



## **STANDARD TERMS AND CONDITIONS** **TO APHL WORK ORDERS**

These Standard Terms and Conditions (the “Standard T&C”) have been attached as Exhibit B to a Work Order between APHL (as defined in the Work Order) and the Contractor (as defined in the Work Order) and have been incorporated into that Work Order by reference. The Standard T&C, together with the Work Order and any applicable Cooperative Agreement Funding Conditions (as defined in the Work Order) attached to that Work Order, make up the entire Agreement (as defined in the Work Order) between the Parties (as defined in the Work Order).

### **1. Responsibilities of the Contractor.**

**A.** The Contractor will prepare all materials and perform all services required to complete the Work (as defined in the Work Order) using its best skills, efforts and attention.

**B.** The Contractor will prepare reports and other final deliverables (each, a “Deliverable”) using a format and software programs agreed to in advance by APHL. The Contractor will check the APHL Work Order Administrator identified in the Work Order if the Contractor is unclear as to whether a Deliverable requires a specific formatting or software program. In the event that any Deliverable is prepared in a language other than English, the Contractor will also prepare an English translation of such Deliverable.

**C.** Any data provided by the Contractor must be free of identifiers that would permit linkages to individuals and must be free of variables that could lead to deductive disclosure of the identity of the individual subjects.

**D.** The Contractor will comply with all applicable laws in the performance of its obligations under the Agreement. The Contractor will comply with federal, state, and local health and safety standards applicable to its operations, and will establish and implement necessary measures to minimize its employees’ risk of injury and illness in activities related to the Agreement. If the Contractor is conducting activities outside the United States of America (“US”) under the Agreement, the Contractor will coordinate as necessary with appropriate government authorities and will obtain appropriate licenses, permits, and approvals. The Contractor will ensure that it and its officers, directors, employees, agents, and contractors (regardless of nationality) (i) avoid any action that violates or appears to violate any governmental rule relating to ethics and integrity, (ii) avoid any corrupt practice (for example, offering or accepting bribes), and (iii) avoid any fraudulent practice (for example, falsifying financial records). The Contractor will immediately inform APHL of any violation of this provision, and will cooperate with APHL in taking corrective action. APHL will have the express right, in its sole discretion, to require cessation of all Work until these corrective actions have been taken by the Contractor.

**E.** If either the Contractor or APHL determines that additional work might be desirable, the Contractor will prepare an estimate of (i) the scope of work required to complete the service

and (ii) the projected cost (a “Quote”). If APHL and, if applicable, the Funding Source (as defined in the Work Order) find the Quote acceptable, APHL will prepare a written amendment to the Agreement. The Contractor will not perform the proposed additional work unless authorized by a written amendment to this Agreement.

**F.** APHL may unilaterally order minor changes in the work that are not inconsistent with the intent of the Agreement. The cost or credit to APHL as a result of these changes will be determined by the Parties’ (as defined in the Work Order) mutual agreement, and APHL prepare a written amendment or an email modification to reflect this cost or credit. The Contractor will not perform any change in the Work without prior written authorization from APHL.

**G.** In the event that the Contractor is an individual (and not a business or nonprofit entity, a governmental agency or unit or a partnership), the Contractor acknowledges and understands each of the following provisions.

**i.** The Contractor will implement its duties under this Agreement in an efficient, economical, and timely fashion. As an independent contractor, the Contractor has sole responsibility and control of the manner and means of providing the services required, including the right to determine the hours and sequence of its work.

**ii.** APHL neither has a legal or regulatory duty nor a contractual requirement: (a) to carry Workers Compensation insurance covering the Contractor or its employees; or (b) to withhold funds for Social Security, Medicare, income taxes, or Unemployment Insurance. The Contractor and its employees are not entitled to any benefits of employment that are offered to employees of APHL except if explicitly noted in the Work Order.

**iii.** The Contractor is responsible for all indirect expenses connected with the Contractor’s services, including the costs of maintaining the Contractor’s own office, equipment, and administrative staff.

## **2. Subcontracting and Subcontractors.**

**A.** The Contractor will not subcontract its services under the Agreement without the prior written consent of APHL.

**B.** In the event that the Contractor desires to subcontract any portion of its services under this Agreement, the Contractor will make positive efforts to include small businesses and minority- and women-owned businesses as subcontractors. The required efforts include the methods outlined in Office of Management and Budget (“OMB”) Circular A-110 §.44(b) (an electronic copy of which is currently available at <http://www.whitehouse.gov/omb/circulars/a110/a110.html>), and the following methods:

**i.** Place small, minority, and women-owned business firms on bidders mailing lists;

- ii. Solicit these firms whenever they are potential sources of supplies, equipment, construction, or services;
- iii. Where feasible, divide total requirements into smaller needs, and set delivery schedules that will encourage participation by these firms; and
- iv. Use the assistance of the Minority Business Development Agency of the Department of Commerce, the Office of Small and Disadvantaged Business Utilization, Department of Health and Human Services (“DHHS”), and similar state and local offices.

C. The Contractor will contract in its own name with each subcontractor under APHL-approved subcontracts. The Contractor is responsible for (i) coordination and review of its subcontractors’ work, (ii) paying any compensation and reimbursing any expenses authorized by subcontracts, and (iii) ensuring that any work performed by subcontractors is performed in accordance with the terms of the Agreement.

**3. Project Schedule.**

- A. APHL has the right to request revisions to any Deliverable. The Contractor will complete all requested revisions to the satisfaction of APHL prior to the start of the next step of the project.
- B. The Contractor will promptly notify APHL of any situation which might interfere with the Contractor’s ability to meet project deadlines.
- C. If a Party (as defined in the Work Order) fails to meet deadlines because of a matter beyond the Party’s control, the Parties will work together to adjust the future deadlines accordingly.

**4. Termination.**

- A. APHL may terminate this Agreement or any portion of the Work in progress by written notice to the Contractor.
- B. Upon receipt of a notice of termination, the Contractor will immediately cease all work and will turn over all work product and work-in-progress to the Representative of APHL.
- C. In the event of early termination, APHL will be obligated to pay the Contractor only for work satisfactorily performed through the date of termination.

**5. Indemnification.** Unless prohibited from doing so pursuant to applicable law or regulation, the Contractor will defend and indemnify APHL against all claims, liabilities, damages, and expenses (including reasonable attorney’s fees) arising out of any act, omission, negligence, misconduct, or breach

of the Agreement by the Contractor, its directors, officers, employees, subcontractors, or agents while engaged in the performance of the Agreement.

**6. Confidentiality.** The Contractor will maintain in strict confidence any Confidential Information of APHL that the Contractor reviews, receives, or acquires in the performance of this Agreement. APHL will make efforts to clearly identify, preferably in writing, any Confidential Information. “Confidential Information” means, subject to the limitation set forth below: economic and financial information, information and materials obtained from interviews or surveys, membership and donor lists, business procedures, solicitation or contact methods, and any other information regarding the business of APHL. Confidential Information does not include information that: (i) is or becomes available from public sources through no wrongful act of the Contractor; (ii) is already in the Contractor’s possession prior to the date of the Agreement without an obligation of confidentiality, except for information disclosed during discussions related to the Agreement; (iii) is rightfully disclosed to the Contractor by a third party with no obligation of confidentiality; (iv) is independently developed by the Contractor; or (v) is required to be disclosed pursuant to any court or regulatory order served on the Contractor. The Contractor may disclose Confidential Information to its accountants, counsel, and other financial and legal advisors with a need to know. If disclosure to a subcontractor is necessary in order to carry out the Contractor’s work, the Contractor must obtain the subcontractor’s agreement to abide by this confidentiality provision prior to disclosure.

**7. Insurance.** Unless prohibited from doing so pursuant to applicable law or regulation, the Contractor will maintain with a reputable insurance company policies of insurance providing an adequate level of coverage for all risks which may be incurred by the Contractor as a result of its performance of the Agreement (including death, personal injury or loss of or damage to property). Upon reasonable request from APHL, the Contractor will provide APHL with copies of such insurance policies or other evidence confirming the existence and extent of the coverage given by those policies.

**8. Conflicts of Interest.** The Contractor, to the to the best of its knowledge and belief at this time, certifies that either (i) there no relevant facts or circumstances which could give rise to an organizational conflict of interest (“OCI”), as defined in Federal Acquisition Regulation (FAR) Subpart 9.5 or (ii) the Contractor has disclosed all such relevant information, and that it will disclose any actual or potential OCI that is discovered. During the term of the Agreement, the Contractor will not enter into other contracts or arrangements or otherwise engage in work that will conflict with the Contractor’s obligations under the Agreement.

**9. Survival.** The obligations and rights of the Parties which by their nature would continue beyond the termination or expiration of the Agreement will survive beyond the termination or expiration of the Agreement and remain in full force and effect. These obligations and rights include those set forth in the Section entitled “Copyright & Intellectual Property Rights” in the Work Order and “Indemnification” and “Confidentiality” in these Standard T&C.

**10. Impossibility.** Either Party may terminate or suspend its obligations under the Agreement if performance of its obligations is prevented or delayed by an event beyond the Party’s control and without its fault or negligence, including acts of war or the public enemy, terrorism, fires, floods,

epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather, laws, regulations and orders of governmental authorities, and curtailment of transportation facilities. Upon this circumstance arising, the non-performing Party will promptly notify the other Party in writing and the Parties will negotiate in good faith to reach a resolution. The non-performing Party will not be liable for this delay or failure to perform its obligations, except there will be a pro rata reduction in the consideration that would otherwise be due.

**11. Non-Discrimination.** The Parties will not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, national origin, sexual orientation, gender identity, disability, genetic information, citizenship status, veteran status or any other classification protected by applicable law or regulation.

**12. Governing Law.** This Agreement is governed exclusively by the laws of the District of Columbia.

**13. Governing Language.** In the event that all or part of the Agreement is produced in English and one or more foreign languages, this English language version of the Agreement is the official version and will govern if there is a conflict between this English language version and one or more of the foreign translations.

**14. Dispute Resolution.**

**A.** In the event the Maximum Compensation Amount (as defined in the Work Order) is equal to or greater than \$20,000, the Parties agree that the sole jurisdiction and venue for any litigation arising from the Agreement is the appropriate federal or district court located in the District of Columbia. The Parties hereby waive trial by jury in any action arising out of this Agreement. If a dispute arises, the Parties will make a good faith attempt to resolve the dispute through dialogue and negotiation prior to pursuing court action.

**B.** In the even the Maximum Compensation Amount is less than \$20,000, the Parties agree that any dispute arising from the Agreement must be settled by arbitration in accordance with either (i) the Commercial Arbitration Rules (if the Work is being conducted in the US) or (ii) the International Arbitration Rules (if the Work is being conducted outside of the US) of the American Arbitration Association. Judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction. Arbitration must be held in Washington, DC. If a dispute arises, the Parties will make a good faith attempt to resolve the dispute through dialogue and negotiation prior to pursuing arbitration.

**15. Independent Contractors.** The relationship between the Parties to the Agreement is that of independent contractors. The Agreement is not intended to create any association, partnership, joint venture, or agency relationship between the Parties. Neither Party has the authorization or ability to legally bind the other Party to any contract, agreement, obligation, commitment or fixed or contingent liability with a third party.

- 16. Assignability.** The Contractor will not assign the Agreement, or any interest in the Agreement, without the prior written consent of APHL.
- 17. Successors.** The Agreement will be binding upon, and will inure to the benefit of, the Parties and their respective permitted successors and assigns.
- 18. Sole Agreement.** This Agreement contains the entire agreement between the Parties concerning the subject matter of the Work Order. It supersedes all prior and contemporaneous oral and written understandings.
- 19. Amendment.**
- A.** Except as provided in Section 19.B. below, no amendment of the Agreement will be valid unless in writing and signed by both Parties.
- B.** In the event of a ministerial or non-substantive modification to the Agreement (such as a no-cost change to the Schedule of Deliverables), a Party may send an email to the other Party stating the terms of the proposed modification and, upon receipt of the other Party's email reply confirming the other Party's consent to such modification, the modification will be valid and will be deemed by the Parties to constitute a valid amendment under this Section 19.
- 20. Waiver.** A Party's waiver of a breach is not to be deemed a waiver of any subsequent breach of the same term or of any other term. No waiver will be valid unless in writing and signed by the waiving Party.
- 21. Severability.** If any provision of the Agreement is held to be invalid, the remaining provisions of the Agreement are not to be affected and will continue in effect. The invalid provision is to be deemed modified to the least degree necessary to remedy the invalidity.
- 22. Interpretation.** When used in the Agreement, the terms "include" or "including" are not limiting (such that the terms should be read as if stating "include without limitation" or "including without limitation" as applicable).
- 23. Section Headings.** The captions or headings in the Agreement are made for convenience and general reference only and should not be construed to describe or limit the scope or the intent of the provisions of the Agreement.
- 24. Drafting Party.** The Parties have participated jointly in the negotiation and drafting of the Agreement and each Party has had the opportunity to consult with, and to get assistance from the counsel and other advisors that Party deemed appropriate. In the event an ambiguity or question of intent or interpretation arises, the Agreement will be construed as jointly drafted by the Parties, and no presumption or burden of proof will arise favoring or disfavoring any Party by virtue of the authorship of any provision of the Agreement.

**25. Counterparts.** The Parties may execute the Work Order in counterparts, each of which is deemed an original and all of which taken together constitute one original.

**26. Signatures/E-delivery.** A manually signed copy of the Work Order delivered by facsimile, email or other means of electronic transmission will be deemed to have the same legal effect as delivery of an original signed copy of the Work Order.

*[End of Standard Terms and Conditions to APHL Work Orders]*