



MISSOURI DEPARTMENT OF HEALTH AND SENIOR SERVICES TERMS AND CONDITIONS

1. APPLICABLE LAWS AND REGULATIONS

a. This contract or agreement shall be governed by and construed in accordance with the laws of the State of Missouri. The venue for arbitration or litigation of any dispute shall be Cole County, Missouri. The Contractor/Provider shall comply with all federal and state laws, regulations and policies applicable to this contract or agreement.

In performing its responsibilities under this contract or agreement, the Contractor/Provider shall fully comply with the following Office of Management and Budget (OMB) administrative requirements and cost principles, as applicable, including any subsequent amendments.

Uniform Administrative Requirements

A-102 - State/Local Governments

2 CFR 215 - Hospitals, Colleges and Universities, For-Profit Organizations (if specifically included in federal agency implementation), and Not-For-Profit Organizations (OMB Circular A-110)

Cost Principles

2 CFR 225 - State/Local Governments (OMB Circular A-87)

A-122 - Not-For-Profit Organizations

A-21 - Colleges and Universities

48 CFR 31.2 - For-Profit Organizations

45 CFR 74 Appendix E – Hospitals

b. The Contractor/Provider shall comply with all applicable Federal and State statutes, regulations and executive orders relating to nondiscrimination and equal employment opportunity to the extent applicable to this contract or agreement. These may include but are not limited to: **(a)** Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color, or national origin (this includes individuals with limited English proficiency) in programs and activities receiving federal financial assistance and Title VII of the Act which prohibits discrimination on the basis of race, color, national origin, sex, or religion in all employment activities; **(b)** Equal Pay Act of 1963 (P.L. 88 -38, as amended, 29 U.S.C. Section 206 (d)); **(c)** Title IX of the Education Amendments of 1972, as amended (20 U.S.C 1681-1683 and 1685-1686) which prohibits discrimination on the basis of sex; **(d)** Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794) and the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) which prohibit discrimination on the basis of disabilities; **(e)** the Age Discrimination Act of 1975, as amended (42 U.S.C. 6101-6107) which prohibits discrimination on the basis of age; **(f)** Equal Employment Opportunity – E.O. 11246, "Equal Employment Opportunity", as amended by E.O. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity"; **(g)** Missouri State Regulation, 19 CSR 10-2.010, Civil Rights Requirements; **(h)** Missouri Governor's E.O. #94-03 (excluding article II due to its repeal); **(i)** Missouri Governor's E.O. #05-30; and **(j)** the requirements of any other nondiscrimination federal and state statutes, regulations and executive orders which may apply to this contract or agreement.

c. The Contractor/Provider and any subcontractors shall comply with 31 U.S.C. 1352 relating to limitations on use of appropriated funds to influence certain federal contracting and financial transactions. No funds under this contract or agreement shall be used to pay the salary or expenses of the Contractor/Provider, or agent acting for the Contractor/Provider, to engage in any activity designed to influence legislation or appropriations pending before the United States Congress or Missouri General Assembly. The Contractor/Provider shall comply with all requirements of 31 U.S.C. 1352 which is incorporated herein as if fully set forth. The Contractor/Provider shall submit to the Department, when applicable, Disclosure of Lobbying Activities reporting forms.

d. The Contractor/Provider shall comply with the requirements of the Single Audit Act Amendments of 1996 (P.L. 104-156) and OMB Circular A-133, including subsequent amendments or revisions, as applicable or 2 CFR 215.26 as it relates to for-profit hospitals and commercial organizations. A copy of any audit report shall be sent to DHSS, Division of Administration, P.O. Box 570, Jefferson City, MO 65102 each contract year if applicable. The Contractor/Provider shall return to the Department any funds disallowed in an audit of this contract or agreement.

e. The Contractor/Provider shall comply with the Pro-Children Act of 1994 (20 U.S.C. 6081), which prohibits smoking within any portion of any indoor facility used for the provision of services for children as defined by the Act.

f. The Contractor/Provider shall comply with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations, as applicable.

g. The Contractor/Provider shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.).

h. The Contractor/Provider shall only utilize personnel authorized to work in the United States in accordance with applicable federal and state laws. This includes but is not limited to the Immigration Reform and Control Act of 1986 as codified at 8 U.S.C. § 1324a, the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) and Section 274A of the Immigration and Nationality Act. If the Contractor/Provider is found to be in violation of these requirements or the applicable laws of the state, federal and local laws and regulations, and if the State of Missouri has reasonable cause to believe that the contractor has knowingly employed individuals who are not eligible to work in the United States, the state shall have the right to cancel the contract immediately without penalty or recourse and suspend or debar the contractor from doing business with the state. The state may also withhold up to twenty-five percent of the total amount due to the Contractor/Provider. The Contractor/Provider agrees to fully cooperate with any audit or investigation from federal, state or local law enforcement agencies.

In addition, the Contractor/Provider shall maintain enrollment and participation in a federal work authorization program with respect to the employees working in connection with the contracted services included herein.

i. If the Contractor/Provider is a subrecipient as defined in OMB Circular A-133, Section 210, the Contractor/Provider shall comply with all applicable implementing regulations, and all other laws, regulations and policies authorizing or governing the use of any federal funds paid to the Contractor/Provider through this contract or agreement.



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2. ELIGIBILITY TO CONTRACT

- a. The Contractor/Provider assures and certifies that it and any of its subcontractors are not presently debarred, suspended, proposed for debarment, declared ineligible, voluntarily excluded from participation, or otherwise excluded from or ineligible for participation under federal assistance programs. The Contractor/Provider shall include the certification requirements regarding debarment, suspension, ineligibility, and voluntary exclusion in all lower tier covered transactions.
- b. In accordance with Section 34.040.6 RSMo, if the Contractor/Provider or its affiliate, if any, makes sales at retail of tangible personal property or for the purpose of storage, use or consumption in the State of Missouri, it shall collect and properly pay the tax as provided in Chapter 144, RSMo.

3. TERMINATION

- a. If state and/or federal funds are not appropriated, continued, or available at a sufficient level to fund this contract or agreement, or in the event of a change in federal or state law relevant to this contract or agreement, the obligations of each party may, at the sole discretion of the Department, be terminated in whole or in part, effective immediately or as determined by the Department, upon written notice to the Contractor/Provider from the Department.
- b. The Contractor/Provider may terminate the contract or agreement by giving written notice at least sixty (60) calendar days prior to the effective date of such termination. The Department reserves the right to terminate the contract or agreement, in whole or in part, at any time, for the convenience of the Department, without penalty or recourse, by giving written notice to the Contractor/Provider at least thirty (30) calendar days prior to the effective date of such termination. In the event of termination pursuant to this paragraph, all documents, data, reports, supplies, equipment, and accomplishments prepared, furnished or completed by the Contractor/Provider pursuant to the terms of the contract shall, at the option of the Department, become the property of the Department as authorized by law. The Contractor/Provider shall be entitled to receive just and equitable compensation for services and/or supplies delivered to and accepted by the Department and for all non-cancelable obligations incurred pursuant to the contract or agreement prior to the effective date of termination.
- c. In the event of material breach of the contractual obligations by the Contractor/Provider, the Department may, by written notice, terminate this contract or agreement immediately in whole or in part. At its sole discretion, the Department may give the Contractor/Provider an opportunity to cure the breach. The actual cure must be completed within no more than ten (10) working days unless otherwise approved by the Department. If the Contractor/Provider fails to cure the breach or when immediate action is demanded, the Department will issue a written notice terminating the contract or agreement in whole or in part, effective immediately. If the Department terminates this contract or agreement in whole or in part, it may acquire, under the terms and in the manner the Department considers appropriate, equipment, supplies and/or services similar to those terminated, and the Contractor/Provider shall be liable to the Department for any excess costs for the equipment, supplies and/or services. In the event of termination pursuant to this paragraph, all documents, data, reports, supplies, equipment, and accomplishments prepared, furnished or completed by the Contractor/Provider pursuant to the terms of the contract or agreement shall, at the option of the Department, become the property of the Department, as authorized by law.
- d. Any notice to the Contractor/Provider shall be deemed sufficient when deposited in the United States mail postage prepaid, transmitted by facsimile, transmitted by e-mail or hand-carried and presented to an authorized employee of the Contractor/Provider.

4. INVOICING AND PAYMENT

- a. Notwithstanding any other payment provision of this contract or agreement, if the Contractor/Provider fails to perform required work or services, fails to submit reports when due, or is indebted to the United States, the Department may withhold payment or reject invoices under this contract or agreement.
- b. Final invoices are due within thirty (30) calendar days of the contract or agreement ending date unless otherwise stated in the contract or agreement. The Department shall have no obligation to pay any invoice submitted after the due date.
- c. In accordance with state policies and procedures, the Contractor/Provider shall submit an invoice billed to the Department on the Contractor/Provider's original descriptive business invoice form. Uniquely identifiable invoice numbers are required to distinguish from a previously submitted invoice or bill.
- d. If a request by the Contractor/Provider for payment or reimbursement is denied, the Department shall provide the Contractor/Provider with written notice of the reason(s) for denial.

5. DOCUMENT RETENTION

The Contractor/Provider shall retain all books, records, and other documents relevant to this contract or agreement for a period of three (3) years after final payment or the completion of an audit, whichever is later, or as otherwise designated by the federal funding agency and stated in the contract or agreement. The Contractor/Provider shall allow authorized representatives of the Department, State, and Federal Government to inspect these records upon request. If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the three (3) year period, the records shall be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular three (3) year period, whichever is later. Failure to retain adequate documentation for any service billed may result in recovery of payments for services not adequately documented.

6. CONFIDENTIALITY

The Contractor/Provider shall maintain strict confidentiality of all patient and client information or records supplied to it by the Department or that the Contractor/Provider establishes as a result of contract activities. The contents of such records shall not be disclosed to anyone other than the Department and the patient/client or the patient's/client's parent or legal guardian unless such disclosure is required by law. The Contractor/Provider assumes liability for all disclosures of confidential information by the Contractor/Provider and/or the Contractor's/Provider's subcontractors and employees. The Contractor/Provider agrees to comply with all applicable provisions of the Federal Standards for Privacy of Individually Identifiable Health Information (45 C.F.R. Parts 160 and 164).



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7. PUBLICITY

Any publicity release mentioning contract or agreement activities shall reference the contract or agreement number and the Department. Any publications, including audiovisual items produced with contract funds, shall give credit to the contract or agreement and the Department. The Contractor/Provider shall obtain approval from the Department prior to the release of such publicity or publications.

8. COPYRIGHTS

If any copyrighted material is developed as a result of this contract or agreement, the Department shall have a royalty-free, nonexclusive and irrevocable right to publish or use, and to authorize others to use, the work for Department purposes or the purpose of the State of Missouri.

9. LIABILITY

a. The relationship of the Contractor/Provider to the Department shall be that of an independent contractor. The Contractor/Provider shall have no authority to represent itself as an agent of the Department. Nothing in this contract is intended to, nor shall be construed in any manner as creating or establishing an agency relationship or the relationship of employer/employee between the parties. Therefore, the Contractor/Provider shall assume all legal and financial responsibility for taxes, FICA, employee fringe benefits, workers compensation, employee insurance, minimum wage requirements, overtime, or any other applicable employee related obligation or expense, and shall assume all costs, attorney fees, losses, judgments, and legal or equitable imposed remedies associated with the matters outlined in this paragraph in regards to the Contractor/Provider's subcontractors, employees and agents. The Contractor/Provider shall have no authority to bind the Department for any obligation or expense not specifically stated in this contract or agreement. This provision is not intended to waive any claim of sovereign immunity to which a public entity would otherwise be entitled to under Missouri law.

b. The Contractor/Provider shall be responsible for all claims, actions, liability, and loss (including court costs and attorney's fees) for any and all injury or damage (including death) occurring as a result of the Contractor's/Provider's performance or the performance of any subcontractor, involving any equipment used or service provided, under the terms and conditions of this contract or agreement or any subcontract, or any condition created thereby, or based upon any violation of any state or federal statute, ordinance, building code, or regulation by Contractor/Provider. However, the Contractor/Provider shall not be responsible for any injury or damage occurring as a result of any negligent act or omission committed by the Department, including its officers, employees, and assigns. This provision is not intended to waive any claim of sovereign immunity to which a public entity would otherwise be entitled to under Missouri law.

10. AMENDMENTS

Any changes to this contract or agreement shall only be made by execution of a written amendment on the Department's Form DH-71 or other form approved by the Department.

11. MONITORING

a. The Department reserves the right to monitor this contract or agreement during the contract/agreement period to ensure financial and contractual compliance.

b. Contractors/Providers deemed high-risk by the Department may have special conditions or restrictions imposed, including but not limited to the following: withholding authority to proceed to the next phase of the project until the Department receives evidence of acceptable performance within a given contract or agreement period; requiring additional, more detailed financial reports or other documentation; additional project monitoring; requiring the Contractor/Provider to obtain technical or management assistance; or establishing additional prior approvals from the Department. Special conditions or restrictions can be imposed at the time of the contract award or at any time after the contract award. Written notification will be provided to the Contractor/Provider prior to the effective date of the high-risk status.

12. RETURN OF CONTRACT/AGREEMENT

Return of the proposed contract or agreement within forty-five (45) calendar days of the date mailed by the Department is necessary to ensure execution of this contract or agreement by the Department.

13. OVERPAYMENT

If the Contractor/Provider is overpaid by the Department, the Contractor shall issue a check made payable to "DHSS-DOA-Fee Receipts" upon official notification by the Department and shall mail the payment to:

Missouri Department of Health and Senior Services
Division of Administration, Fee Receipts
P.O. Box 570
920 Wildwood Drive
Jefferson City, Missouri 65102-0570

14. EQUIPMENT

a. Title to equipment purchased by the Contractor/Provider for the purposes of fulfilling contract or agreement services vests in the Contractor/Provider upon acquisition, subject to the conditions that apply as set forth in 2 CFR 215.34 or 45 CFR 92.32, as applicable. The Contractor/Provider must obtain written approval from the Department prior to purchasing equipment with a cost greater than \$500. The repair and maintenance of purchased equipment will be the responsibility of the Contractor/Provider. Upon satisfactory completion of the contract or agreement, if the current fair market value (FMV) of the equipment purchased by the Contractor/Provider is less than \$5,000 there is no further obligation to the Department. Items purchased by the Contractor/Provider with a current FMV greater than \$5,000 may be sold or retained by the Contractor/Provider but the Contractor/Provider may be required to reimburse the Department for costs up to the current value of the equipment.

b. Equipment purchased by the Department and placed in the custody of the Contractor/Provider shall remain the property of the Department. The Contractor/Provider must ensure these items are safeguarded and maintained appropriately, and return such equipment to the Department at the end of the program.