

DEPARTMENT OF AGING
GENERAL TERMS AND CONDITIONS

1. CONTRACT CONSTRUCTION

The provisions of this Agreement shall be construed in accordance with the provision of the Laws of the Commonwealth of Pennsylvania. All questions or disputes arising between the parties hereto respecting any matter pertaining to this Agreement or any part thereof or any breach of contract arising thereunder may be referred by the Manufacturer in the Board of Claims pursuant to the Act of May 20, 1937, P.L. 728, No. 193, 72 P.S. §4651-1, as amended. This shall be the exclusive remedy for the Manufacturer to resolve such questions and disputes if the Manufacturer and the Department are unable to resolve them between themselves. Settlement of disputes under this provision must be prior to the final payment to the Manufacturer.

2. CONFIDENTIALITY

No information about a client, or information obtained from a client, shall be disclosed by the Manufacturer in a form that identifies the client without the informed and express written consent of the client or of his or her legal representation, unless disclosure is required by court order or for other program monitoring by authorized Federal, State or local monitoring agencies. Lists of older persons compiled for information and referral purposes shall be used solely for the purpose of providing services, and only with the informed and express written consent of each individual on the list.

3. DEPARTMENT HELD HARMLESS

The Manufacturer agrees to indemnify, defend and save harmless the Commonwealth (including the Department), its officers, agents, and employees from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by the Manufacturer in the performance of this agreement, and shall, at the request of the Department, defend any and all actions brought against the Department based upon any such claims or demands.

4. CONTRACTOR INTEGRITY PROVISIONS

A. Definitions -

1. Confidential information means information that is not public knowledge, or available to the public on request, disclosure of which would give an unfair, unethical, or illegal advantage to another desiring to enter into an Agreement with the Commonwealth.
 2. Consent means written permission signed by a duly authorized officer or employe of the Commonwealth, provided that where the material facts have been disclosed, in writing, by prequalification, bid, proposal, or contractual terms, the Commonwealth shall be deemed to have consented by virtue of execution of this Agreement.
 3. Manufacturer means the individual or entity that has entered into this Agreement with the Commonwealth, including directors, officers, partners, managers, key employes, and owners of more than a 5% interest.
 4. Financial interest means:
 - (a) ownership of more than a 5% interest in any business; or
 - (b) holding a position as an officer, director, trustee, partner, employe, or the like, or holding any position of management.
 5. Gratuity means any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind.
- B. The Manufacturer shall maintain the highest standards of integrity in the performance of this Agreement and shall take no action in violation of state or federal laws, regulations, or other requirements that govern contracting with the Commonwealth.
- C. The Manufacturer shall not disclose to others any confidential information gained by virtue of this Agreement.
- D. The Manufacturer shall not, in connection with this or any other Agreement or Agreement with the Commonwealth, directly or indirectly, offer, confer, or agree to offer or confer any pecuniary benefit on anyone

as consideration for the decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty by any officer or employe of the Commonwealth.

- E. The Manufacturer shall not, in connection with this or any other contract or agreement with the Commonwealth, directly or indirectly, offer, give, or agree or promise to offer or give to anyone any gratuity for the benefit of or at the direction or request of any officer or employee of the Commonwealth.
- F. Except with the consent of the Commonwealth, neither the Manufacturer nor anyone in privity with the Manufacturer shall accept or agree to accept from, or give or agree to give to, any person, any gratuity from any person in connection with the performance of work under this Agreement except as provided therein.
- G. Except with the consent of the Commonwealth, the Manufacturer shall not have a financial interest in any other Manufacturer, subManufacturer, or supplier providing services, labor, or material on this project.
- H. The Manufacturer, upon being informed that any violation of these provisions has occurred or may occur, shall immediately notify the Commonwealth in writing.
- I. The Manufacturer, by execution of this Agreement and by the submission of any bills or invoices for payment pursuant thereto, certifies and represents that such does not and has not violated any of these provisions.
- J. The Manufacturer upon the inquiry or request of the Inspector General of the Commonwealth or any of that official's agents or representatives, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Inspector General to the Manufacturer's integrity or responsibility, as those terms are defined by the Commonwealth's statutes, regulations, or management directives. Such information may include, but shall not be limited to, the Manufacturer's business or financial records, documents or files of any type or form which refer to or concern this agreement. Such information shall be retained by the Manufacturer for a period of three years beyond the termination of the Agreement unless otherwise provided by law.
- K. For violation of any of the above provisions, the Commonwealth may terminate this Agreement and other Agreements with the Manufacturer, claim liquidated damages in an amount equal to the value of anything received in breach of these provisions, claim damages for all expenses incurred in obtaining another Manufacturer to complete performance

hereunder, and debar and suspend the Manufacturer from doing business with the Commonwealth. These rights and remedies are cumulative, and the use or nonuse of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those the Commonwealth may have under law, statute, regulation, or otherwise.

5. SUBCONTRACTS

The Manufacturer agrees to accept full responsibility for the performance of the terms of this Agreement, including the work performed through any subcontracting. The Manufacturer shall, in subcontracting under this Agreement, require such subcontractors to comply with all requirements as set forth in these general terms and conditions, as all applicable state and federal requirements including the Older Americans Act, as amended 42 U.S.C.A section 3001 *et. seq.* Except for those subcontracts specifically authorized by this Agreement, the Manufacturer shall not enter into subcontracts for any of the services contemplated under this Agreement without obtaining prior written approval of the Department of Aging. In all events, the Manufacturer shall be responsible for the quality and quantity of the work performed by any of its approved subcontractors as set forth in the General Terms and Conditions of this Agreement.

6. EXAMINATION OF RECORDS

- A. The Manufacturer agrees to maintain books, program and financial records, documents and other evidence pertaining to the costs and expenses of this Agreement.
- B. The Manufacturer agrees to make available at the office of the Manufacturer at all reasonable times during the term of this Agreement and the period set forth below, any of the records for inspection, audit or reproduction by an authorized representative of the Department of Aging or the Auditor General or Federal auditors.
- C. Except for documentary evidence delivered to the Commonwealth, the Manufacturer shall preserve and make available all records for a period of three years from the date of final payment under this Agreement, and for such period, if any, as specified by paragraphs 1 and 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 three years from the date of any resulting final statement.
 - 2. Records which relate to litigation or the settlement of claims arising out of the performance of this Agreement, or costs under

this Agreement as to which exception has been taken by the auditors, shall be retained by the Manufacturer until such litigation, claims or exceptions have been litigated or settled to final disposition.

3. The provisions of this paragraph shall be applicable to and include in each subcontract hereunder.

7. PROGRESS REPORTS

- A. The Manufacturer and its subcontractors shall furnish to the Department such progress and periodic reports in such form and quantity as the Department may from time to time require, including but not limited to, status reports of the project, proposed budgets, invoices, copies of all contracts executed and proposed and any and all other information relative to the project as may be requested.
- B. In the event that the Department determines that the Manufacturer or its subcontractors have not furnished such reports as required by the Department, the Department, by giving written notice to the Manufacturer, may suspend payments under this Agreement, until such time as the required reports are submitted.

8. LIABILITY AND INSURANCE

The Manufacturer shall accept full responsibility for the payment of premiums for Worker's Compensation, Unemployment Compensation, Social Security, and all income tax deductions required by law for its employees who are performing services under this Agreement. As required by law, an independent Manufacturer is responsible for Malpractice Insurance for health care personnel. The Manufacturer shall provide insurance Policy Number and Provider Name, or a copy of the policy with all renewals for the entire Agreement period.

9. INDEMNIFICATION

Manufacturer being bound by all applicable state and federal regulations, hereby expressly agrees to hold the Department harmless against all audit exceptions or any claims and losses arising from any act or omission by Manufacturer, its employes, or agents. Manufacturer shall make restitution to the Department of such amounts as are withheld from the Department due to Manufacturer's non-compliance. Restitution shall be made no later than 30 days after receipt of notification from the Department that said monies are due the Department.

10. RIGHTS IN DATA: COPYRIGHTS AND DISCLOSURE

- A. Definition: The term, “data”, as used herein, includes written reports, drawings, studies, and work of any similar nature which is required to be delivered under the Agreement. It does not include Manufacturer’s financial reports or other information incidentals to Agreement administration.
- B. Rights in Data: Data submitted to and accepted by the Department under this Agreement shall be the property of the Department and it shall have full right to use such data for any official purpose in whatever manner deemed desirable and appropriate. Such use shall be without any additional payment to or approval by the Manufacturer. Manufacturer may retain a copy of such data for its internal use.
- C. Copyrights: Manufacturer relinquishes any and all copyrights and/or privileges to data developed under this Agreement. Manufacturer shall not include in the data any copyrighted matter without the written approval of the Department unless Manufacturer provides the Department with written permission of the copyright owner for the Department to use such copyrighted matter in a manner provided herein. Any product or material that is to be printed or developed for any publication or distribution or other public display as a result of this Agreement, must be reviewed and approved in writing by the Secretary/Deputy Secretary of the Department of Aging prior to final production or printing. All data produced by funds provided through this Agreement must contain the Department’s logo and appropriate state officials’ names on the cover and the following notation on the inside cover on title Page: “This document was produced with funds provided under Contract No. _____ from the Pennsylvania Department of Aging.”
- D. The Manufacturer shall defend any suit or proceeding brought against the Commonwealth on account of any alleged infringement of any copyright 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 Manufacturer; provided, nevertheless, that the Commonwealth shall provide prompt notification in writing of such suit or proceedings, together with full right, authorization and opportunity to conduct the defense thereof, and full information and all reasonable cooperation for the defense of the same. If principles of governmental or public law are involved, the Commonwealth may participate in the defense of any such action. The Manufacturer shall pay all damages and costs awarded therein against the Commonwealth. If information and assistance are furnished by the Commonwealth at

Manufacturer's written request, it shall be at the Manufacturer's expense, but the responsibility for such expense shall be only that within the Manufacturer's written request. If any of the materials, reports studies or computer programs provided by the Manufacturer are held to constitute infringement and the use or publication thereof is enjoined in such suit or proceeding, the Manufacturer shall, at its own expense and at its option, either procure the right to publish or continue use of such infringing materials, reports, studies or computer programs, replace them with non-infringing items, or so modify them so that they are no longer infringing. The obligations of the Manufacturer under this paragraph continue without time limit. It is understood that the Manufacturer is responsible for defending suit against the commonwealth on account of any alleged infringement of any copyright arising out of information or material supplied by only the Manufacturer under this Agreement.

11. AMERICANS WITH DISABILITIES ACT

- A. Pursuant to federal regulations promulgated under the authority of The Americans With Disabilities Act, 28 C.F.R. 35.101 et seq., the Manufacturer understands and agrees that no individual with a disability shall, on the basis of the disability, be excluded from participation in this Agreement or from the activities provided for under this Agreement. As a condition of accepting and executing this Agreement, the Manufacturer agrees to comply with the "General Prohibitions Against Discrimination," 28 C.F.R. 35.130, and all other regulations promulgated under Title II of The Americans With Disabilities Act which are applicable to the benefits, services, programs, and activities provided by the Commonwealth of Pennsylvania through contracts with outside Manufacturers.
- B. The Manufacturer shall be responsible for and agrees to indemnify and hold harmless the Commonwealth of Pennsylvania from all losses, damages, expenses, claims, demands, suits, and actions brought by any party against the Commonwealth of Pennsylvania as a result of the Manufacturer's failure to comply with the provisions of paragraph A. above.

12. SET OFF

The Manufacturer agrees that the Commonwealth may set off the amount of any state tax liability or other debt of the Manufacturer or its subsidiaries that is owed to the Commonwealth against any payments due the Manufacturer under this or any other Agreement with the Commonwealth.

13. CONTRACTOR RESPONSIBILITY

A. The Manufacturer must certify, in writing, for itself and all its subcontractor, that as of the date of its execution of any Commonwealth Agreement, that neither the Manufacturer, nor any subcontractor, nor any suppliers are under suspension or debarment by the Commonwealth or any governmental entity, instrumentality, or authority and, if the Manufacturer cannot so certify, then it agrees to submit, along with a signed copy of the Agreement, a written explanation of why such certification cannot be made.

B. The Manufacturer must also certify in writing that as of the date of the execution of this Agreement it has no tax liabilities or other Commonwealth obligations.

C. The Manufacturer's obligations pursuant to these provisions are ongoing from and after the effective date of the Agreement through the termination date thereof. Accordingly, the Manufacturer shall have an obligation to inform the contracting agency if, at any time during the term of the Agreement, it becomes delinquent in the payment of taxes, or other Commonwealth obligations, or if it or any of its subcontractor are suspended or debarred by the Commonwealth, the federal government, or any other state or governmental entity. Such notification shall be made within 15 days of the date of suspension or debarment.

D. The failure of the Manufacturer to notify the contracting agency of its suspension or debarment by the Commonwealth, any other state, or the federal government shall constitute an event of default of the Agreement with the Commonwealth.

E. The Manufacturer agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of State Inspector General for investigations of the Manufacturer's compliance with the terms of this or any other agreement between the Manufacturer and the Commonwealth, which results in the suspension or debarment of the Manufacturer. Such costs shall include, but shall not be limited to, salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The Manufacturer shall not be responsible for investigative costs for investigations that do not result in the Manufacturer's suspension or debarment.

F. The Manufacturer may obtain a current list of suspended and debarred Commonwealth Manufacturers by either searching the internet at <http://www.dgs.state.pa.us/procurement/site/default.asp> or contacting the:

Department of General Services
Office of Chief Counsel
603 North Office Building
Harrisburg, PA 17125
Telephone No: (717) 783-6472
FAX No.: (717) 787-9138

14. NON-DISCRIMINATION/SEXUAL HARASSMENT

During the term of the Contract, Manufacturer agrees as follows:

A. 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 Manufacturer, subcontractor or any person acting on behalf of the Manufacturer or subcontractor shall not by reason of gender, race, creed, color, disability, national origin, ancestry or age discriminate against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.

B. Neither the Manufacturer 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, disability, national origin, ancestry or age.

C. Manufacturers and subcontractor shall establish and maintain a written sexual harassment policy and shall inform its employees of the policy.

D. The Manufacturer 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 Manufacturer 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.

E. The Manufacturer shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subcontract so that such provisions will be binding upon each subcontractor.

F. 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.

15. PROPERTY AND SUPPLIES

- A. Manufacturer 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 whenever required by law.
- B. Title to all property furnished in-kind by the Department shall remain with the Department.
- C. Title to all personal property acquired by the Manufacturer, including purchase by lease-purchase agreement, for the cost of which the Manufacturer is to be reimbursed under this Agreement shall vest in the Manufacturer during the term of this Agreement. Upon cancellation or termination of this Agreement, disposition of such purchased personal property which has remaining useful life shall be made in accordance with the following provisions:
 - 1. The Manufacturer and the Department may agree to transfer at no cost any item of such purchased property to another Manufacturer designated by the Department. Title to all transferred property shall vest in the designated Manufacturer during the term of its Agreement. Additionally, the Department will reimburse the Manufacturer for its proper share, if any, of the value of the remaining life of the property as provided in 15 C. 2. and upon prior approval for the shipping costs resulting from the transfer.
 - 2. If the Manufacturer wishes to retain any items of such purchased property, both parties will arrange for an independent third-party appraisal of the property items and the Manufacturer will reimburse the Department for the value of the remaining life of the property on the basis of such appraisal, where appropriate depreciation tables may be substituted for an independent appraisal.
 - 3. With the prior written permission of the Secretary of Aging and the approval of the Governor's Office of Budget and Administration, Manufacturers will sell the property and reimburse the Department for its appropriate share, providing the Department is notified ten (10) days in advance of the sale.

- D. All property furnished by the Department or personal property acquired by the Manufacturer, including purchase by lease-purchase agreement, for which the Manufacturer is to be reimbursed under this Agreement shall be deemed Commonwealth property for the purpose of section E., F., and G., of this provision.
- E. Manufacturer shall maintain and administer in accordance with sound business practice a program for the maintenance, repair, protection, preservation and insurance of Commonwealth property so as to assure its full availability and usefulness.
- F. 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 Administration, be used only for the performance of this Agreement.
- G. In the event that Manufacturer is indemnified, reimbursed, or otherwise compensated for any loss or destruction of or damage to the Commonwealth property, he 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.
- H. Any products provided to the Commonwealth as part of the Manufacturer's performance of this service Agreement shall meet the minimum percentage levels for total recycled content and post-consumer recycled content in accordance with the List of Products and Procurement Guidelines available from the PA Department of General Services.

16. AGREEMENT SUBJECT TO 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 Manufacturer.

17. INTERESTS OF MEMBERS OF THE COMMONWEALTH AND OTHERS

No officer, member or employe of the Commonwealth and no member of its General Assembly, who exercises any functions or responsibilities under this Agreement, shall participate in any decision relating to this Agreement which affects their respective personal interest or the interest of any corporation,

partnership, or association in which directly or indirectly, they may be interested; nor shall any such officer, member of employe of the Commonwealth or members of its General Assembly have any interest, direct or indirect, in this Agreement or the proceeds thereof.

18. INTEREST OF MANUFACTURER

The Manufacturer covenants and agrees that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. The Manufacturer further covenants and agrees that in the performance of this Agreement, it shall not knowingly employ any person having such interest. Manufacturer further certifies that no member of the board of the Manufacturer or any of its officers or directors have such an adverse interest.

19. TERMINATION OF AGREEMENT

A. Termination for Default – If, through any cause, the Manufacturer shall fail to fulfill in timely or proper manner its obligations under this Agreement, or if the Manufacturer shall violate any of the covenants or stipulations of this Agreement, the Department shall thereupon have the right to terminate this Agreement by giving written notice to the Manufacturer of such termination and specifying the effective date thereof, at least five days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, photographs and reports or other material prepared by the Manufacturer under this Agreement shall, at the option of the Department, become its property, and the Manufacturer shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials

Notwithstanding the above, the Manufacturer shall not be relieved of liability to the Department of damages sustained by the Department by virtue, in any manner or degree, of the Manufacturer's nonperformance of its services hereunder; however, such damages shall not exceed the amount of this Agreement.

B. Termination for Convenience – The Department or Manufacturer may terminate this Agreement at any time by giving written notice to the other party of such termination by specifying the effective date thereof, at least thirty (30) days before the effective date of such termination.

20. ASSIGNABILITY

The Manufacturer shall not assign any interest in this Agreement and shall not transfer any interest in the same (whether by assignment or novation), without the prior written approval of the Department thereto, which shall be attached to the original Agreement, and subject to such conditions and provisions as the Department may deem necessary. No such approval by the Department of any assignment shall be deemed in any event or in any manner to provide for the incurrence of any obligation of the Department in addition to the total agreed-upon price: PROVIDED, however, that claims for compensation due or to become due the Manufacturer from the Commonwealth under this Agreement may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly in writing to the Department.

21. COVENANT AGAINST CONTINGENT FEES

The Manufacturer warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee (excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Manufacturer for the purpose of securing business). For breach or violation of this warranty, the Commonwealth shall have the right to annul this Agreement without liability or, in its discretion, to deduct from the consideration otherwise due under the Agreement, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

22. AVAILABILITY OF FUNDS

The obligations of the Commonwealth under this Agreement are subject to the availability and appropriation of funds by the Commonwealth through its Lottery Fund and its General Fund.