

## STANDARD GENERAL TERMS AND CONDITIONS

### 1. DEFINITIONS.

- A. **Contracting Officer.** The person designated to act for the Department in the processing of this Grant Agreement. The person so designated is the Deputy Secretary for Administration or his or her designee.
- B. **Project Officer.** The person designated to act for the Department in administering this Grant.
- C. **Sub-grantee.** The entity with whom the Grantee enters into an Agreement to perform work under the Grant Agreement. The term "Sub-grantee" shall include Sub-contractors and any other term the Grantee may use for such an entity.

### 2. GRANT CONSTRUCTION.

The provisions of this Grant Agreement shall be construed in accordance with the provision of the Laws of the Commonwealth of Pennsylvania.

### 3. GRANT CONTROVERSIES.

- A. All questions or disputes arising between the parties hereto respecting any matter pertaining to this Grant Agreement or any part thereof or any breach of Grant arising thereunder must be filed as a written claim with the Contracting Officer within six months after the cause of action accrues. The claim shall be filed as of the date of receipt by the agency. The claim shall state all grounds upon which the Grantee asserts a controversy exists. If the Grantee fails to file a claim or files an untimely claim, the Grantee is deemed to have waived its right to assert a claim in any forum.
- B. The Contracting Officer shall review timely-filed claims and issue a determination, in writing, regarding the claim. The determination shall be issued within 120 days of the receipt of the claim, unless extended by consent of the Contracting Officer and the Grantee. The Contracting Officer shall send the written determination to the Grantee. If the Contracting Officer fails to issue a determination within the 120 day period, (unless extended by the consent of the parties), the claim shall be deemed denied. The Contracting Officer's determination shall be considered to be a decision of a subordinate officer, and shall be appealable to the Agency Head or his or her designee within 10 business days pursuant to 1 Pa. Code § 35.20. The matter before the agency shall be subject to 2 Pa. C.S. ch. 5, Subch. A (relating to practice and procedure of Commonwealth Agencies), and the rules set out in 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure). The Agency Head shall issue a final order which shall be appealable pursuant to 2 Pa. C.S. Ch. 7, Subch. A (relating to Judicial Review of Commonwealth Agency Action).
- C. The remedy set forth in this Paragraph 3 shall be the exclusive remedy for the Grantee to resolve such questions and disputes if the Grantee and the Department are unable to resolve them between themselves. Settlement of disputes under this provision must be prior to the final payment to Grantee.

### 4. INDEPENDENT CONTRACTOR.

The Grantee shall perform its services under this Agreement as an independent contractor and shall provide public liability, property damage and workers' compensation insurance, insuring as they may appear, the interests of all parties to the Agreement against any and all claims which may arise out of Grantee's operations under the terms of this Agreement. The Grantee shall accept full responsibility for the payment of premiums for workers' compensation and social security as well as all income tax deductions and any other taxes or payroll deductions required by law for its employees who are performing services specified by this Agreement.

### 5. DEPARTMENT HELD HARMLESS.

The Grantee shall hold the Commonwealth (including the Department) its officers, agents and employees, harmless against any and all claims, demands and actions based upon or arising out of any activities performed by the Grantee and its officers, agents and employees under this Agreement, and shall, at the request of the Commonwealth, defend any and all actions brought against the Commonwealth based upon any such claims or demands.

**6. ASSIGNABILITY.**

- A. Subject to the terms and condition of this Paragraph 6, this Grant Agreement shall be binding upon the parties and their respective successors and assignors.
- B. The Grantee may not assign, in whole or in part, this Grant Agreement or its rights, duties, obligations, or responsibilities hereunder without the prior written consent of the Contracting Officer, which consent may be withheld at the sole and absolute discretion of the Contracting Officer.
- C. Notwithstanding the foregoing, the Grantee may, without the consent of the Contracting Officer, assign its rights to payment to be received under the Grant Agreement, provided that the Grantee provides written notice of such assignment to the Contracting Officer together with a written acknowledgement from the assignee that any such payments are subject to all of the terms and conditions of this Grant Agreement.
- D. For the purposes of this Grant Agreement, the term "assign" shall include, but shall not be limited to, the sale, gift, assignment, pledge, or other transfer of any ownership interest in the Grantee provided, however, that the term shall not apply to the sale or other transfer of stock of a publicly traded company.
- E. Any assignment consented to by the Contracting Officer shall be evidenced by a written assignment agreement executed by the Grantee and its assignee in which the assignee agrees to be legally bound by all of the terms and conditions of the Grant Agreement and to assume the duties, obligations, and responsibilities being assigned.
- F. A change of name by the Grantee, following which the Grantee's Federal identification number remains unchanged, shall not be considered to be an assignment hereunder. The Grantee shall give the Contracting Officer written notice of any such change of name.

**7. SUB-GRANTS.**

Except for those sub-grants specifically authorized by this Grant Agreement, the Grantee shall not enter into sub-grants for any of the work contemplated under this Grant Agreement without obtaining prior written approval of the Department, which shall be attached to the original Grant Agreement, and subject to such conditions and provisions as the Department may deem necessary. PROVIDED, however, that notwithstanding the foregoing, unless otherwise provided herein, such prior written approval shall not be required for the purchase by Grantee of articles, supplies, equipment and services which are both necessary for and merely incidental to the performance of the work required under this Grant Agreement; and PROVIDED, further, however, no provision of this clause and no such approval by the Department of any sub-grant shall be deemed in any event in any manner to provide for the incurrence of any obligation of the Department in addition to the total agreed-upon price.

**8. OTHER GRANTEES OR CONTRACTORS.**

The Department may undertake or award other Grants or Contracts for additional or related work, and the Grantee shall fully cooperate with other Grantees or Contractors and Department employees and carefully fit its work to such additional work. The Grantee shall not commit or permit any act which will interfere with the performance of work by any other Grantee or Contractor or by Department employees.

This Paragraph shall be included in the contracts and Agreements of all Grantees and Contractors with whom this Grantee will be required to cooperate. The Department shall equitably enforce this Paragraph as to all Grantees and Contractors to prevent the imposition of unreasonable burdens on any Grantee.

**9. AVAILABILITY OF INFORMATION.**

During the period of this Grant Agreement, all information obtained by the Grantee through work on the project shall be made available to the Department immediately upon demand.

**10. FISCAL AND PROGRAM RECORDS.**

- A. The Grantee agrees to maintain program and fiscal records required by the Department. For purposes of this Grant Agreement, "fiscal and program records" shall include, but not be limited to, books, records, documents,

sub-grants or sub-contracts and other evidence pertaining to the costs and expenses of this Agreement, records relating services being provided, statistical information collected in the course of performing services, policies and procedures, information relating to staff and job descriptions, and all information necessary for the Grantee to perform the work required under the Grant Agreement. The Grantee agrees that a program and facilities review, including meetings with consumers, review of service records, review of service policy and procedural issuances, review of staffing ratios and job descriptions, and meetings with any staff directly or indirectly involved in the provision of services may be conducted at any reasonable time by state and Federal personnel and other persons duly authorized by the Department.

- B. The Grantee agrees to maintain statistical records required by the Department to produce program narrative and statistical data at times prescribed by, and on forms furnished by the Department.
- C. The Grantee agrees to maintain fiscal records to the extent and in such detail as will properly reflect all net costs, direct and indirect, of labor, materials, equipment, supplies and services and other costs and expenses of whatever nature for which reimbursement is claimed under the provisions of this Agreement. If the Grantee is not a public body, the Grantee agrees to maintain books, records, documents and other evidence in accordance with accounting procedures and practices which meet generally accepted accounting principles.
- D. If this Grant Agreement provides funding for a clinic or program which receives income or funding other than directly through this Grant Agreement (such as, but not limited to, third party reimbursement for patients), the Grantee agrees that all parts of this Paragraph 10 of these Standard General Terms and Conditions shall also apply to the Grantee's records pertaining to such other sources of funding or income supporting the clinic or program.
- E. The Grantee agrees to make available at the Office of the Grantee at all reasonable times during the term of this Grant Agreement and the period set forth in Paragraph 11 below, any of the records for inspection, audit or reproduction by any authorized representative of the Department, the Department's Comptroller, the Auditor General, the Inspector General or Federal auditors.
- F. The provisions of this Paragraph 10 shall be applicable to and included in each sub-grant or sub-contract entered into by the Grantee in the performance of this Grant Agreement.
- G. The Grantee agrees to collect statistical data of a fiscal nature on a regular basis and to make fiscal statistical reports at times prescribed by, and on forms furnished by the Department.

## **11. RECORD RETENTION REQUIREMENTS.**

All records kept pursuant to Paragraph 10 shall be retained pursuant to the provisions of this Paragraph 11.

- A. The Grantee shall preserve and make available its records for a period of four years from the date of final payment under this Agreement, and for such period, if any, as is required by applicable statute, by any other Paragraph of this Agreement, or by sub-paragraphs (1) or (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 five years from the date of any resulting final payment.
  - (2) Records which relate to litigation or the settlement of claims arising out of the performance of this Agreement, or costs and expenses of this Agreement as to which exception has been taken by the auditors, shall be retained by the Grantee until such litigation, claims, or exceptions have been disposed of.
- B. Except for the records described in sub-paragraph A(2) above, the Grantee may, in fulfillment of its obligation to retain its records as required by this Paragraph, substitute photographs, microphotographs, or other authentic reproductions of such records, after the expiration of two years following the last day of the month of reimbursement to the Grantee of the invoice or voucher to which such records relate, unless a shorter period is authorized by the Department, with the concurrence of the auditors.

## **12. FEDERAL FUNDS.**

The Grantee certifies that the Federal funds provided by this Agreement do not replace or supplant in any way any other funds, whether state, local or private, being used to provide already existing services. The Grantee further

certifies that the services to be provided under this Agreement are not already available without cost. The Grantee further certifies that the addition of Federal funds will result in a commensurate program expansion.

**13. QUALITY ASSURANCE.**

Unless otherwise provided herein, the Grantee with due diligence shall furnish all necessary qualified personnel, material and equipment, managing and directing same to complete the work required by this Grant Agreement. The Grantee's work hereunder shall be monitored by the Project Officer and the Project Officer's designated representatives. If requested by the Department, The Grantee shall produce or provide special reports to the Department in a timeframe and format specified by the Department.

**14. PROGRAM CHANGES.**

The Project Officer may at any time, by written order, make changes in the statement of work, provided such changes are within the general scope of the statement of work and provided further that the total cost of this Grant Agreement is not exceeded. The Project Officer and the Grantee shall mutually determine whether the ordered changes can be accomplished within the total Grant Agreement cost and the extent of change, if any, in delivery schedules required by the ordered changes. Failure of the Project Officer and the Grantee to arrive at such mutual determinations shall be a dispute concerning a question of fact within the meaning of the Paragraph 2 of this Appendix entitled "Grant Construction." The Project Officer may not change the scope of work or increase the total cost of this Grant Agreement.

**15. WRITTEN COMMITMENT.**

Any written commitment or representation of the Grantee made within the scope of this Agreement shall, if accepted by the Project Officer in writing, be binding upon the Grantee and shall be incorporated as a part of this Grant Agreement.

**16. KEY PERSONNEL.**

The personnel specified in this Grant Agreement are considered to be essential to the work being performed hereunder. Prior to diverting any of the specified individuals to other programs, the Grantee shall notify the Project Officer reasonably in advance and shall submit justification including proposed substitutions, in sufficient detail to permit evaluation of the impact on the program. No diversion shall be made by the Grantee without the written consent of the Project Officer.

**17. INSPECTION AND ACCEPTANCE.**

Final inspection and acceptance of all work required under this Grant Agreement shall be performed by the Project Officer.

**18. TRAVEL AND SUBSISTENCE COSTS.**

The Department shall not be liable for travel or subsistence costs except as specifically set forth in this Grant Agreement.

**19. OWNERSHIP RIGHTS.**

A. Definition: The term "data," as used herein, includes but is not necessarily limited to written reports and analyses, diagrams, maps, system designs, computer programs, flow charts, software, magnetic tapes, diskettes, drawings, studies, manuals, brochures, advertisements, documents, sketches, papers, files, information, computer documentation, other tangible materials, and work of any similar nature which is required to be performed by or for the Grantee under this Grant or which is incidentally prepared by or for the Grantee in the performance of this Grant. Data includes background material prepared by or for the Grantee incidental to the performance of this Grant. Background material is defined as original work papers, notes, and drafts prepared by or for the Grantee to support conclusions in any final report or product delivered under this Grant, including but not limited to completed questionnaires, and material in electronic data processing form, computer programs, and other tangible materials produced by or for the Grantee during the term of this Grant and directly related to the services being rendered. It does not include the Grantee's financial reports or other information incidental to Grant administration.

- B. **Preexisting Materials Brought by Grantee to the Project:** The Department shall have no ownership rights to the Grantee's data, proprietary materials, methodologies or other intellectual property that the Grantee brings to the Project or has previously developed with or obtained from third parties. The Grantee shall provide a list of all preexisting data, proprietary materials, methodologies or other intellectual property in connection with the Grant Agreement prior to starting work. Notwithstanding the foregoing provision, where materials brought by the Grantee to the Project are necessary to use the deliverables required under this Grant, the Grantee shall, and hereby effectively does, grant to the Department a paid-up, nonexclusive, nontransferable license to use, modify, prepare derivative works, and to grant to third parties engaged by the Commonwealth the right to use, modify, and prepare derivative works, from all or any portion of the material brought by the Grantee to the Project.
- C. **Ownership of Data:** Any Data that fits the definition of "work made for hire," as that term is defined in United States copyright law, shall be considered a "work made for hire." All rights to these Data shall vest in the Department, which shall have sole and exclusive ownership of all Data. In the event that such Data do not fall within the specifically enumerated works that constitute "works made for hire" under the United States copyright laws, the Grantee agrees to assign and, upon their authorship or creation, expressly and automatically assigns all copyright interests, proprietary rights, trade secrets, and other right, title and interest in and to such Data to the Department. The Department shall have the rights accorded a holder of copyright under the United States copyright laws including, but not limited to, the exclusive right to reproduce the Data in copies, the right to distribute copies by sale or other transfers, the right to register all copyrights in its own name as author in the United States and foreign countries, the right to prepare derivative works based upon the Data, and the right to display the Data. Upon completion or termination of this Agreement, the Grantee shall immediately deliver all working papers, files, background material, and other documentation to the Department. The Grantee warrants that the Data are original and do not infringe the rights of any other work.
- D. **Data Processing:** All computer programs, tapes, and software developed under this Agreement, and any data or information provided to the Department by diskette or electronic means, shall be compatible with Department computer systems. Specifications, if not included elsewhere in this Agreement, may be obtained from the Project Officer.
- E. **Federal Government Interests:** It is understood that certain funding under this Agreement may be provided by the Federal Government. Accordingly, the rights to Data of Grantees or subcontractors hereunder will be further subject to government rights as set forth in 37 C.F.R. Section 401, and other applicable statutes. Notwithstanding the foregoing, the Department retains the right to share information with the Federal Government relating to Data developed under a wholly state-funded Grant.
- F. **Defense of Infringement Claim:** The Grantee shall hold the Commonwealth harmless for any suit or proceeding brought against the Commonwealth, including the Department, or their officials or employees, on account of any alleged infringement of any United States or foreign copyrights, patents, trademarks, or trade secrets 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 Grantee. The Grantee shall pay all damages and costs awarded therein against the Commonwealth. Pursuant to the Commonwealth Attorney's Act 71 P.S. § 732 – 101, et seq., the Office of Attorney General (OAG) has the sole authority to represent the Commonwealth in actions brought against the Commonwealth. The OAG may, however, in its sole discretion and under the terms it deems appropriate, delegate its right of defense. If information and assistance are furnished by the Commonwealth at the Grantee's written request, it shall be at the Grantee's expense, but the responsibility for such expense shall be only that within the Grantee's written request. If any of the data, materials, reports, studies or computer programs provided by the Grantee are held to constitute infringement, and the use of publication thereof is enjoined in such suit or proceeding, the Grantee shall, at its own expense and at its option, either procure the right to publish or continue use of such infringing data, materials, reports, studies or computer programs, replace them with non-infringing items, or so modify them so that they are no longer infringing. If after a reasonable time and good faith effort, the Grantee is unable to comply with the requirements of the immediately preceding sentence, the Grantee shall return to the Department that portion of Grant funds expended by the Grantee in relation to the infringing item. The obligations of the Grantee under this Paragraph continue without time limit.

## **20. DEPARTMENT APPROVAL AND ATTRIBUTION.**

- A. All printed material is subject to written preapproval by the Department. "Printed material" includes, but is not limited to, notices, informational pamphlets, press releases, research reports, brochures, manuals, labels, newsletters, artwork, and print advertisements. All printed material must bear the Department logo and the

names and titles of the Governor and the Secretary of Health unless otherwise authorized in writing by the Department's Contracting Officer. All material produced for radio and television must also be approved for quality of content and accreditation in writing by the Department's Contracting Officer prior to final production as well as after final production.

- B. Department attribution shall be at the Department's sole discretion. If the Department requires attribution on printed materials, the Grantee shall include the following statement on printed materials released by the Grantee: "This project is funded, in part, under a Grant with the Pennsylvania Department of Health. Basic data for use in this study were supplied by the Pennsylvania Department of Health, Harrisburg, Pennsylvania. The Department takes no part in and is in no way responsible for any analyses, interpretations or conclusions," or another statement approved by the Department. If the Department requires attribution on materials produced for radio and television, the Grantee shall include a statement approved by the Department.

## **21. FORMS APPROVAL.**

All forms, questionnaires, survey instruments, etc., developed under this Grant Agreement shall be subject to prior written approval by the Department.

## **22. CONFIDENTIALITY, SENSITIVE DOCUMENTS AND INFORMATION.**

- A. The Grantee shall maintain the confidentiality of medical records of individuals served by the Grantee under this Agreement except to disclose such confidential information to the Department for purposes of consultation or the Department's monitoring of this Agreement.
- B. Sensitive Information: The Grantee shall not publish or otherwise disclose, except to the Department and except matters of public record, any information or data obtained hereunder from private individuals, organizations, or public agencies, in a publication whereby the information or data furnished by or about any particular person or establishment can be identified, except with the informed consent of such person or establishment.
- C. The Grantee shall not release any sensitive documents or information without the prior written approval of the Department. The term "sensitive documents or information" shall mean a document or information that contains the description, design, operational plan, or other vital information about a critical facility or infrastructure located in Pennsylvania and bordering states (e.g., nuclear power plants, hazardous chemical plant, oil refinery, bridge, dam, tunnel, etc.), or contains information about the operational protocols or emergency response capabilities of state and local agency personnel, the content of which could be used by a terrorist or enemy of the United States to plan an attack upon a critical facility located in Pennsylvania and bordering states or engage in other activities that could cause death or injury to fire, police, medical, military, or other emergency response personnel, public officials, or the general public.

## **23. COLLECTION OR RECORDING OF INFORMATION.**

The Grantee shall submit to the Project Officer for written approval prior to use, copies of each questionnaire and survey plan, including plans for structured interviews and consultations, for the collection of information upon identical items from five or more individuals or organizational elements. The term "structured interview and consultation" is defined as an interview or consultation which follows a pre-designed line of questioning that takes approximately the same form for all the respondents being interviewed or consulted.

## **24. INTERESTS OF MEMBERS OF THE COMMONWEALTH AND OTHERS.**

No officer, member or employee 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 that person's personal interest or the interest of any corporation, partnership, or association in which that person is, directly or indirectly, interested; nor shall any such officer, member or employee of the Commonwealth or member of its General Assembly have any interest, direct or indirect, in this Agreement or the proceeds thereof.

## **25. INTEREST OF GRANTEE.**

The Grantee covenants 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 Grantee further covenants that in the performance of this Agreement, it shall not knowingly employ any person having such interest.

Grantee further certifies that no member of the board of the Grantee or any of its officers or directors have such an adverse interest.

## **26. DEFAULT AND TERMINATION.**

- A. The Department may, subject to the provisions of sub-paragraph C below, by written notice of default to the Grantee, immediately terminate upon such terms as said notice shall set forth, the whole or any part of this Agreement in any one of the following circumstances:
- (1) If the Grantee fails to perform the services within the time specified herein or any extension thereof; or
  - (2) If the Grantee fails to perform any of the other provisions of this Agreement, or so fails to make progress as to endanger its terms, and in either of these two circumstances does not cure such failure within a period of 10 days (or such longer period as the Department may authorize in writing) after receipt of notice from the Department specifying such failure.
- B. In the event the Department terminates this Agreement in whole or in part as provided in sub-paragraph A above, the Department may procure, upon such terms and in such manner as the Project Officer may deem appropriate, services similar to those so terminated and the Grantee shall be liable to the Department for any excess costs for such similar services, provided that the Grantee shall continue the performance of this Agreement to the extent not terminated under the provisions of this Paragraph 26.
- C. Except with respect to defaults of or sub-grantees, the Grantee shall not be liable for any excess costs if the failure to perform this Agreement arises out of causes beyond the control and without the fault or negligence of the Grantee. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the Commonwealth of Pennsylvania in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restriction, strikes, freight embargoes, and unusually severe weather; but in every case the failure to perform must be beyond the control and without the fault or negligence of the Grantee. If the failure to perform is caused by the default of a sub-grantee, and if such default arises out of causes beyond the control of both the Grantee and sub-grantee and without the fault or negligence of either of them, the Grantee shall not be liable unless the services to be furnished by the sub-grantee were obtainable from other sources in sufficient time to permit the Grantee to meet the required delivery schedule.
- D. If this Agreement is terminated as provided in sub-paragraph A above, the Department shall require the Grantee to transfer title and deliver to the Department such partially completed reports or other documentation as the Grantee has produced under this Agreement. Payments for completed reports and other documentation delivered to and accepted by the Department shall be at the Agreement price. Payment for partially completed reports and other documentation delivered to and accepted by the Department shall be in an amount agreed upon by the Grantee and the Project Officer. Failure to agree to such amount shall be a dispute concerning a question of fact within the meaning of Paragraph 2 of this Appendix entitled "Grant Construction." The Department may withhold from amounts otherwise due the Grantee for such completed or partially completed reports or other documentation such sum as the Department determines to be necessary to protect it against loss because of outstanding liens or claims of former lien holders.
- E. The rights and remedies of the Department provided in this Paragraph 26 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Grant Agreement.
- F. The Department may cancel this Grant Agreement, in whole or in part, at any time for the convenience of the Commonwealth by giving written notice to the Grantee. Should the Department exercise its rights under this clause, the Department will pay the Grantee for all work done by the Grantee under this Agreement until such time as the Department sets forth in its written notice to Grantee.
- G. Should the Grantee become insolvent, or if proceedings in bankruptcy shall be instituted by or against the Grantee, the remaining or unexpired portion of this Agreement may, at the election of the Department, be terminated.
- H. In addition, this Agreement may be cancelled by either party upon 30 days advance written notice.

## **27. GRANT CONTINGENT UPON LEGISLATIVE APPROPRIATION.**

Payment hereunder is subject to the availability of state and/or Federal funds.

**28. AVAILABILITY OR SUFFICIENCY OF DEPARTMENT FUNDS.**

In addition to any other termination provision within this Grant Agreement, the Department may terminate this Grant Agreement at any time in the event funds, including, but not limited to, Federal program funds, become unavailable or are insufficient for Department program purposes. In such case, the Department will provide the Grantee with advance notice to the extent reasonable and possible under the circumstances to either terminate the Grant overall, or suspend all or a portion of such Grant as determined by the Department and set forth in its notice to the Grantee. The Department will pay the Grantee for satisfactory work completed up until such termination or outside such suspension period, but in no event shall the Grantee be entitled to receive loss of profits.

**29. COVENANT AGAINST CONTINGENT FEES.**

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

**30. ENVIRONMENTAL PROTECTION.**

In carrying out this Grant Agreement, the Grantee shall minimize pollution and shall strictly comply with all applicable environmental laws and regulations.

**31. EQUAL EMPLOYMENT OPPORTUNITY.**

- A. The Grantee shall not discriminate against any employee, applicant for employment, independent contractor or any other person because of race, color, religious creed, ancestry, national origin, age, or sex. The Grantee shall take affirmative action to insure that applicants are employed, and that employees or agents are treated during employment, without regard to their race, color, religious creed, ancestry, national origin, age, or sex. Such affirmative action shall include, but is not limited to: employment, upgrading, demotion or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training. The Grantee shall post in conspicuous places, available to employees, agents, applicants for employment, and other persons, a notice to be provided by the contracting agency setting forth the provisions of this nondiscrimination clause.
- B. The Grantee shall, in advertisements or requests for employment placed by it or on its behalf, state that all qualified applicants will receive consideration for employment without regard to race, color, religious creed, ancestry, national origin, age, or sex.
- C. The Grantee shall send each labor union or workers' representative with which it has a collective bargaining agreement or other Grant or understanding, a notice advising said labor union or workers' representative of its commitment to this nondiscrimination clause. Similar notice shall be sent to every other source of recruitment regularly utilized by the Grantee.
- D. It shall be no defense to a finding of noncompliance with this nondiscrimination clause that the Grantee had delegated some of its employment practices to any union, training program, or other source of recruitment which prevents it from meeting its obligations. However, if the evidence indicates that the Grantee was not on notice of the third-party discrimination or made a good faith effort to correct it, such factor shall be considered in mitigation in determining appropriate sanction.
- E. Where the practices of a union or training program or other source of recruitment will result in the exclusion of minority group persons, so that the Grantee will be unable to meet its obligations under this nondiscrimination clause, the Grantee shall then employ and fill vacancies through other nondiscriminatory employment procedures.
- F. The Grantee shall comply with all state and Federal laws prohibiting discrimination in hiring or employment opportunities. In the event of the Grantee's noncompliance with the nondiscrimination clause of this

Agreement or with any such laws, this Agreement may be terminated or suspended, in whole or in part, and the Grantee may be declared temporarily ineligible for further Commonwealth Contracts or Grants, and other sanctions may be imposed and remedies invoked.

- G. The Grantee shall furnish all necessary employment documents and records to, and permit access to its books, records, and accounts by, the Department and the Office of Administration, Bureau of Affirmative Action, for purposes of investigation to ascertain compliance with the provisions of this clause. If the Grantee does not possess documents or records reflecting the necessary information requested, it shall furnish such information on reporting forms supplied by the Department or the Bureau of Affirmative Action.
- H. The Grantee shall actively recruit minority sub-grantees or sub-grantees with substantial minority representation among their employees.
- I. The Grantee shall include the provisions of this nondiscrimination clause in every sub-grant or sub-contract, so that such provisions will be binding upon each sub-grantee.
- J. The Grantee obligations under this clause are limited to the Grantee's facilities within Pennsylvania, or where the Grant Agreement is for purchase of goods manufactured outside of Pennsylvania, the facilities at which such goods are actually produced.

### **32. EQUAL OPPORTUNITY FOR THE HANDICAPPED.**

- A. The Grantee agrees to abide by Section 504 of the Rehabilitation Act of 1973, as amended (Public Law 93-112, 29 U.S.C. §794, as amended) and implementing Federal regulations. The Grantee assures that any benefits, services, or employment, available through the Grantee to the public by way of this Grant Agreement's funds, shall not be denied persons with handicaps who are otherwise qualified or eligible for the benefits, services, or employment available as a result of this Grant Agreement.
- B. The Grantee shall include the provisions of sub-paragraph A above in every sub-grant or sub-contract under this Grant Agreement so that such provision binds each sub-Grantee.

### **33. DISPOSITION OF EQUIPMENT AND OTHER MATERIAL.**

- A. The Grantee 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.
- B. Title to all property furnished by the Department shall remain with the Department. Title to all personal property acquired by the Grantee, including purchase by lease-purchase agreement, for the cost of which the Grantee is to be reimbursed under this Agreement, shall vest in the Grantee during the term of this Agreement. Upon cancellation or termination of this Agreement, such purchased personal property which has remaining useful life shall become the property of the Department, or at the election of and with written approval of the Department, may be disposed of by the Grantee in accordance with the following provisions:
  - (1) If the Grantee wishes to retain any items of such purchased property, both parties will arrange for an independent third-party appraisal of these property items and the Grantee will reimburse the Department for the value of the remaining useful life of the property on the basis of such appraisal. Unless otherwise agreed upon in writing by the Department, the Grantee shall be responsible for the cost of appraisal.
  - (2) Provided the Department is notified 10 days in advance of the date of the sale and the Grantee has the prior written permission of the Department and the approval of the Governor's Office of Budget, Grantee may sell the property. Grantee shall reimburse the Department for the Department's appropriate share.
- C. All property furnished by the Department or personal property acquired by the Grantee, including purchase by lease-purchase agreement, for which the Grantee is to be reimbursed under this Agreement shall be deemed Commonwealth property for the purpose of sub-paragraphs D, E, and F of this Paragraph.
- D. Grantee shall maintain and administer in accordance with sound business practices a program for the maintenance, repair, protection, preservation and insurance of Commonwealth property so as to assure its full availability and usefulness.

- E. 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 Budget, be used only for the performance of this Agreement.
- F. In the event that Grantee is indemnified, reimbursed or otherwise compensated for any loss or destruction of or damage to the Commonwealth's property, Grantee 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.
- G. Should the Grantee purchase equipment pursuant to this Agreement, the Grantee shall complete the Department's Equipment Inventory Form and return it to the Department with the Grantee's invoice which seeks reimbursement for such equipment under this Agreement. The Department will provide the Grantee with the form when this Agreement provides for the purchase of equipment.

**34. GENERIC DRUGS.**

If under this Agreement the Grantee prescribes or dispenses drugs to consumers, it shall do so in accordance with Act 259 of November 24, 1976, P.L. 1163, 35 P.S. §960.1 et seq., as amended, and prescribe and dispense generically equivalent drugs rather than brand name drugs whenever possible.

**35. EXTENSION RIGHT.**

The Commonwealth reserves the right, upon notice to the Grantee, to extend the term of the Grant Agreement for up to three months upon the same terms and conditions.

**36. ASSIGNMENT OF ANTITRUST CLAIMS.**

The Grantee and the Commonwealth recognize that in actual economic practice, overcharges by the Grantee's suppliers resulting from violations of state and Federal antitrust laws are in fact borne by the Commonwealth. As part of the consideration for the award of this Grant Agreement, and intending to be legally bound, the Grantee assigns to the Commonwealth all right, title and interest in and to any claims the Grantee now has or may hereafter acquire under state or Federal antitrust laws relating to the goods or services which are the subject of this Grant Agreement.

**37. LAWS AND REGULATIONS.**

This Grant 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 Grant Agreement are subject to modification by amendments to Federal, state and local laws and regulations without further notice to the Grantee.

**38. CORPORATE PRACTICE OF MEDICINE DOCTRINE.**

The Grantee shall comply with and not violate the corporate practice of medicine doctrine.

**39. HUMAN RESEARCH.**

The Grantee agrees that all human subject research (which includes but is not limited to the researcher obtaining identifiable private information or data through intervention or interaction with an individual) shall be prohibited unless the Grantee also certifies that prior written approval of its own or another Institutional Review Board (IRB) has been obtained or the research has been exempted, subject to all applicable laws, including but not limited to: 42 U.S. C. Section 3515(b) (relating to prohibitions on funding certain experiments involving human participants) and the regulations there under. Voluntary, informed consent of each subject shall be obtained. If the subject is a minor, or incompetent, the voluntary, informed consent of his or her legal guardian shall be required. The Grantee shall inform each potential subject prior to his or her consent that refusal will not result in the loss of any benefits to which the subject is otherwise entitled from the Federal government, the Commonwealth, the Grantee, any sub-grantee, or any third party insurer. Additionally, the Grantee agrees that all human subject research funded under this Grant shall be submitted for review and approval to the Department of Health IRB on form number HD 1013F prior to the onset of research.

**40. INTEGRATION CLAUSE.**

The parties agree that this Grant Agreement constitutes the entire Agreement.

**41. REPORTING REQUIREMENTS UNDER THE FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT (FFATA).**

**A. Registration and Identification Information**

The Grantee must maintain a current full registration that permits their entity registration to appear in a public search in the System for Award Management or SAM ([www.SAM.gov](http://www.SAM.gov)) at all times during which they have active Federal awards funded pursuant to this agreement. A Unique Entity Identifier (UEI) is issued upon registration in SAM.gov. Grantee must provide it's UEI to the Commonwealth. The Commonwealth will not process this Grant Agreement until such time that the Grantee provides this information.

**B. Primary Location**

The Grantee must provide to the Commonwealth the primary location of performance under the award, including the city, State, and zip+4. If performance is to occur in multiple locations, then the Grantee must list the location where the most amount of the Grant award is to be expended pursuant to this Grant Agreement. The Grantee must provide this information to the Commonwealth. The Commonwealth will not process this Grant Agreement until such time that Grantee provides this information.

**C. Compensation of Officers**

The Grantee must provide to the Commonwealth the names and total compensation of the five most highly compensated officers of the entity if--

- (1) the entity in the preceding fiscal year received—
  - (a) 80 percent or more of its annual gross revenues in Federal awards; and
  - (b) \$25,000,000 or more in annual gross revenues from Federal awards; and
- (2) the public does not have access to information about the compensation of the senior executives of the entity through periodic reports filed under section 13(a) or 15(d) of the Securities Exchanges Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986.

If the Grantee does not meet the conditions listed above, then it must specifically affirm to the Commonwealth that the requirements of this clause are inapplicable to the Grantee. The Grantee must provide information responding to this question . The Commonwealth will not process this Grant Agreement until such time that Grantee provides such information responding to this question. ]

**42. HEALTH EQUITY.**

- A. The Grantee, any subgrantee, Contractor or any subcontractor shall provide services in an equitable manner to all populations served and especially those currently underserved, socially disadvantaged, and ethnically diverse groups which includes services that are culturally and linguistically appropriate. Services shall be consistent with the provisions of the National Standards for Culturally and Linguistically Appropriate Services in Health Care (CLAS Standards).
- B. The Grantee, any subgrantee, Contractor or any subcontractor shall identify specific group(s) or population segments to be served who experience a disproportionate burden of disease, health condition or problem being addressed by this Agreement.
- C. The Grantee, any subgrantee, Contractor or any subcontractor shall identify and address the specific social and environmental conditions (social determinants of health) that put disproportionately affected groups at increased risk of the disease, health condition or problem being addressed by this Agreement.

## **Attachment A to Standard General Terms and Conditions (Commonwealth Standard Terms and Conditions, Grant Version)**

**The parties agree that this Attachment A supersedes and takes precedence over any conflicting provision found elsewhere in this Agreement.**

### **1. DEFINITIONS**

Capitalized terms used in these Commonwealth standard terms and conditions that are not otherwise defined in these provisions have the meanings specified in the agreement to which they are attached.

### **2. INDEMNIFICATION**

The Grantee shall indemnify and defend the Commonwealth against all third-party claims, suits, demands, losses, damages, costs, and expenses, including without limitation, litigation expenses, attorneys' fees, and liabilities, arising out of or in connection with any activities performed by the Grantee or its employees and agents pursuant to this agreement, as determined by the Commonwealth in its sole discretion.

### **3. NONDISCRIMINATION/SEXUAL HARASSMENT**

- a. **Representations.** The Grantee represents that it is presently in compliance with and will remain in compliance with all applicable federal, state, and local laws, regulations, and policies relating to nondiscrimination and sexual harassment for the term of the agreement. The Grantee shall, upon request and within the time periods requested by the Commonwealth, furnish all necessary employment documents and records, including EEO-1 reports, and permit access to its books, records, and accounts by the Commonwealth for the purpose of ascertaining compliance with provisions of this Nondiscrimination/Sexual Harassment Clause.
- b. **Nondiscrimination/Sexual Harassment Obligations.** The Grantee shall not:
  - i. in any manner discriminate in the hiring of any employee(s) for the performance of the activities required under this agreement or any subgrant agreement, contract, or subcontract, by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the Pennsylvania Human Relations Act ("PHRA") and applicable federal laws, against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.
  - ii. in any manner discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the PHRA and applicable federal laws, against or intimidate any of its employees.
  - iii. in any manner discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the PHRA and applicable federal laws, in the provision of services under this agreement or any subgrant agreement, contract, or subcontract.

- iv. in any manner discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of PHRA and applicable federal laws, against any subgrantee, contractor, subcontractor, or supplier who is qualified to perform the work to which this agreement relates.
  - v. in any manner discriminate against employees by reason of participation in or decision to refrain from participating in labor activities protected under the Public Employee Relations Act, Pennsylvania Labor Relations Act, or National Labor Relations Act, as applicable, and to the extent determined by entities charged with the Acts' enforcement and shall comply with any provision of law establishing organizations as employees' exclusive representatives.
- c. **Establishment of Grantee Policy.** The Grantee shall establish and maintain a written nondiscrimination and sexual harassment policy that complies with the applicable law and these Nondiscrimination/Sexual Harassment provisions and shall inform its employees in writing of the policy. The policy must contain a provision that states that sexual harassment will not be tolerated and employees who practice it will be disciplined. For the entire period of this agreement, the Grantee shall: (1) post its written nondiscrimination and sexual harassment policy or these Nondiscrimination/Sexual Harassment provisions conspicuously in easily accessible and well-lighted places customarily frequented by employees at or near where the grant activities are performed; or (2) provide electronic notice of the policy or this clause to its employees not less than annually.
- d. **Notification of Violations.** The Grantee's obligations pursuant to these provisions are ongoing from the effective date and through the termination date of the agreement. Accordingly, the Grantee shall notify the Commonwealth if, at any time during the term of this agreement, it becomes aware of any actions or occurrences that would result in violation of these provisions.
- e. **Cancellation or Termination of Agreement.** The Commonwealth may cancel or terminate this agreement and all money due or to become due under this agreement may be forfeited for a violation of the terms and conditions of these Nondiscrimination/Sexual Harassment provisions. In addition, the granting agency may proceed with debarment or suspension and may place the Grantee in the Contractor Responsibility File.
- f. **Subgrant Agreements, Contracts, and Subcontracts.** The Grantee shall include these Nondiscrimination/Sexual Harassment provisions in its subgrant agreements, contracts, and subcontracts with all subgrantees, contractors, and subcontractors providing goods or services under this agreement. The incorporation of these provisions in the Grantor's subgrants, contracts, or subcontracts does not create privity of contract between the Commonwealth and any subgrantee, contractor, or subcontractor, and no third-party beneficiaries are created by those provisions. If the Grantee becomes aware of a subgrantee's, contractor's, or subcontractor's violation of these provisions, the Grantee shall use its best efforts to ensure the subgrantee's, contractor's, or subcontractor's compliance with these provisions.

#### 4. GRANTEE INTEGRITY

a. **Definitions.** For purposes of these Grantee Integrity Provisions, the following definitions apply:

- i. “Affiliate” means two or more entities where (a) a parent entity owns more than 50% of the voting stock of each of the entities; (b) a common shareholder or group of shareholders owns more than 50% of the voting stock of each of the entities; or (c) the entities have a common proprietor or general partner.
- ii. “Grantee” means the individual or entity, that has entered into this agreement with the Commonwealth.
- iii. “Grantee Related Parties” means any Affiliates of the Grantee and the Grantee’s executive officers, Pennsylvania officers and directors, or owners of five percent or more interest in the Grantee.
- iv. “Financial Interest” means ownership of more than a five percent interest in any business or holding a position as an officer, director, trustee, partner, employee, or holding any position of management.
- v. “Gratuity” means tendering, giving, or providing anything of more than nominal monetary value including, but not limited to, cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind. The exceptions set forth in the [Governor’s Code of Conduct, Executive Order 1980-18](#), as may be amended, 4 Pa. Code §7.153(b), apply.
- vi. “Non-Solicitation Award Process” means a method of awarding grants based on predetermined criteria, without the solicitation of grant applications.

b. **Representations and Warranties.**

- i. **Grantee Representation and Warranties.** The Grantee represents, to the best of its knowledge and belief, and warrants that within the last five years neither the Grantee nor Grantee Related Parties have:
  1. been indicted or convicted of a crime involving moral turpitude or business honesty or integrity in any jurisdiction;
  2. been suspended, debarred, or otherwise disqualified from entering into any contract with any governmental agency;
  3. had any business license or professional license suspended or revoked;
  4. had any sanction or finding of fact imposed as a result of a judicial or administrative proceeding related to fraud, extortion, bribery, bid rigging, embezzlement, misrepresentation or anti-trust; and
  5. been, and are not currently, the subject of a criminal investigation by any federal, state, or local prosecuting or investigative agency or civil anti-trust investigation by any federal, state, or local prosecuting or investigative agency.

- ii. **Grantee Explanation.** If the Grantee cannot make the representations and warranties set forth above at the time of its submission of its grant application or if the agreement is awarded pursuant to a Non-Solicitation Award Process at the time of the execution of the agreement, the Grantee shall submit a written explanation outlining the reasons why it cannot make those representations and warranties. The Commonwealth may, based on its evaluation of the explanation provided, determine whether it is in the Commonwealth's best interest to execute the agreement.
  - iii. **Further Representations.** By submitting any bills, invoices, or requests for payment pursuant to the agreement, the Grantee further represents that it has not violated any of these Grantee Integrity Provisions during the term of the agreement.
  - iv. **Notice.** The Grantee shall immediately notify the Commonwealth, in writing, if at any time during the term of the agreement it becomes aware of any event that would cause the Grantee's certification or explanation to change. The Grantee acknowledges that the Commonwealth may, in its sole discretion, terminate the agreement for cause if it learns that any of the certifications made in these Grantee Integrity Provisions are currently false or misleading due to intervening factual circumstances or were false or misleading or should have been known to be false or misleading when entering into the agreement.
- c. **Grantee Responsibilities.** During the term of this agreement, the Grantee shall:
- i. maintain the highest standards of honesty and integrity.
  - ii. take no action in violation of any applicable laws, regulations, or other requirements applicable to the Grantee that govern Commonwealth contracting or grant administration.
  - iii. establish and implement a written business integrity policy that includes, at a minimum, the requirements of these Grantee Integrity Provisions as they relate to the Grantee's activity with the Commonwealth and Commonwealth employees and ensure that its employees comply with the policy.
  - iv. not accept, agree to give, offer, confer, agree to confer, or promise to confer, directly or indirectly, any gratuity or pecuniary benefit to any person, or to influence or attempt to influence any person in violation of any federal or state law, regulation, executive order, statement of policy, management directive, or bulletin applicable to the award of grants or the administration of this agreement.
  - v. not have a financial interest in any other subgrantee, contractor, subcontractor, or supplier providing services, labor, or material under this agreement, unless the financial interest is disclosed to the Commonwealth in writing and the Commonwealth consents to Grantee's financial interest. The Grantee must disclose the financial interest to the Commonwealth at the time of submission of its grant application, or if a Non-Solicitation Award Process is used, no later than the date the Grantee signs the agreement. The Commonwealth shall be deemed to have consented if the required disclosure is received and all of the required Commonwealth signatures are affixed.

- vi. comply with the requirements of the Lobbying Disclosure Act (65 Pa.C.S. § 13A01 et seq.) regardless of the method of award.
  - vii. comply with the requirements of Section 1641 of the Pennsylvania Election Code (25 P.S. § 3260a) if this agreement was awarded pursuant to a Non-Solicitation Award Process.
  - viii. immediately notify the Commonwealth or the Office of the State Inspector General, in writing, when the Grantee has reason to believe that any breach of ethical standards as set forth in law, the Governor's Code of Conduct, or these Grantee Integrity Provisions has occurred or may occur, including, but not limited to, contact by a Commonwealth officer or employee, which, if acted upon, would violate the ethical standards.
- d. **Investigations.** If a State Inspector General investigation is initiated, the Grantee shall:
- i. reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of the State Inspector General for investigations of the Grantee's compliance with the terms of this or any other agreement between the Grantee and the Commonwealth that results in the suspension or debarment of the Grantee. The Grantee shall not be responsible for investigative costs for investigations that do not result in the Grantee's suspension or debarment.
  - ii. cooperate with the Office of the State Inspector General in its investigation of any alleged Commonwealth agency or employee breach of ethical standards and any alleged Grantee non-compliance with these Grantee Integrity Provisions and make identified Grantee employees and volunteers available for interviews at reasonable times and places.
  - iii. upon the inquiry or request of an Inspector General, provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Office of the State Inspector General to Grantee's integrity and compliance with these provisions. This information may include, but is not be limited to, the Grantee's business or financial records, documents or files of any type or form that refer to or concern this agreement.
- e. **Termination.** For violation of any of these Grantee Integrity Provisions, the Commonwealth may terminate this agreement and any other contract with the Grantee, claim liquidated damages in an amount equal to the value of anything received in breach of these Grantee Integrity provisions, claim damages for all additional costs and expenses incurred in obtaining another grantee to complete performance under this agreement, and debar and suspend the Grantee from doing business with the Commonwealth. These rights and remedies are cumulative, and the use or non-use of any one does 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.
- f. **Subcontracts.** The Grantee shall include these Grantee Integrity Provisions in its subgrant agreements, contracts, and subcontracts with all subgrantees, contractors, and subcontractors providing goods or services under this agreement. The incorporation of this provision in the Grantee's subgrant agreements, contracts, and subcontracts shall not

create privity of contract between the Commonwealth and any subgrantee, contractor, or subcontractor, and no third-party beneficiaries are created by the inclusion of these provisions. If the Grantee becomes aware of a subgrantee's, contractor's, or subcontractor's violation of these provision, the Grantee shall use its best efforts to ensure their compliance with these provisions.

## 5. CONTRACTOR RESPONSIBILITY

- a. **Definition.** For the purpose of these provisions, the term "Contractor" means as any person, including, but not limited to, a bidder, offeror, loan recipient, grantee or lessor, who has furnished or performed or seeks to furnish or perform, goods, supplies, services, leased space, construction or other activity, under a contract, grant, lease, purchase order or reimbursement agreement with the Commonwealth. The term also includes a permittee, licensee, or any agency, political subdivision, instrumentality, public authority, or other public entity in the Commonwealth.
- b. **Contractor Representations.**
  - i. The Contractor represents for itself and its subgrantees, contractors, and subcontractors required to be disclosed or approved by the Commonwealth, that as of the date of its execution of this agreement, that neither the Contractor, nor any of its subgrantees, contractors, and subcontractors, are under suspension or debarment by the Commonwealth or any governmental entity, instrumentality, or authority and, if the Contractor cannot make this representation, the Contractor shall submit, along with the agreement, a written explanation of why the certification cannot be made.
  - ii. The Contractor represents that, as of the date of its execution of this agreement, it has no tax liabilities or other Commonwealth obligations, or has filed a timely administrative or judicial appeal, if any liabilities or obligations exist, or is subject to a duly approved deferred payment plan if any liabilities exist.
- c. **Notification.** The Contractor shall notify the Commonwealth 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, to the best of its knowledge, any of its subgrantees, contractors, or subcontractors are suspended or debarred by the Commonwealth, the federal government, or any other state or governmental entity. The Contractor shall provide this notification within 15 days of the date of suspension or debarment.
- d. **Default.** The Contractor's failure to notify the Commonwealth of its suspension or debarment by the Commonwealth, any other state, or the federal government constitutes an event of default of the agreement with the Commonwealth.
- e. **Reimbursement.** The Contractor shall reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of State Inspector General for investigations of the Contractor's compliance with the terms of this agreement or any other agreement between the Contractor and the Commonwealth that results in the suspension or debarment of the Contractor. These costs include, but are not limited to, salaries of investigators, including overtime; travel and lodging expenses; and expert witness and

documentary fees. The Contractor shall not be responsible for investigative costs for investigations that do not result in the Contractor's suspension or debarment.

- f. **Suspension and Debarment List.** The Contractor may obtain a current list of suspended and debarred Commonwealth contractors by visiting the eMarketplace website at <http://www.emarketplace.state.pa.us> and clicking the Debarment list tab.

## 6. AMERICANS WITH DISABILITIES ACT

- a. **No Exclusion.** Pursuant to the Americans with Disabilities Act, 42 U.S. Code § 12101, et seq., no qualified individual with a disability may, on the basis of the disability, be excluded from participation in this agreement or from activities provided for under this agreement.
- b. **Compliance.** For all goods and services provided pursuant to this agreement, the Grantee shall comply with Title II of the Americans with Disabilities Act, the "General Prohibitions Against Discrimination" set forth in 28 C. F. R. § 35.130, and all other regulations promulgated under Title II of the Americans with Disabilities Act that apply to state and local governments.
- c. **Indemnification.** The Grantee shall indemnify the Commonwealth against all third-party claims, suits, demands, losses, damages, costs, and expenses, including without limitation, litigation expenses, attorneys' fees, and liabilities, arising out of or in connection with the Grantee's failure or its employee's or agent's failure to comply with the provisions of paragraph a, as determined by the Commonwealth in its sole discretion.

## 7. APPLICABLE LAW AND FORUM

This agreement is governed by and must be interpreted and enforced in accordance with the laws of the Commonwealth of Pennsylvania (without regard to any conflict of laws provisions) and the decisions of the Pennsylvania courts. The Grantee consents to the jurisdiction of any court of the Commonwealth of Pennsylvania and any federal courts in Pennsylvania and waives any claim or defense that such forum is not convenient or proper. Any Pennsylvania court or tribunal has in personam jurisdiction over the Grantee, and the Grantee consents to service of process in any manner authorized by Pennsylvania law. This provision may not be interpreted as a waiver or limitation of the Commonwealth's rights or defenses.

## 8. RIGHT TO KNOW LAW

- a. **Applicability.** The Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104, ("RTKL") applies to this agreement.
- b. **Grantee Assistance.** If the Commonwealth needs the Grantee's assistance in any matter arising out of the RTKL related to this agreement, the Commonwealth shall notify the Grantee that it requires the Grantee's assistance, and the Grantee shall provide to the Commonwealth:
  - i. access to, and copies of, any document or information in the Grantee's possession (Requested Information) arising out of this agreement that the Commonwealth reasonably believes is a public record under the RTKL, within ten calendar days after receipt of written notification; and

- ii. any other assistance as the Commonwealth may reasonably request, in order to comply with the RTKL with respect to this agreement.
- c. **Trade Secret or Confidential Proprietary Information.** If the Grantee considers the Requested Information to include a Trade Secret or Confidential Proprietary Information, as those terms are defined by the RTKL, or other information that the Grantee considers exempt from production under the RTKL, the Grantee shall notify the Commonwealth and provide, within seven calendar days of receipt of the written notice a written statement, signed by a representative of the Grantee, that explains why the requested material is exempt from public disclosure under the RTKL. If the Commonwealth determines that the Requested Information is clearly not exempt from disclosure, the Grantee shall provide the Requested Information to the Commonwealth within five business days of receipt of written notice of the Commonwealth's determination.
- d. **Reimbursement**
  - i. **Commonwealth Reimbursement.** If the Grantee fails to provide the Requested Information and the Commonwealth is ordered to produce the Requested Information, the Grantee shall reimburse the Commonwealth for any damages, penalties, or costs that the Commonwealth may incur as a result of the Grantee's failure, including any statutory damages assessed against the Commonwealth.
  - ii. **Grantor Reimbursement.** The Commonwealth will reimburse the Grantee for any costs that the Grantee incurs as a direct result of complying with these provisions only to the extent allowed under the fee schedule established by the Office of Open Records or as otherwise provided by the RTKL.
- e. **Challenges of Commonwealth Release.** The Grantee may file a legal challenge to any Commonwealth decision to release a record to the public with the Office of Open Records, or in the Pennsylvania Courts, however, the Grantee shall reimburse the Commonwealth for any legal expenses incurred by the Commonwealth as a result of the challenge, including any damages, penalties or costs that the Commonwealth may incur as a result of the Grantee's legal challenge, regardless of the outcome.
- f. **Waiver.** As between the parties, the Grantee waives all rights or remedies that may be available to it as a result of the Commonwealth's disclosure of Requested Information pursuant to the RTKL.
- g. **Survival.** The Grantee's obligations contained in this Section survive the termination or expiration of this agreement.

## 9. OFFSET

The Commonwealth may set off the amount of any state tax liability or other obligation of the Grantee, or its subsidiaries, owed to the Commonwealth against any payments due the Grantee under any contract between the Commonwealth and Grantee.

## 10. AUTOMATED CLEARING HOUSE (ACH) PAYMENTS

- a. **Payment Method.** The Commonwealth shall make payments to the Grantee through the Automated Clearing House (ACH). Within 10 days of the grant award, the Grantee must submit or must have submitted its ACH information within its user profile in the Commonwealth's Master Database. The Grantee may enroll to receive remittance information via electronic addenda and email (e-Remittance). ACH and e-Remittance information is available at the following:

<https://www.budget.pa.gov/Services/ForVendors/Pages/Direct-Deposit-and-e-Remittance.aspx>

- b. **Unique Identifier.** The Grantee must submit a unique invoice number with each invoice submitted. The Commonwealth shall list the Grantee's unique invoice number on its ACH remittance advice to enable the Grantee to properly apply the state agency's payment to the respective invoice or program.
- c. **ACH Information in the Commonwealth's Master Database.** The Grantee shall ensure that the ACH information contained in Commonwealth's Master Database is accurate and complete. The Grantee's failure to maintain accurate and complete information may result in delays in payments.

## 11. WORKER PROTECTION AND INVESTMENT

The Grantee shall comply with all applicable Pennsylvania state labor laws and worker safety laws including, but not limited to, the following:

- a. Construction Workplace Misclassification Act;
- b. Employment of Minors Child Labor Act;
- c. Minimum Wage Act;
- d. Prevailing Wage Act;
- e. Equal Pay Law;
- f. Employer to Pay Employment Medical Examination Fee Act;
- g. Seasonal Farm Labor Act;
- h. Wage Payment and Collection Law;
- i. Industrial Homework Law;
- j. Construction Industry Employee Verification Act;
- k. Act 102: Prohibition on Excessive Overtime in Healthcare;
- l. Apprenticeship and Training Act; and
- m. Inspection of Employment Records Law.