liability

| | |
|--|-------------|
| • General Aggregate | \$1,000,000 |
| • Products – Completed Operations Aggregate | \$ 500,000 |
| • Personal and Advertising Injury | \$ 500,000 |
| • Blanket Contractual Liability – Written and Oral | \$ 500,000 |
| • Fire Legal Liability | \$ 25,000 |
| • Each Occurrence | \$ 500,000 |

- 1.1.2 The policy shall be endorsed to include the following additional insured language:
“The Arizona Department of Health Services, the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees shall be named as additional insured entities with respect to liability arising out of the activities performed by or on behalf of the Contractor”.

- 1.1.3 Policy shall contain a waiver of subrogation against the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor

1.2 Worker's Compensation and Employers' Liability

- 1.2.1 Policy shall include:

| | |
|---------------------------|------------|
| • Workers' Compensation | Statutory |
| • Employers' Liability | |
| o Each Accident | \$ 100,000 |
| o Disease – Each Employee | \$ 100,000 |
| o Disease – Policy Limit | \$ 100,000 |

- 1.2.2 Policy shall contain a waiver of subrogation against the State of Arizona, its department, agencies, boards, commissions, universities and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor

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

1.3 Professional Liability (Errors and Omissions Liability)

- 1.3.1 Policy shall include:

| | |
|--------------------|-------------|
| • Each Claim | \$500,000 |
| • Annual Aggregate | \$1,000,000 |

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



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Contract No: ADHS11-004573

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

- 1 3.3 The policy shall cover professional misconduct or lack of ordinary skill 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, the following provisions:
- 2.1 The State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees wherever additional insured status is required such additional insured shall be covered to the full limits of liability purchased by the Contractor, even if those limits of liability are in excess of those required by this Contract.
- 2.2 The Contractor's insurance coverage shall be primary insurance with respect to all other available sources.
- 2.3 Coverage provided by the Contractor shall not be limited to the liability assumed under the indemnification provisions of this Contract.
3. **NOTICE OF CANCELLATION:** Each insurance policy required by the insurance provisions of this Contract shall provide the required coverage and shall not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty (30) days prior written notice has been given to the State of Arizona. Such notice shall be sent directly to **State of Arizona Department of Health Services, Office of Procurement, 1740 West Adams, Room 303, Phoenix, AZ 85007** and shall be sent by certified mail, return receipt requested.
4. **ACCEPTABILITY OF INSURERS:** Insurance is to be placed with duly licensed or approved non-admitted insurers in the state of Arizona with an "A.M. Best" rating of not less than A- VII. The State of Arizona in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.
5. **VERIFICATION OF COVERAGE:** Contractor shall furnish the State of Arizona with certificates of insurance (ACORD form or equivalent approved by the State of Arizona) as required by this Contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.
- All certificates and endorsements are to be received and approved by the State of Arizona before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.
- All certificates required by this Contract shall be sent directly to **State of Arizona Department of Health Services, Office of Procurement, 1740 West Adams, Room 303, Phoenix, AZ 85007**. The State of Arizona project contract number and project description shall be noted on the certificate of insurance. The State of Arizona reserves the right to require complete, certified copies of all insurance policies required by this Contract at any time. **DO NOT SEND CERTIFICATES OF INSURANCE TO THE STATE OF ARIZONA'S RISK MANAGEMENT SECTION.**
6. **SUBCONTRACTORS:** Contractors' certificate(s) shall include all subcontractors as insured under its policies or Contractor shall furnish to the State of Arizona separate certificates and endorsements for each subcontractor. All coverage's for subcontractors shall be subject to the minimum requirements identified above.



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7. **APPROVAL:** Any modification or variation from the *insurance requirements* in this Contract shall be made by the Department of Administration, Risk Management Section, whose decision shall be final. Such action will not require a formal Contract amendment, but may be made by administrative action.
8. **EXCEPTIONS:** In the event the Contractor or sub-contractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a Certificate of Self-Insurance. If the Contractor or sub-contractor(s) is/are a State of Arizona agency, board, commission, or university, none of the above shall apply.

L. Financial Management:

For all contracts, the practices, procedures, and standards specified in and required by the Accounting and Auditing Procedures Manual for Arizona Department of Health Services funded programs shall be used by the Contractor in the management of contract funds and by the ADHS when performing a contract audit. Funds collected by the Contractor in the form of fees, donations and/or charges for the delivery of these contract services shall be accounted for in a separate fund.

State Funding. Contractors receiving state funds under this contract shall comply with the certified compliance provisions of A R S § 35-181.03

Federal Funding. Contractors receiving federal funds under this contract shall comply with the certified finance and compliance audit provision of the Office of Management and Budget (OMB) Circular A-133, if applicable. The federal financial assistance information shall be stated in a Change Order or Purchase Order.

M. Financial Requirements:

Contractors receiving federal funds under this Contract shall comply with the certified finance and compliance audit provisions of the Office of Management and Budget (OMB) Circular A-133, if applicable. Contractors receiving state funds under this contract shall comply with the certified compliance provisions of A R S. 35-181.03.

N. Offshore Performance of Work Prohibited:

Due to security and identity protection concerns, direct services under this contract shall be performed within the borders of the United States. Any services that are described in the specifications or scope of work that directly serve the State of Arizona or its clients and may involve access to secure or sensitive data or personal client data or development or modification of software for the State shall be performed within the borders of the United States. Unless specifically stated otherwise in the specifications, this definition does not apply to indirect or "overhead" services, redundant back-up services or services that are incidental to the performance of the contract. This provision applies to work performed by subcontractors at all tiers.

O. Health Insurance Portability and Accountability Act of 1996:

The Contractor warrants that it is familiar with the requirements of HIPAA and HIPAA's accompanying regulations and will comply with all applicable HIPAA requirements in the course of this contract. Contractor warrants that it will cooperate with the State in the course of performance of the contract so that both the State and Contractor will be in compliance with HIPAA, including cooperation and coordination with the State's privacy officials and other compliance officers required by HIPAA and its regulations. Contractor will sign and date any documents that are reasonably necessary to keep the State and Contractor in compliance with HIPAA, including, but not limited to, individualized Business Associate Agreements.

If requested by the State, Contractor agrees to sign the State agency's confidentiality statement and to abide by the statements in the form addressing the creation, use and disclosure of confidential information, including