

Appendix G

**DHS Addendum to Standard Terms and
Conditions and Audit Clause A/B**

**DEPARTMENT OF HUMAN SERVICES ADDENDUM TO
STANDARD TERMS AND CONDITIONS**

A. DEFINITIONS

Capitalized terms used in this addendum that are not otherwise defined in these provisions have the meanings specified in the Contract to which they are attached.

For the purpose of this addendum, the following definitions apply:

“Commonwealth” means the Commonwealth of Pennsylvania.

“Contract” means the underlying agreement, including, but not limited to, a contract, grant agreement, lease, purchase order, cooperative agreement, intergovernmental agreement, or reimbursement agreement, between Contractor and the Commonwealth for the provision or performance of services, supplies, goods, leased space, construction, or other activity.

“Contractor” means 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 with the Commonwealth.

“Department” means the Department of Human Services.

B. APPLICABILITY

This addendum supplements the standard terms and conditions. Certain terms contained in this addendum may not be applicable to all the goods, supplies, services, leased space, construction, or other activity Contractor may furnish or perform through its Contract with the Department. These provisions apply only to the extent applicable to the services provided by Contractor pursuant to this Contract.

C. CONFIDENTIALITY

The parties shall not use or disclose any information about a recipient of the services to be performed under this Contract for any purpose not connected with the parties’ Contract responsibilities except in accordance with applicable state and federal law. If no state or federal law applies, the parties shall not disclose such information except with written consent of the recipient or the recipient’s personal representative.

D. INFORMATION

During the period of this Contract, the Contractor shall make all information obtained by the Contractor through work on the project available to the Department immediately upon demand and in the manner requested by the Department. If requested, the Contractor shall deliver to the Department background material prepared or obtained by the Contractor incident to the performance of this Contract. “Background material” means original work, papers, notes, and drafts prepared by the Contractor to support the data and conclusions in final reports and other deliverables, and includes, but is not limited to, completed questionnaires, materials in electronic data processing form, computer programs, other printed materials, pamphlets, maps, drawings, and all data directly related to the services being rendered. Contractor’s obligations under this provision will survive termination or expiration of the Contract, and will last as long as the information is retained.

E. CERTIFICATION AND LICENSING

Contractor shall obtain all necessary licenses, certifications, and permits from Federal, State, and Local authorities permitting it to carry out its activities under this Contract.

F. PROGRAM SERVICES

Definitions of service, eligibility of recipients of service, and other limitations in this Contract are subject to modification by amendments to Federal, State, and local laws, regulations, and program requirements without further notice to the Contractor.

G. CHILD PROTECTIVE SERVICE LAWS

In the event that the Contract calls for services for a child (or children) as defined in 23 Pa.C.S. § 6303, the Contractor shall comply with the provisions of the Child Protective Services Law (23 Pa.C.S. Ch. 63) and all associated regulations promulgated (55 Pa. Code Ch. 3490).

H. PRO-CHILDREN ACT

1. The Contractor shall comply with Public Law 103–227, Title X, Part C, also known as the Pro–Children Act of 1994 (“Act”), 20 U.S.C. § 7183, which imposes restrictions on smoking in facilities where certain federally-funded children’s services are provided. The Act prohibits smoking within any indoor facility (or portion of such facility), whether owned, leased, or contracted for, that is used for the routine or regular provision of: (i) Kindergarten, elementary, or secondary education or library services; or (ii) health or day care services that are provided to children under the age of 18. The statutory prohibition also applies to indoor facilities that are constructed, operated, or maintained with Federal funds, whether directly or through State or local governments.
2. Federal funds include grants, cooperative agreements, loans or loan guarantees, and contracts. The Act does not apply to children’s services provided in private residences, facilities funded solely by Medicare or Medicaid funds, portions of facilities used for inpatient drug and alcohol treatment, or facilities where Special Supplemental Nutrition Program for Women, Infants, and Children (commonly known as WIC) coupons are redeemed.

I. MEDICARE/MEDICAID REIMBURSEMENT

1. If services are furnished by the Contractor, subcontractors, or organizations related to the Contractor or its subcontractors, and such services may be claimed by the Commonwealth for Medicare/Medicaid reimbursements, in whole or in part, Contractor shall comply with 42 C.F.R. Part 420 and shall include a clause in its subcontracts or other agreements requiring its subcontractors or organizations related to the Contractor or its subcontractors to comply with 42 C.F.R. Part 420. Compliance with 42 C.F.R. Part 420 includes, but is not limited to, the following:
 - a. Preservation of subcontracts, books, documents, and records until the expiration of four years after the services are furnished under the Contract or subcontract.
 - b. Full and free access to subcontracts, books, documents, and records by the Commonwealth, the U.S. Comptroller General, the U.S. Department of Health and Human Services, and the duly authorized representatives of these entities.
2. Contractor certifies under penalty of law that it has not been debarred, suspended, terminated, or excluded from the Medicare, Medicaid, or any other State or Federal health care program. If a debarment, suspension, termination, or exclusion occurs during the Contract term, Contractor shall immediately notify the Commonwealth.

J. TRAVEL AND PER DIEM EXPENSES

Contractor shall not be allowed or paid travel or per diem expenses except as provided for in Contractor’s Budget and included in the Contract amount. Any reimbursement to the Contractor for travel, lodging or meals under this Contract must be at or below state rates as provided in Management Directive 230.10, Commonwealth Travel Policy, as may be amended, unless the Contractor has higher rates that have been established by its offices/officials, and published prior to entering into this Contract. The Contractor must support higher rates by submitting a copy of the minutes or other official documents to the Department. Documentation in support of travel and per diem expenses must be the same as required of state employees.

K. PROPERTY AND SUPPLIES

1. Contractor shall obtain all supplies and equipment for use in the performance of this Contract at the lowest practicable cost and shall purchase by means of competitive bidding whenever required by law.
2. Title to all property furnished in-kind by the Department remains with the Department.
3. Contractor has title to all personal property acquired by the Contractor, including purchase by lease-purchase contract, for which the Contractor is to be reimbursed under this Contract. Upon expiration or termination of this Contract, disposition of such purchased personal property that has a remaining useful life must be made in accordance with the following provisions:

- a. The Contractor and the Department may agree to transfer any item of such purchased property to another contractor designated by the Department. Cost of transportation will be borne by the contractor receiving the property and will be reimbursed by the Department. Title to all transferred property will vest in the designated contractor. The Department shall reimburse the Contractor for its share, if any, of the value of the remaining life of the property in the same manner as provided under subsection b below.
 - b. If the Contractor wishes to retain any items of such purchased property, depreciation tables must be used to ascertain the value of the remaining useful life of the property. The Contractor shall reimburse the Department in the amount determined from the tables.
 - c. When authorized by the Department in writing, the Contractor may sell the property and reimburse the Department for its share. The Department may fix the minimum sale price it will accept.
4. All property furnished by the Department or personal property acquired by the Contractor, including purchase by lease-purchase contract, for which the Contractor is to be reimbursed under this Contract is deemed "Department Property" for the purposes of subsections 5, 6, and 7 of this section.
 5. Contractor shall maintain and administer in accordance with sound business practice a program for the maintenance, repair, protection, preservation, and insurance of Department Property so as to assure its full availability and usefulness.
 6. Unless otherwise approved in writing by the Department, Department Property shall be used only for the performance of this Contract.
 7. If the Contractor is indemnified, reimbursed, or otherwise compensated for any loss, destruction or damage to Department Property, the Contractor must, at the Department's direction, use the proceeds to replace, repair, or renovate the property involved; credit such proceeds against the cost of the work covered by the Contract; or reimburse the Department.

L. DISASTERS

If, during the term of this Contract, the Department's premises are so damaged by flood, fire, or other Acts of God as to render them unfit for use, the Department will have no liability or obligation to the Contractor during the period of time there is no need for the services provided by the Contractor, except that the Department will render compensation to which the Contractor was entitled to under this Contract prior to such damage.

M. SUSPENSION OR DEBARMENT

If Contractor is suspended or disbarred by the Commonwealth, 4 Pa. Code §§ 60.1-60.7, as may be amended, applies.

N. CONTRACTOR'S CONFLICT OF INTEREST

The Contractor certifies 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 services or furnishment of goods or supplies under this Contract. The Contractor shall not knowingly employ any person having such interest during the term of this Contract. Contractor certifies that no member of the Board of the Contractor or any of its officers or directors has such an adverse interest.

O. INTEREST 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 Contract, may participate in any decision relating to this Contract that affects his or her personal interest or the interest of any corporation, partnership, or association in which he or she is, directly or indirectly, interested; nor may any such officer, member, or employee of the Commonwealth or member of its General Assembly have interest, direct or indirect, in this Contract or its proceeds. The Contractor shall comply with all applicable requirements of the State Adverse Interest Act, 71 P.S. §§ 776.1-776.8, as may be amended.

P. TUBERCULOSIS CONTROL

For all services provided in a state mental health ("MH") facility or a state intellectual disability ("ID") center, the Contractor shall comply with the Guidelines for Preventing the Transmission of Mycobacterium tuberculosis

in Health Care Settings, 2005, issued by the Centers for Disease Control and Prevention (“CDC”), as these guidelines may be updated. The guidelines are available at http://www.cdc.gov/mmwr/preview/mmwrhtml/rr5417a1.htm?s_cid=rr5417a1_e.

The Department shall provide any required testing free of charge from the state MH/ID facility. If the Contract service provider has written proof of testing within the last six months, the MH/ID facility will accept this documentation in lieu of administration of a repeat test. If a health care worker employed by the Contractor is unwilling to submit to the test, the Contractor must complete the risk assessment questionnaire. If a Contractor or its health care worker refuses to comply with the guidelines issued by the CDC, the Department may terminate its Contract without liability.

Q. CONTRACTOR RESPONSIBILITY TO EMPLOY DHS CLIENTS

1. If Contractor was required to submit a Contractor Partnership Program (“CPP”) Submittal with its bid, quote, application, or proposal, the Contractor’s CPP Submittal and the CPP requirements set forth in the solicitation become part of the Contract. Contractor shall submit any proposed changes to its CPP Submittal to the CPP Division of the Department’s Office of Income Maintenance. If the Contract is assigned to another contractor, the new contractor must maintain the CPP requirements of the original Contract.
2. Contractor shall, within 10 days of receiving the Effective Date of the Contract, register in the Commonwealth Workforce Development System (CWDS).
3. As specified in the solicitation, Contractor shall submit Quarterly Employment Reports to the Office of Income Maintenance Central Office of Employment and Training, CPP Division. On a quarterly basis, Contractor shall provide information on the use and outcomes of hiring strategies and demonstrating good faith efforts to hire TANF beneficiaries.
4. If Contractor is non-compliant, the CPP Division will contact the Contract Administrator to request corrective action.

R. OLDER ADULTS PROTECTIVE SERVICES ACT APPLICATION TO CONTRACTOR

Contractor shall submit information obtained within the preceding one-year period for any personnel providing services in a facility, as defined in 35 P.S. § 10225.102, who will have or may have direct contact with residents of a Department-operated facility or unsupervised access to their personal living quarters in accordance with the following:

1. Pursuant to 18 Pa.C.S. Ch. 91 (relating to criminal history record information) a report of criminal history information from the Pennsylvania State Police or a statement from the State Police that their central repository contains no such information relating to that person. The criminal history record information will be limited to that which is disseminated pursuant to 18 Pa.C.S. 9121(b)(2) (relating to general regulations). The Contractor shall apply to the State Police for clearance at its own expense. The forms are available online at <https://epatch.pa.gov/home>.
2. Where the Contractor’s personnel is not, and for the two years immediately preceding the date of execution of a Contract, has not been a resident of this Commonwealth, the Contractor must submit, at its own expense, a report of Federal criminal history record information pursuant to the Federal Bureau of Investigation’s (“FBI”) appropriation under the Departments of State, Justice, and Commerce, the Judiciary, and Related Agencies Appropriation Act, 1973 (Public Law 92-544, 86 Stat. 1109). Information regarding the fingerprinting process for FBI background checks mandated by OAPSA is available at <https://www.aging.pa.gov/organization/advocacy-and-protection/Pages/Criminal-History-Background-Checks.aspx>. The information obtained from the criminal record check shall be used by the Department to determine the individual’s eligibility. The Contractor must submit the determination to the Department before Contractor’s personnel provides services at the Department’s facility. The Department shall insure confidentiality of the information. The provisions of 18 Pa. C.S. § 9121(b)(2) will not apply if the request for a report of Federal criminal history record information is made pursuant to this section.

For personnel hired after execution of the Contract, the Contractor shall forward all State Police Criminal History Background Reports or FBI background checks of its personnel, as applicable, when received. The Contractor’s

failure to forward State Police Criminal History Background Reports or FBI background checks, as applicable, within 60 days of receipt may result in termination of the Contract. Personnel shall not have direct contact with residents of a Department-operated facility or unsupervised access to their personal living quarters until Contractor provides the Department with the applicable background check.

S. DATA BREACH OR LOSS

The Contractor shall comply with all applicable data protection, data security, data privacy, and data breach notification laws, including, but not limited to, the Breach of Personal Information Notification Act, 73 P.S. §§ 2301-2330, as amended.

T. OTHER FEDERAL REQUIREMENTS

The Contractor shall comply with the requirements set forth in this section when: (i) the Contract is funded in whole or in part with federal funds; and (ii) the listed requirements are applicable to the Contractor and to the services or supplies provided under the Contract.

1. The Contractor shall comply with the following, as applicable:
 - a. 2 C.F.R. Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards;
 - b. 45 C.F.R. §§ 75.330, Contracting with Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms;
 - c. 45 C.F.R. § 75.331, Procurement of Recovered Materials;
 - d. 45 C.F.R. § 75.364, Access to Records;
 - e. 45 C.F.R. § 95.615, Access to System and Records; and
 - f. 45 C.F.R. § 75.112, Conflict of Interest.
2. If the Contract is a prime construction contract in excess of \$2,000, the Contractor shall comply with the Davis-Bacon Act, 40 U.S.C. §§ 3141-3148, as amended, as supplemented by U.S. Department of Labor regulations, 29 C.F.R. Part 5, and the Copeland "Anti-Kickback" Act, 40 U.S.C. § 3145, as supplemented by U.S. Department of Labor regulations, 29 C.F.R. Part 3, when required by Federal program legislation,
3. If the Contract amount is \$100,000 or more and the Contract involves the employment of mechanics or laborers, the Contractor shall comply with the Contract Work Hours and Safety Standards Act, 40 U.S.C. §§ 3701-3708, as supplemented by U.S. Department of Labor regulations, 2 C.F.R. Part 5.
4. If the Federal award meets the definition of "funding agreement" under 37 C.F.R. § 401.2(a) and the Contractor or subcontractor wish to enter into a contract with a small business firm or nonprofit organization regarding the substation of parties, assignment or performance of experimental, developmental, or research work under that funding agreement, the Contractor shall comply with 37 C.F.R. Part 401 and any implementing regulations issued by the awarding federal agency.
5. If the Contract amount is \$150,000 or more, the Contractor shall comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act, 42 U.S.C. §§ 7401-7671q, and the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251-1387, as amended.
6. If the Contract amount is \$100,000 or more, the Contractor shall comply with the Bird Anti-Lobbying Amendment, 31 U.S.C § 1352.
7. In accordance with 45 C.F.R. § 75.308(c)(1)(ii), the Department must request federal approval before executing any Key Personnel changes. The Contractor shall notify the Department of all such changes to enable the Department to comply with this requirement.
8. The Department may not make a contract award to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R. Part 180 that implement Executive Orders 12549 and 12689, Debarment and Suspension. Contractor certifies under penalty of law that it is not listed on the government-wide exclusions in SAM.
9. Except as provided under 41 C.F.R. Part 60, if this Contract meets the definition of "federally assisted

construction contract” in 41 C.F.R. Part 60-1.3, the Contractor shall comply with the following provision:

During the performance of this Contract, the Contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee’s essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor’s legal duty to furnish information.

(4) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers’ representatives of the Contractor’s commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the Contractor’s noncompliance with the nondiscrimination clauses of this Contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation

with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

U. LOBBYING CERTIFICATION AND DISCLOSURE

(applicable to contracts \$100,000 or more)

Commonwealth agencies will not contract with outside firms or individuals to perform lobbying services, regardless of the source of funds. With respect to an award of a federal contract, grant, or cooperative agreement exceeding \$100,000 or an award of a federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding \$150,000, all recipients shall certify that they will not use federal funds for lobbying and shall disclose the use of non-federal funds for lobbying by filing required documentation. The Contractor shall complete and return a "Lobbying Certification Form" and, if applicable, a "Disclosure of Lobbying Activities form" with their signed Contract, which form(s) will be made attachments to the Contract.

V. AUDIT CLAUSE

This Contract is subject to audit in accordance with the attached Audit Clause. Contractor shall comply with all the requirements set forth in the Audit Clause.

SUBRECIPIENT / CONTRACTOR AUDITS

AUDIT CLAUSE A/B – SUBRECIPIENT

The Commonwealth of Pennsylvania, Department of Human Services (DHS), distributes federal and state funds to local governments, non-profit, and for-profit organizations. Federal expenditures are subject to federal audit requirements, and federal and state funding passed through DHS are subject to DHS audit requirements. Any federal statute prescribing specific policies or specific requirements that differ from the standards provided herein shall govern. The DHS provides the following audit requirements in accordance with the Commonwealth of Pennsylvania, Governor's Office, Management Directive 325.09, as amended January 10, 2022.

Subrecipient means a non-federal entity that expends federal awards received from a pass-through entity to carry out a federal program but does not include an individual that is a beneficiary of such a program. A subrecipient may also be a recipient of other federal awards received directly from a federal awarding agency (see the definition of subrecipient in 2 CFR Part 200 § 200.1). For purposes of this audit clause, a subrecipient **is not** a contractor as defined in 2 CFR Part 200 § 200.1.

Subrecipients must comply with all federal audit requirements and any other applicable law or regulation, as well as any other applicable law or regulation that may be enacted or promulgated by the federal government.

A. Federal Audit Requirements

Federal Audit Requirements Specific to Local Governments and Nonprofit Organizations

If a local government or nonprofit organization expends federal awards of \$1,000,000 or more during its fiscal year, received either directly from the federal government, indirectly from a pass-through entity, or a combination of both, to carry out a federal program, it **is required** to have an audit conducted in accordance with the provisions outlined in 2 CFR Part 200.501, *Audit Requirements*.

Federal Audit Requirements Specific to For-Profit Organizations

A for-profit organization **is required** to have an audit if it expends a total of \$1,000,000 or more in federal funds under one or more Department of Health and Human Services (DHHS) federal awards. Title 45, CFR 75.501(a) incorporates the thresholds and deadlines of 2 CFR Part 200 as amended, and provides for-profit organizations with two options regarding the type of audit that will satisfy the audit requirements:

1. A financial audit conducted in accordance with generally accepted *Government Auditing Standards* (The Yellow Book), revised; or
2. An audit that meets the requirements contained in 2 CFR Part 200.

Federal Audit Requirements Applicable to Local Governments and Nonprofit Organizations, and to For-Profit Organizations

If a subrecipient expends **total federal awards of less than \$1,000,000** during its fiscal year, it is exempt from these **federal** audit requirements but is required to maintain auditable records of federal or state funds that supplement such awards. Records must be available for review by appropriate officials. **Although an audit may not be necessary under the federal requirements, DHS audit requirements may be applicable.**

SUBRECIPIENT / CONTRACTOR AUDITS

AUDIT CLAUSE A/B – SUBRECIPIENT

B. DHS Audit Requirements

Subrecipients must meet the following DHS audit requirements:

Where a Single Audit or program-specific audit is conducted in accordance with the federal audit requirements referenced above, DHS will accept such audit provided that:

1. A full copy of the audit report is submitted as detailed below; **and**
2. The subrecipient shall ensure that the audit requirements are met for the terms of this contract; i.e., the prescribed Agreed-Upon Procedures (AUP) Report(s) and applicable schedule requirement(s). The incremental cost for preparation of the AUP Report(s) and the schedule cannot be charged to federal funding streams.

In the absence of a federally required audit, the entity is responsible for following the annual audit requirements described below, which are based upon the program year specified in this agreement.

DHS Audit Requirements Specific to Subrecipients

Subrecipients that **expend \$1,000,000 or more in combined state and federal funds, but less than \$1,000,000 in federal funds**, during the program year are required to have an audit of those funds made in accordance with generally accepted *Government Auditing Standards* (The Yellow Book), revised, as published by the Comptroller General of the United States. Where such an audit is not required to meet the federal requirements, the costs related to DHS audit requirements may not be charged to federal funding streams.

If in connection with the agreement, a subrecipient **expends \$750,000 or more in combined state and federal funds, but less than \$1,000,000 in combined state and federal funds**, during the program year, the subrecipient shall ensure that, for the term of the contract, an independent auditor conducts annual examinations of its compliance with the terms and conditions of this contract (compliance attestations). These examinations shall be conducted in accordance with the American Institute of Certified Public Accountants' Statements on Standards for Attestation Engagements, No. 18, Attestation Standards: Clarification and Recodification (SSAE 18) and shall be of a scope acceptable to the DHS. The initial compliance attestation shall be completed for the program year specified in the contract and conducted annually thereafter. The incremental cost for preparation of the compliance attestation reports cannot be charged to federal funding streams.

The subrecipient shall submit the compliance attestation reports (if applicable) to the DHS within 90 days after the program year has been completed. When the compliance attestation reports are other than unmodified, the subrecipient shall submit to the DHS, in addition to the compliance attestation reports, a plan describing what actions the subrecipient will implement to correct the situation that caused the auditor to issue other than an unmodified report, a timetable for implementing the planned corrective actions, and a process for monitoring compliance with the timetable and a contact person who is responsible for the resolution of the situation.

If the subrecipient enters into an agreement with a subcontractor(s) for the performance of any primary contractual duties, the audit requirements are applicable to the subcontractor(s) with

SUBRECIPIENT / CONTRACTOR AUDITS

AUDIT CLAUSE A/B – SUBRECIPIENT

whom the subrecipient has entered into an agreement. Consequently, the audit requirements should be incorporated into the sub-contractual document as entered by the subrecipient.

A subrecipient that **expends less than \$750,000 combined state and federal funds** during the program year is exempt from DHS audit requirements but is required to maintain auditable records for each contract year. Records must be available for review by appropriate officials of the DHS or a pass-through entity.

GENERAL AUDIT PROVISIONS

A subrecipient is responsible for obtaining the necessary audit and securing the services of an independent, licensed certified public accountant, or other independent governmental auditor.

DHS, other state agencies, and federal agencies, or their authorized representatives, may perform additional financial and/or performance audits. If an audit of this contract is to be performed, the subrecipient will be given advance notice. The subrecipient shall maintain books, records, and documents that support the services provided, that the fees earned are in accordance with the contract, and that the subrecipient has complied with the contract terms and conditions. The subrecipient shall make available, upon reasonable notice, at the office of the subrecipient, during normal business hours, for the term of this contract and the retention period set forth in this Audit Clause, any of the books, records, and documents for inspection, audit, or reproduction by any state or federal agency or its authorized representative.

Except when a longer period is stated in the contract, the subrecipient shall preserve all books, records, and documents related to this contract for a period of time that is the greater of five years from the time when the contract expires and all questioned costs or activities have been resolved to the satisfaction of DHS, or as required by applicable federal laws and regulations. Any records that support the services provided, that the fees earned are in accordance with the contract, and that the subrecipient has complied with contract terms and conditions must be maintained. If this contract is completely or partially terminated, subrecipient shall preserve the records relating to and make available for a period of five years from the date of any resulting final settlement.

Audit documentation and audit reports must be retained by the subrecipient's independent auditor for a minimum of five years from the date of issuance of the audit report, unless the subrecipient's auditor is notified in writing by DHS, other state agencies, or federal agencies to extend the retention period. Audit documentation must be made available upon request to authorized representatives of DHS, other state agencies, or federal agencies.

The subrecipient shall retain and shall make available or provide to DHS at DHS's option those records that relate to litigation of the settlement of claims arising out of performance or expenditures under the contract until such litigation, claim, or exceptions have reached final disposition.

Except for documentary evidence delivered pursuant to litigation or the settlement of claims arising out of the performance of the contract, the subrecipient may retain records as required by this Audit Clause using 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 contractor of the invoice or voucher to which such records relate, unless a shorter period is authorized by DHS.

SUBRECIPIENT / CONTRACTOR AUDITS

AUDIT CLAUSE A/B – SUBRECIPIENT

SUBMISSION OF AUDIT REPORTS TO THE COMMONWEALTH

A. Federally Required Audit Reports

Local Governments and Nonprofit Organizations

Submit an electronic copy of the audit report package to the Federal Audit Clearinghouse, which shall include the elements outlined in 2 CFR Part 200, Subpart F – *Audit Requirements* (Subpart F).

In addition, the subrecipient must send a copy of the confirmation from the Federal Audit Clearinghouse to the resource account RA-BAFMSingleAudit@pa.gov.

For-Profit Organizations

Submit an electronic copy of the audit report package, which shall include the elements outlined in 2 CFR Part 200, Subpart F – *Audit Requirements* (Subpart F) to the resource account RA-BAFMSingleAudit@pa.gov.

B. DHS Required Audit Reports and Additional Submission by Subrecipients

1. Independent Accountant's Report on Applying Agreed-Upon Procedures – which consist of the following procedures for the funding provided by this agreement for the contract year ending within the entity's fiscal year end under audit:

- (a) Verify by comparison of the amounts and classifications that the supplemental financial schedules listed below, which summarize amounts reported to DHS for fiscal year ended {CONTRACT YEAR END}, have been accurately compiled and reflect the audited books and records of (Auditee). Also verify by comparison to the example schedules that these schedules are presented, at a minimum, at the level of detail that directly mirrors the budget page (Rider 3) of the contract. The Schedule of Revenues and Expenditures should mirror the line items on the budget pages of the contract and include a budget and an actual expenditure column pertaining to this period.

Program Name/ Contract Number Referenced Schedule/Exhibit

(List each individual schedule for all contracts in which the auditee participated.)

- (b) Inquire of management regarding adjustments to reported revenues or expenditures, which were not reflected on the reports submitted to DHS for the period in question.
- (c) Based on the procedures detailed in paragraphs (a) and (b) above, disclose any adjustments and/or findings and identify which have (have not) been reflected on the corresponding schedules.

(List each separately. Indicate whether it has/has not been reflected on the schedule.)

SUBRECIPIENT / CONTRACTOR AUDITS

AUDIT CLAUSE A/B – SUBRECIPIENT

2. Independent Accountant's Report on Applying Agreed-Upon Procedures – which consist of the following procedures for the entity's fiscal year end under audit. All Local Governments and Nonprofit Organizations who are submitting a single audit in accordance with 2 CFR Part 200, Subpart F, and For-Profit Organizations who are submitting a single audit in accordance with Title 45, CFR 75.501(i), are also required to include in their single audit reporting package a supplemental schedule, which is to be subjected to an Agreed-Upon Procedures engagement. The schedule, for which an example is included in this audit clause as Enclosure I, is a reconciliation of the expenditures listed on the Schedule of Expenditures of Federal Awards (SEFA) to the Federal award income received from the Pennsylvania Department of Human Services (DHS), as noted in the revenue audit confirmation received from the Commonwealth of Pennsylvania. The procedures to be performed on the reconciliation schedule are as follows:
- (a) Agree the expenditure amounts listed on the reconciliation schedule under the "Federal Expenditures per the SEFA" column to the audited Schedule of Expenditures of Federal Awards (SEFA).
 - (b) Agree the receipt amounts listed on the reconciliation schedule under the "Federal Awards Received per the audit confirmation reply from Pennsylvania" column to the subrecipient Federal amounts that were reflected in the audit confirmation reply from the Office of Budget, Comptroller Operations.
 - (c) Recalculate the amounts listed under the "Difference" and "% Difference" columns.
 - (d) Agree the amounts listed under the "Difference" column to the audited books and records of the subrecipient.
 - (e) Agree the "Detailed Explanation of the Differences" to the audited books and records of the subrecipient.
 - (f) Based on the procedures detailed in paragraphs (a) through (e) above, disclose any adjustments and/or findings which have not been reflected on the corresponding schedules (List each separately.).

PERIOD SUBJECT TO AUDIT

A federally required audit, conducted in accordance with Subpart F, or Title 45, CFR 75.501(i), as appropriate, encompasses the fiscal period of the subrecipient. **Therefore, the period of the federally required audit may differ from the official reporting period as specified in this agreement.** Where these periods differ, the required supplemental schedule(s) of Revenues and Expenditures and the related Independent Accountant's Report on Applying Agreed-Upon Procedures must be completed for the official annual reporting period of this agreement that ended during the period under audit and shall accompany the federally required audit.

CORRECTIVE ACTION PLAN

SUBRECIPIENT / CONTRACTOR AUDITS

AUDIT CLAUSE A/B – SUBRECIPIENT

The subrecipient shall prepare a corrective action plan (CAP) to address all findings of noncompliance, internal control weaknesses, and/or reportable conditions disclosed in the audit report. For each finding noted, the CAP should include: (1) a brief description identifying the findings; (2) whether the subrecipient agrees with the finding; (3) the specific steps taken or to be taken to correct the deficiency or specific reasons why corrective action is not necessary; (4) a timetable for completion of the corrective action steps; (5) a description of monitoring to be performed to ensure that the steps are taken; and (6) the responsible party for the CAP.

REMEDIES FOR NONCOMPLIANCE

The subrecipient's failure to provide an acceptable audit may result in the DHS not accepting the report and initiating actions against the subrecipient that may include the following:

- Disallowing the cost of the audit.
- Withholding a percentage of the contract funding pending compliance.
- Withholding or disallowing administrative costs.
- Suspending subsequent contract funding pending compliance.
- Requiring a corrective action plan.
- Terminating the contract if the failure is not corrected within the time period approved by DHS.
- Assessing liquidated damages up to the amount of \$200 for each calendar day and portion of each calendar day for which each required audit or compliance attestation report is submitted beyond its required due date. Audits submitted without required AUP reports will not be considered acceptable and will be subject to liquidated damages.

TECHNICAL ASSISTANCE

Technical assistance on the DHS' audit requirements and the integration of those requirements with the federal Single Audit requirements will be provided by:

Department of Human Services
Bureau of Financial Operations
Division of Audit and Review
Audit Resolution Section
1st Floor, Forum Place
555 Walnut Street
P.O. Box 2675
Harrisburg, Pennsylvania 17105-2675
Email: RA-pwauditresolution@pa.gov

SUBRECIPIENT / CONTRACTOR AUDITS

AUDIT CLAUSE A/B – SUBRECIPIENT

SUBRECIPIENT / CONTRACTOR AUDITS											
AUDIT CLAUSE A/B – SUBRECIPIENT											
ENCLOSURE I											
Entity Name											
Year Ended (ORGANIZATION'S FINANCIAL STATEMENT DATE)											
SUPPLEMENTAL SCHEDULE											
RECONCILIATION											
Federal Awards Passed through the Pennsylvania Department of Human Services											
Expenditures per the SEFA to Revenue Received per the Pennsylvania Audit Confirmation Reply											
CFDA Name	CFDA Number	Federal Expenditures per the SEFA	Federal Awards Received per the audit confirmation reply from Pennsylvania	Difference	% Difference	Detailed Explanation of the Differences					
		\$	\$	\$	%						