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Project Officer  
Department of Drug and Alcohol

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Alternate Project Officer  
Department of Drug and Alcohol

**COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF DRUG AND ALCOHOL PROGRAMS**

and

SAP NO.

This outpatient gambling treatment grant agreement ("Agreement") is made and entered into by and between the Commonwealth of Pennsylvania ("Commonwealth"), through the Department of Drug and Alcohol Programs ("Department") and the Grantee for Outpatient Treatment Services ("Grantee").

**WITNESSETH:**

**WHEREAS**, the Pennsylvania Race Horse Development and Gaming Act, Act of July 5, 2004, P.L. 572, No. 71, ("Act 2004-71") established the Compulsive and Problem Gambling Treatment Fund to be expended solely for programs for the prevention and treatment of gambling addiction and other emotional and behavioral problems associated with or related to gambling addiction and for the administration of the compulsive and problem gambling program;

**WHEREAS**, the Act of Oct. 30, 2017, P.L. 419, No. 42, 4 Pa. C.S.A. § 1509 ("Act 2017-42") explicitly gave the Department the power and duty to administer the Compulsive and Problem Gambling Treatment Fund;

**WHEREAS**, Act 2017-42, 4 Pa. C.S.A. § 3310, directed the Department to update the program for compulsive and problem gambling to include video gaming;

**WHEREAS**, the Department established the Outpatient Gambling Treatment Grant Program ("Program") utilizing funds from the Compulsive and Problem Gambling Treatment Fund to compensate qualified Department approved providers of outpatient gambling treatment services for their services to Pennsylvanians struggling with compulsive or problem gambling issues; and

**WHEREAS**, the Grantee submitted an application to participate in the Program and Department approved the application.

**NOW, THEREFORE**, the parties, intending to be legally bound, agree as follows:

1. **Services Provided.** The Grantee shall provide outpatient gambling treatment services to eligible Pennsylvania residents in accordance with the Statement of Work ("SOW") set forth in Appendix A and the Department's Gambling Treatment Services Manual ("Manual") set forth in Appendix B to this Agreement.
2. **Term and Termination.** The term of this Agreement shall commence on the date of the last required Commonwealth signature and shall remain in effect for five (5) years, unless terminated sooner by either party in accordance with this paragraph. Thereafter, the term of this Agreement will automatically renew for five (5) additional one (1) year terms. The Department may terminate this Agreement at any time for its convenience or for any other reason if it determines that termination is in its best interests, or is otherwise appropriate, by giving written notice to the Grantee of termination and specifying the effective date of the termination. The Grantee shall be paid for services it provided prior to the effective date of the termination. The Grantee may terminate this Agreement, at any time, by giving the Department thirty (30) days written notice of termination.
3. **Billing and Payment.** The Grantee shall submit monthly invoices to the Department for outpatient gambling treatment services provided during the previous month in accordance with the billing requirements set forth in Section 13 of the Manual.

4. **Additional Terms and Conditions.** The terms and conditions set forth in the following Appendices are incorporated into this Agreement:

- A. Appendix B – Gambling Treatment Services Manual
- B. Appendix C - Commonwealth Standard Grant Agreement Clauses; and
- C. Appendix D - HIPAA Business Associate Appendix.

5. **Insurance.**

- A. The Grantee shall accept full responsibility for the payment of premiums for Workers' 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 contractor is responsible for Malpractice Insurance for outpatient treatment personnel. The Grantee shall provide a copy of the policy with all renewals for the entire contract period.
- B. The Grantee shall, at its expense, procure and maintain during the term of this Agreement, the following types of insurance, issued by companies acceptable to the Department and authorized to conduct such business under the laws of the Commonwealth of Pennsylvania:
  - i. Worker's Compensation Insurance for all of the Grantee's employees and those of any subcontractor, engaged in work at the site of the project as required by law.
  - ii. Public liability and property damage insurance to protect the Commonwealth, the Grantee, and any and all subcontractors from claim for damages for personal injury (including bodily injury), sickness or disease, accidental death and damage to property, including loss of use resulting from any property damage, which may arise from the activities performed under this Agreement or the failure to perform under this Agreement whether such performance or nonperformance be by the Grantee, by any subcontractor, or by anyone directly or indirectly employed by either. The limits of such insurance shall be in an amount not less than \$500,000 each person and \$2,000,000 each occurrence, personal injury and property damage combined. Such policies shall be occurrence rather than claims-made policies and shall name the Commonwealth of Pennsylvania as an additional insured. The insurance shall not contain any endorsements or any other form designated to limit or restrict any action by the Commonwealth, as an additional insured, against the insurance coverage in regard to work performed for the Commonwealth.
- C. Prior to commencement of the work under the Agreement and during the term of this Agreement, the Grantee shall provide the Department with current certificates of insurance. These certificates shall contain a provision that the coverages afforded under the policies will not be cancelled or changed until at least thirty (30) days' written notice has been given to the Department

6. **Confidentiality.** The Grantee shall not use or disclose any information about a recipient of the outpatient gambling treatment services provided under this Agreement for any purpose not connected with the Grantee's responsibilities under this Agreement. The Grantee shall also comply with the confidentiality provisions contained in 4 Pa. Code § 255, 4 Pa. Code § 257, 28 Pa. Code § 709.28, and 55 Pa. Code § 5100.37 as applicable.

7. **Compliance with Applicable Law.** The Grantee shall comply with all applicable federal and state laws.

8. **Audit.** This Agreement is subject to audit by Commonwealth agencies and/or their designated representatives, including audits of actual cost incurred. The Grantee shall maintain records of program costs and expenditures under this Agreement. At the direction of the Department or the Commonwealth, all Grantee's books and records related to this Agreement shall be made available for audit at a site designated by the Commonwealth. The Grantee shall preserve books, documents, and records sufficient to justify its costs and

expenditures for three years after expiration of this Agreement. The Grantee shall give full and free access to all records to the Commonwealth and/or their authorized representatives.

9. **Third Party Beneficiary Rights**. This Agreement does not create or intend to confer any rights in or on persons or entities not a party to this Agreement.
10. **Remedies Not Exclusive**. The rights and remedies of the Department provided under this Agreement shall not be exclusive and are in addition to any other rights and remedies provided by law.
11. **Amendments and Modifications**. No alterations or variations to this Agreement shall be valid unless made in writing and signed by the parties. Amendments to this Agreement shall be accomplished through a formal written document signed by the parties with the same formality as the original Agreement.
12. **Assignment**. The Grantee shall not assign or otherwise transfer its rights, interest, or obligation under this Agreement, whether by operation of law or otherwise without the prior written consent of the Department.
13. **Independent Contractor**. Grantee's relationship to the Department is one of independent contract and nothing contained herein is intended or shall be construed as to create an employment, agency or partnership relationship between the parties
14. **No Waiver**. The failure of either party to insist upon the strict performance of the terms and conditions hereof shall not constitute or be construed as a waiver or relinquishment of either party's right to thereafter enforce the same in accordance with this Grant Agreement.
15. **Severability**. The provisions of this Agreement shall be severable. If any phrase, clause, sentence or provision of this Agreement is declared to be contrary to the Constitution of Pennsylvania or of the United States or of the laws of the Commonwealth the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this Agreement and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby.
16. **Integration and Merger**. This Agreement constitutes the final, complete and exclusive agreement between the parties containing all the terms and conditions agreed on by the parties. All representations, understandings, promises and agreements pertaining to the subject matter of this Agreement made prior to or at the time this Agreement is executed are superseded by this Agreement unless specifically accepted by any other term or provision of this Agreement. There are no conditions precedent the performance of this Agreement except as expressly set forth herein.

[SIGNATURE PAGE FOLLOWS.]



## **APPENDIX A**

### STATEMENT OF WORK FEE FOR SERVICE – OUTPATIENT GAMBLING TREATMENT SERVICES

1. The Grantee shall implement Outpatient Gambling Treatment Services (“Services”) in either an established office or in a Department licensed facility, utilizing only certified gambling counselors as approved by the Department. The Grantee shall implement services in a non-discriminatory and culturally sensitive manner. The Grantee shall be able to demonstrate its ability to recognize and respond appropriately, as determined by the Department through onsite visits, to the unique needs of special populations to include, but not be limited to, language, culture, race, gender, sexual orientation and age-related difference.
2. The Grantee shall comply with the requirements outlined in the Department’s Gambling Treatment Services Manual.
3. The Grantee shall offer clients both individual and group Services.
4. The Grantee shall only utilize Department approved gambling treatment counselors.
5. When contacted by a client for an appointment, the Grantee shall complete the Gambling Screening Tool to determine if there are any other clinical disorders in addition to gambling that need to be addressed. The Gambling Screening Tool is located on DDAP’s website at [www.ddap.pa.gov](http://www.ddap.pa.gov). If the Grantee is unable to provide these additional services, then a referral to licensed provider must be offered to the client.
6. Any news releases or advertising material issued by the Grantee relating to the Services provided under this Agreement must be approved in writing by the Department and shall be issued in conjunction with the Department.

**APPENDIX B**

GAMBLING TREATMENT SERVICES MANUAL

## APPENDIX C

### COMMONWEALTH STANDARD GRANT AGREEMENT CLAUSES

#### 1. DEFINITIONS

##### A. Definitions

- (1) “Commonwealth” means the Commonwealth of Pennsylvania.
- (2) “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 contract with the Commonwealth.
- (3) “Consent” means written permission signed by a duly authorized officer or employee 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.
- (4) “Grantee” means the individual or entity that has entered into this Agreement with Commonwealth, including directors, officers, partners, managers, key employees, and owners of more than five percent (5%) interest.
- (5) “Financial Interest” means ownership of more than a five percent (5%) interest in any business or holding a position as an officer, director, trustee, partner, employee, or the like, or holding any position of management.
- (6) “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 Agreements of any kind. The exceptions set forth in the Governor’s Code of Conduct, Executive Order 1980-18, as amended, 4 Pa. Code §7.153(b), as amended, shall apply.
- (7) “Non-bid Basis” means a contract awarded or executed by the Commonwealth to the Grantee without seeking bids or proposals from any other potential bidder or offeror.
- (8) “Immediate Family” means a spouse and any non-emancipated child.
- (9) “Political Contribution” means any payment, gift, subscription, assessment, contract, payment for services, dues, loan, forbearance, advance or deposit of money or any valuable thing, to a candidate for public office or to a political committee, including but not limited to a political action committee, made for the purpose of influencing any election in the Commonwealth or for paying debts incurred by or for a candidate or committee before or after any election.

#### 2. GRANTEE INTEGRITY PROVISIONS

It is essential that those who seek to contract with the Commonwealth of Pennsylvania (“Commonwealth”) observe high standards of honesty and integrity. They must conduct themselves in a manner that fosters public confidence in the integrity of the Commonwealth contracting and procurement process.

A. DEFINITIONS. For purposes of these Contractor Integrity Provisions, the following terms shall have the meanings found in this Section:

- (1) "Affiliate" means two or more entities where (a) a parent entity owns more than 50 percent of the voting stock of each of the entities; or, (b) a common shareholder or group of shareholders owns more than 50 percent of the voting stock of each of the entities; or, (c) the entities have a common proprietor or general partner.
- (2) "Consent" means written permission signed by a duly authorized officer or employee 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 the execution of this Contract.
- (3) "Contractor" means the individual or entity, that has entered into this Contract with the Commonwealth.
- (4) "Contractor Related Parties" means any affiliates of the Contractor and the Contractor's executive officers, Pennsylvania officers and directors, or owners of 5 percent or more interest in the Contractor.
- (5) "Financial Interest" means either:
  - (a) Ownership of more than a 5 percent interest in any business; or
  - (b) Holding a position as an officer, director, trustee, partner, employee, or holding any position of management.
- (6) "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 2015-1, 4 Pa. Code § 7.153(b), shall apply.
- (7) "Non-bid Basis" means a contract awarded or executed by the Commonwealth with contract without seeking bids or proposals from any other potential bidder or offeror.

B. In furtherance of this policy, Contractor agrees to the following:

- (1) Contractor shall maintain the highest standards of honesty and integrity during the performance of this Contract and shall take no action in violation of state or federal laws or regulations or any other applicable laws or regulations, or other requirements applicable to Contractor or that govern contracting or procurement with the Commonwealth.
- (2) Contractor shall establish and implement a written business integrity policy, which includes, at a minimum, the requirements of these provisions as they relate to the Contractor activity with the Commonwealth and Commonwealth employees and which is made known to all Contractor employees. Posting these Contractor Integrity Provisions conspicuously in easily-accessible and well-lighted places customarily frequented by employees and at or near where the contract services are performed shall satisfy this requirement.

- (3) Contractor, its affiliates, agents, employees and anyone in privity with Contractor shall not accept, agree to give, offer, confer, or 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 of the Governor of Pennsylvania, statement of policy, management directive or any other published standard of the Commonwealth in connection with performance of work under this Contract, except as provided in this Contract.
- (4) Contractor shall not have a financial interest in any other contractor, sub-contractor, or supplier providing services, labor, or material under this Contract, unless the financial interest is disclosed to the Commonwealth in writing and the Commonwealth consents to Contractor's financial interest prior to Commonwealth execution of the Contract. Contractor shall disclose the financial interest to the Commonwealth at the time of bid or proposal submission, or if no bids or proposals are solicited, no later than Contractor's submission of the Contract signed by Contractor.
- (5) Contractor certifies to the best of its knowledge and belief that within the last 5 years Contractor or Contractor Related Parties have not:
  - (a) been indicted or convicted of a crime involving moral turpitude or business honesty or integrity any jurisdiction;
  - (b) been suspended, debarred or otherwise disqualified from entering into any contract with any governmental agency;
  - (c) had any business license or professional license suspended or revoked;
  - (d) 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,
  - (e) been, and is not currently, the subject of a criminal investigation by any federal, state or local prosecuting or investigative agency and/or civil anti-trust investigation by any federal, state or local prosecuting or investigative agency.

If Contractor cannot so certify to the above, then it must submit along with its bid, proposal or contract a written explanation of why such certification cannot be made and the Commonwealth will determine whether a contract may be entered into with the Contractor. The Contractor's obligation pursuant to this certification is ongoing from and after the effective date of the Contract through the termination date thereof. Accordingly, the Contractor shall have an obligation to immediately notify the Commonwealth in writing if at any time during the term of the Contract it becomes aware of any event which would cause the Contractor's certification or explanation to change. Contractor acknowledges that the Commonwealth may, in its sole discretion, terminate the Contract for cause if it learns that any of the certifications made herein are currently false due to intervening factual circumstances or were false or should have been known to be false when entering into the Contract.

- (6) Contractor shall comply with the requirements of the Lobbying Disclosure Act (65 Pa. C.S. §§ 13a01, et seq.) regardless of the method of award. If this Contract was awarded on a Non-bid Basis, Contractor must also comply with the requirements of the Section 1641 of the Pennsylvania Election Code (25 P.S. § 3260(a).)

- (7) When Contractor has reason to believe that any breach of ethical standards as set forth in law, the Governor's Code of Conduct, or these Contractor 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 such ethical standards, Contractor shall immediately notify the Commonwealth Contracting Officer or the Office of the State Inspector General in writing.
- (8) Contractor, by submission of its bid or proposal and/or execution of this Contract and by the submission of any bills, invoices or requests for payment pursuant to the Contract, certifies and represents that it has not violated any of these Contractor Integrity Provisions in connection with the submission of the bid or proposal, during any contract negotiations or during the term of the Contract, to include any extensions thereof. Contractor shall immediately notify the Commonwealth in writing of any actions for occurrences that would result in a violation of these Contractor Integrity Provisions. Contractor agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of the State Inspector General for investigations of the Contractor's compliance with the terms of this or any other Agreement between the Contractor and the Commonwealth that results in the suspension or debarment of the Contractor. Contractor shall not be responsible for investigative costs for investigations that do not result in the Contractor's suspension or debarment.
- (9) Contractor shall 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 Contractor non-compliance with these Contractor Integrity Provisions. Contractor agrees to make identified Contractor employees available for interviews at reasonable times and places. Contractor, upon the inquiry or request of an Inspector General, shall 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 Contractor's integrity and compliance with these provisions. Such information may include, but shall not be limited to, Contractor's business or financial records, documents or files of any type or form that refer to or concern this Contract. Contractor shall incorporate this paragraph in any Agreement, contract or sub-contract it enters into in the course of the performance of this Contract/Agreement solely for the purpose of obtaining sub-contractor compliance with this provision. The incorporation of this provision in a sub-contract shall not create privity of contract between the Commonwealth and any such sub-contractor, and no third party beneficiaries shall be created thereby.
- (10) For violation of any of these Contractor Integrity Provisions, the Commonwealth may terminate this and any other Contract with Contractor, claim liquidated damages in an amount equal to the value of anything received in breach of these Provisions, claim damages for all additional costs and expenses incurred in obtaining another Contractor to complete performance under this Contract, and debar and suspend Contractor from doing business with the Commonwealth. These rights and remedies are cumulative, and the use or non-use 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.

### 3. GRANTEE RESPONSIBILITY PROVISIONS

- A. The Grantee certifies, in writing, for itself and its subcontractors required to be disclosed or approved by the Commonwealth, that as of the date of its execution of this Agreement, that neither the Grantee, nor any such subcontractors, are under suspension or debarment by the Commonwealth or any governmental entity, instrumentality, or authority and, if the Grantee cannot so certify, then it agrees to submit, along with its Agreement, a written explanation of why such certification cannot be made.
- B. The Grantee also certifies, in writing, 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 such liabilities or obligations exist, or is subject to a duly approved deferred payment plan if such liabilities exist.
- C. The Grantee's obligations pursuant to these provisions are ongoing from and after the Effective Date of the Agreement through the termination date thereof. Accordingly, the Grantee shall have an obligation to inform 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 knowledge of the Grantee, any of its subcontractors are suspended or debarred by the Commonwealth, the federal government, or any other state or governmental entity. Such notification shall be made within fifteen (15) days of the date of suspension or debarment.
- D. The failure of the Grantee to notify the Commonwealth of its suspension or debarment by the Commonwealth, any other state, or the federal government shall constitute an event of default of the Contract with the Commonwealth.
- E. The Grantee agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of 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. 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 Grantee shall not be responsible for investigative costs for investigations that do not result in the Grantee's suspension or debarment.
- F. The Grantee may obtain a current list of suspended and debarred Commonwealth contractors and grantees by either searching the Internet at <http://www.dgs.pa.gov> 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

- G. The Grantee agrees that the Commonwealth may set off the amount of any state tax liability or other obligation of the Grantee or its subsidiaries to the Commonwealth against any payments due the Grantee under any contract with the Commonwealth.

#### 4. NONDISCRIMINATION/SEXUAL HARASSMENT CLAUSE

##### NONDISCRIMINATION/SEXUAL HARASSMENT CLAUSE (Grants)

The Grantee agrees:

1. In the hiring of any employee(s) for the manufacture of supplies, performance of work, or any other activity required under the grant agreement or any subgrant agreement, contract, or subcontract, the Grantee, a subgrantee, a contractor, a subcontractor, or any person acting on behalf of the Grantee shall not discriminate 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.
2. The Grantee, any subgrantee, contractor or any subcontractor or any person on their behalf shall not 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.
3. Neither the Grantee nor any subgrantee nor any contractor nor any subcontractor nor any person on their behalf shall 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 the grant agreement, subgrant agreement, contract or subcontract.
4. Neither the Grantee nor any subgrantee nor any contractor nor any subcontractor nor any person on their behalf shall 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 such Acts' enforcement, and shall comply with any provision of law establishing organizations as employees' exclusive representatives.
5. The Grantee, any subgrantee, contractor or any subcontractor shall establish and maintain a written nondiscrimination and sexual harassment policy and shall inform their employees in writing of the policy. The policy must contain a provision that sexual harassment will not be tolerated and employees who practice it will be disciplined. Posting this Nondiscrimination/Sexual Harassment Clause conspicuously in easily-accessible and well-lighted places customarily frequented by employees and at or near where the grant services are performed shall satisfy this requirement for employees with an established work site.
6. The Grantee, any subgrantee, contractor or any subcontractor shall not 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 any subgrantee, contractor, subcontractor or supplier who is qualified to perform the work to which the grant relates.
7. The Grantee and each subgrantee, contractor and subcontractor represents that it is presently in compliance with and will maintain compliance with all applicable federal, state, and local laws and regulations relating to nondiscrimination and sexual harassment. The Grantee and each subgrantee, contractor and subcontractor further represents that it has filed a Standard Form 100 Employer Information Report ("EEO-1") with the U.S. Equal Employment Opportunity Commission ("EEOC") and shall file an annual EEO-1 report with the EEOC as required for employers' subject to *Title VII* of the *Civil Rights Act of 1964*, as amended, that have 100 or more

employees and employers that have federal government contracts or first-tier subcontracts and have 50 or more employees. The Grantee, any subgrantee, any contractor or any subcontractor 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 their books, records, and accounts by the granting agency and the Bureau of Diversity, Inclusion and Small Business Opportunities for the purpose of ascertaining compliance with the provisions of this Nondiscrimination/Sexual Harassment Clause.

8. The Grantee, any subgrantee, contractor or any subcontractor shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subgrant agreement, contract or subcontract so that those provisions applicable to subgrantees, contractors or subcontractors will be binding upon each subgrantee, contractor or subcontractor.
9. The Granter's and each subgrantee's, contractor's and subcontractor's obligations pursuant to these provisions are ongoing from and after the effective date of the grant agreement through the termination date thereof. Accordingly, the Grantee and each subgrantee, contractor and subcontractor shall have an obligation to inform the Commonwealth if, at any time during the term of the grant agreement, it becomes aware of any actions or occurrences that would result in violation of these provisions.
10. The Commonwealth may cancel or terminate the grant agreement and all money due or to become due under the grant agreement may be forfeited for a violation of the terms and conditions of this Nondiscrimination/Sexual Harassment Clause. In addition, the granting agency may proceed with debarment or suspension and may place the Grantee, subgrantee, contractor, or subcontractor in the Contractor Responsibility File.

## **5. PROVISIONS CONCERNING THE AMERICANS WITH DISABILITIES ACT**

A. During the term of this Agreement, the Grantee agrees as follows:

(1) Pursuant to federal regulations promulgated under the authority of the Americans with Disabilities Act, 28 C. F. R. § 35.101 et seq., the Grantee 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 activities provided for under this Agreement. As a condition of accepting and executing this Agreement, the Grantee 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 that are applicable to the benefits, services, programs, and activities provided by the Commonwealth through contracts with outside contractors.

B. The Grantee shall be responsible for and agrees to indemnify and hold harmless the Commonwealth from all losses, damages, expenses, claims, demands, suits, and actions brought by any party against the Commonwealth as a result of the Grantee's failure to comply with the provisions of paragraph 1.

## **6. INDEMNIFICATION AND HOLD HARMLESS CLAUSE**

A. The Grantee shall indemnify and hold the Commonwealth, harmless against any and all claims, demands, and actions based or arising out of any activities performed by the Grantee and its employees and agents under this Agreement provided the Commonwealth gives the Grantee prompt notice of any such claim of which it learns. Pursuant to the Commonwealth Attorneys Act (71 P.S. Section 732-101, et seq.), the Office of Attorney General (OAG) has sole authority

to represent the Commonwealth in actions brought against the Commonwealth. The OAG may, however, in its sole discretion and under such terms as it deems appropriate, delegate its right of defense. If OAG delegates the defense to the Grantee, the Commonwealth will cooperate with all reasonable requests of Grantee made in defense of such suits.

- B. Notwithstanding the above, neither party shall enter into any settlements without the other party's written consent, which shall not be unreasonably withheld. The Commonwealth may, in its sole discretion, allow the Grantee to control the defense of any related settlement negotiations.

## **7. OFFSET PROVISION**

- A. The Grantee agrees that the Commonwealth of Pennsylvania may set off the amount of any state tax liability or other obligation of the Grantee or its subsidiaries to the Commonwealth against any payments due the contractor under any contract with the Commonwealth.

## **8. CONTRACT PROVISIONS – RIGHT TO KNOW LAW**

- A. The Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104, (“RTKL”) applies to this Agreement.
- B. If the Commonwealth needs the Grantee's assistance in any matter arising out of the RTKL related to this Agreement, it shall notify the Grantee using the legal contact information provided in this Agreement. The Grantee, at any time, may designate a different contact for such purpose upon reasonable prior written notice to the Commonwealth.
- C. Upon written notification from the Commonwealth that it requires the Grantee's assistance in responding to a request under the RTKL for information related to this Agreement that may be in the Grantee's possession, constituting, or alleged to constitute, a public record in accordance with the RTKL (“Requested Information”), the Grantee shall:
  - (1) Provide the Commonwealth, within ten (10) calendar days after receipt of written notification, access to, and copies of, any document or information in the Grantee's possession arising out of this Agreement that the Commonwealth reasonably believes is Requested Information and may be a public record under the RTKL; and
  - (2) Provide such other assistance as the Commonwealth may reasonably request, in order to comply with the RTKL with respect to this Agreement.
- D. If the Grantee considers the Requested Information to include a request for 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 must notify the Commonwealth and provide, within seven (7) calendar days of receiving the written notification, a written statement signed by a representative of the Grantee explaining why the requested material is exempt from public disclosure under the RTKL.
- E. The Commonwealth will rely upon the written statement from the Grantee in denying a RTKL request for the Requested Information unless the Commonwealth determines that the Requested Information is clearly not protected from disclosure under the RTKL. Should the Commonwealth determine that the Requested Information is clearly not exempt from disclosure, the Grantee shall provide the Requested Information within five (5) business days of receipt of written notification of the Commonwealth's determination.

- F. If the Grantee fails to provide the Requested Information within the time period required by these provisions, the Grantee shall indemnify and hold the Commonwealth harmless for any damages, penalties, costs, detriment or harm that the Commonwealth may incur as a result of the Grantee's failure, including any statutory damages assessed against the Commonwealth.
- G. The Commonwealth will reimburse the Contractor for any costs associated with 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 if the fee schedule is inapplicable.
- H. The Contractor 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 Contractor shall indemnify the Commonwealth for any legal expenses incurred by the Commonwealth as a result of such a challenge and shall hold the Commonwealth harmless for any damages, penalties, costs, detriment or harm that the Commonwealth may incur as a result of the Contractor's failure, including any statutory damages assessed against the Commonwealth, regardless of the outcome of such legal challenge. As between the parties, the Contractor agrees to waive 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.
- I. The Contractor's duties relating to the RTKL are continuing duties that survive the expiration of this Contract and shall continue as long as the Contractor has Requested Information in its possession.

## **9. APPLICABLE LAW**

- A. This Agreement shall be governed by and 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 Pennsylvania courts. The Grantee consents to the jurisdiction of any court of the Commonwealth of Pennsylvania and any federal courts in Pennsylvania, waiving any claim or defense that such forum is not convenient or proper. The Grantee agrees that any such court shall have in personam jurisdiction over it, and consents to service of process in any manner authorized by Pennsylvania law.

## APPENDIX D

### HIPAA BUSINESS ASSOCIATE APPENDIX

#### COMMONWEALTH OF PENNSYLVANIA BUSINESS ASSOCIATE APPENDIX

##### Health Insurance Portability and Accountability Act (HIPAA) Compliance

**WHEREAS**, the Pennsylvania Department of Drug and Alcohol Programs (Covered Entity) and the Grantee (Business Associate), intend to protect the privacy and provide for the security of certain Protected Health Information (PHI) to which Business Associate may have access in order to provide goods or services to or on behalf of Covered Entity, in accordance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (HIPAA), the Health Information Technology for Economic and Clinical Health (HITECH) Act of 2009, Public Law 111-5, the HIPAA Privacy Rule (Privacy Rule) modifying 45 CFR Parts 160 and 164, and the HIPAA Security Rule (Security Rule), modifying 45 CFR Parts 160, 162 and 164.

**WHEREAS**, Business Associate may receive PHI in any format including electronic form, from Covered Entity, or may create or obtain PHI from other parties for use on behalf of Covered Entity, which PHI must be handled, disclosed or used only in accordance with this Agreement, and the standards established by the HIPAA Rules.

**NOW, THEREFORE**, the Covered Entity and Business Associate agree as follows:

1. **Definitions.** The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information (PHI), Required By Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

**Specific Definitions:**

- a. **“Business Associate”** shall have the same meaning as the term “business associate” at 45 CFR §160.103.
  - b. **“Covered Entity”** shall have the same meaning as the term “covered entity” at 45 CFR §160.103.
  - c. **“HIPAA Rules”** shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and 164.
2. **Changes in Law.** Business Associate shall comply with any changes in the HIPAA Rules by the compliance date established by any such changes and shall provide the Covered Entity with written certification of such compliance.
  3. **Stated Purposes For Which Business Associate May Use Or Disclose PHI.** Except as otherwise limited in this Agreement, Business Associate shall be permitted to use or disclose PHI provided by or obtained by or obtained on behalf of Covered Entity to perform those functions, activities, or services for, or on behalf of, Covered Entity that are specified in Appendix A (Statement of Work) of this Agreement, provided that such use or disclosure would not violate the HIPAA Rules if done by Covered Entity. Business Associate shall make uses, disclosures, and requests for PHI consistent with Covered Entity’s minimum policies and procedures.
  4. **Additional Purposes For Which Business Associate May Use Or Disclose Information.** Business Associate shall not use or disclose PHI provided by, or created or obtained on behalf of Covered Entity for any other purposes except as required by law. Business Associate shall not use PHI to de-identify the information in accordance with 45 CFR 164.514(a)-(c) without the Covered Entity’s express written authorization(s). Business Associate may use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
  5. **Business Associate Obligations:**
    - a. **Limits On Use And Further Disclosure Established By Appendix And Law.** Business Associate shall not use or disclose the PHI provided by, or created or obtained on behalf of Covered Entity other than as permitted or required by this Agreement, Appendix A or as required by law.

- b. **Appropriate Safeguards.** Business Associate shall establish and maintain appropriate safeguards to prevent any use or disclosure of PHI other than as provided for by this Agreement that reasonably and appropriately protect the confidentiality, integrity, and availability of the PHI that is created, received, maintained, or transmitted on behalf of the Covered Entity as required by Subpart C of 45 CFR Part 164. Appropriate safeguards shall include but are not limited to implementing:
- i. administrative safeguards required by 45 CFR 164.308;
  - ii. physical safeguards as required by 45 CFR 164.310;
  - iii. technical safeguards as required by 45 CFR 164.312; and
  - iv. policies and procedures and document requirements as required by 45 CFR 164.316.
- c. **Training and Guidance.** Business Associate shall provide annual training to relevant employees, contractors, and subcontractors on how to prevent the improper use or disclosure of PHI. Business Associate shall also comply with annual guidance on the most effective and appropriate technical safeguards issued by the Secretary of Health and Human Services.
- d. **Reports Of Improper Use Or Disclosure or Breach.** Business Associate shall notify the Cover Entity's Project Officer and the Covered Entity's Legal Office within two (2) days of discovery of any use or disclosure of PHI not provided for or allowed by this Agreement, including Breaches of unsecured PHI as required by 45 CFR 164.410. Such notification shall be written and shall include the identification of each individual whose unsecured PHI has been, or is reasonably believed by the Business Associate to have been, accessed, acquired, or disclosed during the improper use or disclosure or Breach. Business Associate shall furnish Covered Entity with any other available information that Covered Entity is required to include in its notification to individuals under 45 CFR 164.404(c) at the time of Business Associate's notification to Covered Entity or promptly thereafter as such information becomes available. An improper use or disclosure or Breach shall be treated as discovered by the Business Associate on the first day on which it is known to the Business Associate (including any person, other than the individual committing the Breach, that is an employee, officer, or other agent of the Business Associate) or should reasonably have been known to the Business Associate to have occurred.

If any of the Business Associate's employees, agents, subcontractors, and representatives use or disclose PHI received from, or created or received on behalf of Covered Entity, or any derivative de-identified information in a manner not provided for in this Agreement, Business Associate shall ensure that such employees, agents, subcontractors, and business representatives receives training on Business Associate's procedure for compliance with the HIPAA Rules, or shall be sanctioned or prevented from accessing any PHI Business Associate receives from, or creates or receives on behalf of Covered Entity. Continued use of PHI in a manner contrary to the terms of this Agreement shall constitute a material breach of this Agreement.

- e. **Subcontractors And Agents.** In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, Business Associate shall ensure that any of its subcontractors and agents that create, receive, maintain, or transmit PHI on behalf of the Business Associate agree to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such information.
- f. **Reports Of Security Incidents.** Business Associate shall notify, in writing, the Cover Entity's Project Officer within two (2) days of discovery of any Security Incident at the time of Business Associate's notification to Covered Entity or promptly thereafter as such information becomes available.
- g. **Right Of Access To PHI.** Business Associate shall allow an individual who is the subject of PHI maintained in a designated record set, to have access to and copy that individual's PHI within ten (10) business days of receiving a written request from the Covered Entity or an authorized individual in accordance with the HIPAA Rules. Business Associate shall provide PHI in the format requested, unless it cannot readily be produced in such format, in which case it shall be provided in standard hard copy. If any individual requests from Business Associate or its agents or subcontractors access to PHI, Business Associate shall notify Covered Entity of same within five (5) business days. Business Associate shall further conform with and meet all of the requirements of 45 CFR 164.524.

- h. **Amendment And Incorporation Of Amendments.** Within five (5) business days of receiving a request from Covered Entity or from the individual for an amendment of PHI maintained in a designated record set, Business Associate shall make the PHI available to the Covered Entity and incorporate the amendment to enable Covered Entity to comply with 45 CFR 164.526. If any individual requests an amendment from Business Associate or its agents or subcontractors, Business Associate shall notify Covered Entity of same within five (5) business days.
- i. **Provide Accounting Of Disclosures.** Business Associate shall maintain a record of all disclosures of PHI in accordance with 45 CFR 164.528. Such records shall include, for each disclosure, the date of the disclosure, the name and address of the recipient of the PHI, a description of the PHI disclosed, the name of the individual who is the subject of the PHI disclosed, the purpose of the disclosure, and shall include disclosures made on or after the date which is six (6) years prior to the request. Business Associate shall make such record available to the individual or the Covered Entity within ten (10) business days of a request for an accounting of disclosures and in accordance with 45 CFR 164.528.
- j. **Access To Books And Records.** Business Associate shall make its internal practices, books, and records relating to the use or disclosure of PHI received from, or created or received by Business Associate on behalf of Covered Entity, available to the Covered Entity and the Secretary of Health and Human Services or designee for purposes of determining compliance with the HIPAA Rules.
- k. **Return Or Destruction Of PHI.** At termination of this Agreement, Business Associate shall return or destroy all PHI provided by or obtained on behalf of Covered Entity. Business Associate agrees not to retain any copies of the PHI after termination of this Agreement. If return or destruction of the PHI is not feasible, Business Associate shall extend the protections of this Agreement to limit any further use or disclosure until such time as the PHI may be returned or destroyed. If Business Associate elects to destroy the PHI, it shall certify to Covered Entity that the PHI has been destroyed.
- l. **Maintenance of PHI.** Notwithstanding section 4(k) of this Appendix, Business Associate and its subcontractors or agents shall retain all PHI throughout the term of the Agreement and shall continue to maintain the information required under section 4(h) of this Appendix for a period of six (6) years after termination of the Agreement, unless Covered Entity and Business Associate agree otherwise.
- m. **Mitigation Procedures.** Business Associate shall establish and provide to Covered Entity upon request, procedures for mitigating, to the maximum extent practicable, any harmful effect from the use or disclosure of PHI in a manner contrary to this Agreement or the HIPAA Rules. Business Associate shall mitigate any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of this Appendix or the Privacy Rule.
- n. **Sanction Procedures.** Business Associate shall develop and implement a system of sanctions for any employee, subcontractor, or agent who violates this Appendix or the HIPAA Rules.
- o. **Application of Civil and Criminal Penalties.** All Civil and Criminal Penalties under the HIPAA Rules shall apply to Business Associate's violation of any security provision contained in the HIPAA Rules.
- p. **Breach Notification.** Business Associate shall comply with the Breach notification requirements of 45 CFR 164. In the event that Business Associate discovers a Breach, Covered Entity may elect to directly comply with Breach notification requirements or require Business Associate to comply with all Breach notifications requirements of 45 CFR 164 on behalf of Covered Entity. If Covered Entity requires Business Associate to comply with Breach notification requirements, Business Associate shall provide Covered Entity with a detailed weekly, written report, starting one week following discovery of the Breach. The report shall include, at a minimum, Business Associate's progress regarding Breach notification and mitigation of the Breach. If Covered Entity elects to directly meet the requirements of 45 CFR 164, Business Associate shall be financially responsible to Covered Entity for all resulting costs and fees incurred by Covered Entity, including, but not limited to, labor, materials, or supplies. Covered Entity may at its sole option: 1) offset amounts otherwise due and payable to Business Associate under this Agreement; or 2) seek reimbursement of or direct payment to a third party of Covered Entity's costs and fees incurred under this paragraph, Business Associate shall make payment to Covered Entity (or a

third party as applicable) within thirty (30) days from the date of Covered Entity's written notice to Business Associate.

- q. **Grounds For Breach.** Any non-compliance by Business Associate with this Appendix or the HIPAA Rules will automatically be considered to be a breach of the Agreement.
- r. **Termination by Commonwealth.** Business Associate authorizes termination of this Agreement by the Covered Entity if the Covered Entity determines, in its sole discretion that the Business Associate has violated a material term of this Appendix.
- s. **Failure to Perform Obligations.** In the event Business Associate including its subcontractors or agents fails to perform its obligations under this Appendix, Covered Entity may immediately discontinue providing PHI to Business Associate. Covered Entity may also, at its option, require Business Associate to submit to a plan of compliance, including monitoring by Covered Entity and reporting by Business Associate, as Covered Entity in its sole discretion determines to be necessary to maintain compliance with this Appendix and applicable law.
- t. **Privacy Practices.** The Covered Entity will provide and Business Associate shall immediately begin using, distributing, or both to clients any applicable form, including but not limited to, any form used for Notice of Privacy Practices, Accounting for Disclosures, or Authorization, upon the effective date of this Agreement, or as otherwise designated by the Program or Covered Entity. The Covered Entity retains the right to change the applicable privacy practices, documents, and forms. The Business Associate shall implement changes as soon as practicable, but not later than forty-five (45) days from the date of notice of the change. The version of the Covered Entity's Notice of Privacy Practices current at the time of execution of this Agreement is Attachment 1 to this Business Associate Appendix.
- u. **Indemnification.** Business Associate shall indemnify and defend the Covered Entity against all claims and actions, whether in law or equity, resulting from Business Associate's Breach or other violation of the HIPAA Rules. Additionally, Business Associate shall reimburse Covered Entity for any civil monetary penalties imposed on Covered Entity as a result of Business Associate's Breach or other violation of the HIPAA Rules.

## 6. **Obligations of Covered Entity:**

- a. **Provision of Notice of Privacy Practices.** Covered Entity shall provide Business Associate with the notice of privacy practices that the Covered Entity produces in accordance with 45 CFR 164.520 (Attachment 1 to this Business Associate Appendix), as well as changes to such notice.
- b. **Permissions.** Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by individual to use or disclose PHI of which Covered Entity is aware, if such changes affect Business Associate's permitted or required uses and disclosures.
- c. **Restrictions.** Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that the Covered Entity has agreed to in accordance with 45 CFR 164.522 to the extent that such restriction may affect Business Associate's use or disclosure of PHI.