

December 2018, T. Shields (cw)
City of Philadelphia

Contract Number 1920332

Office of Behavioral Health/Intellectual disAbility Services

AGREEMENT
Office of Behavioral Health/Intellectual
disAbility Services
formerly known as the Office of Behavioral Health/Mental
Retardation Services

CONFORMED

General Consultant Services

THIS PROVIDER AGREEMENT (“Agreement” or “Contract”) is made this day of January 24, 2019 effective as of the 1st day of January, 2019 (“Effective Date”), by and between the City of Philadelphia (the “City”), by and through the Office of Behavioral Health/Intellectual disAbility Services (the “Department” or “OBHIDS”), and Community Behavioral Health (“CBH”), a non-profit corporation organized under the laws of the Commonwealth of Pennsylvania, with its principal place of business at 801 Market Street, 7th Floor, Philadelphia Pennsylvania 19107 (the City, acting through the Department, and CBH are sometimes collectively referred to as the “Parties”).

BACKGROUND

The City has approval from the Commonwealth of Pennsylvania, Department of Human Services (formerly known as the Department of Public Welfare) (“Commonwealth” or “PA DHS”) to manage a Mandatory Medical Assistance Behavioral Health Managed Care Program for eligible persons residing in Philadelphia County called the HealthChoices Behavioral Health Program (the “Program”);

The City has entered into an agreement with the Commonwealth, effective as of January 1, 2012 (the contract between the City and Commonwealth for the Program, including any Applicable Law and document(s) referenced therein, and any amendments thereto, is hereinafter referred to as the “Commonwealth Contract”) for the expenditure of the Program funds (“Commonwealth Funds”) pursuant to the Commonwealth Contract;

CBH is a nonprofit corporation organized under the laws of the Commonwealth of Pennsylvania for the primary purpose of arranging for the delivery of, and paying for, mental health and substance abuse services for eligible medical assistance (“MA”) recipients to be provided by independent Healthcare Providers, as defined herein;

The City and CBH desire that CBH render various professional services to the City in connection with the Program (“Program Services”), additional services unrelated to the Program

(“Additional Services”) and any other services authorized by subsequent amendment to this Agreement (“Other Services”) (the Program Services, Additional Services and Other Services are sometimes referenced together herein as the “Services”), in accordance with the provisions of this Agreement, the City of Philadelphia Professional Services Contract General Provisions for General Consultant Services, as revised June 2018 (the “General Provisions”), as applicable, and all of the other documents and exhibits, which together constitute the Contract and the Contract Documents, as those terms are defined in the General Provisions. A copy of the General Provisions is attached hereto and incorporated herein by reference.

The Parties acknowledge that CBH may in the future desire to have access to the data base known as the Cross Agency Response for Effective Services (“CARES”), which is owned and operated by the City for the internal use by certain City Departments, and to which CBH currently provides data. If CBH seeks access to CARES during the Initial Term or Additional Term, if any, of this Agreement, such access shall be subject to the approval of the Commissioner Of Behavioral Health/Intellectual disability Services, or the occupant of a successor position, and the Director. If those officials deem it necessary, following approval of such access, CBH shall execute a CARES Limited License Agreement (“Limited License Agreement”), and upon such execution, without further action by the Parties, the Limited License Agreement shall be deemed to be one of the Contract Documents.

ARTICLE I: GENERAL TERMS

1.1 **Incorporation of Background.** The Background is incorporated by reference herein.

1.2 **Definitions.** Capitalized terms shall have the meanings set forth in the General Provisions as amended by the Revisions to the General Provisions set forth in Exhibit PA-4 or as set forth in the Program Standards and Requirements of the Program.

ARTICLE II: TERM

2.1. **Initial Term.** The term of this Agreement shall commence on January 1, 2019 and shall terminate on December 31, 2019, unless terminated earlier in accordance with the terms of the Agreement.

2.2 **Additional Term(s).** This Agreement may be amended by the City, in its sole discretion, to add Additional Terms in accordance with Section 2.2 of the General Provisions. The terms and conditions applicable during the Initial Term shall be applicable during any Additional Term.

ARTICLE III: SERVICES AND MATERIALS

3.1 **Services and Materials.** CBH shall perform the Services and provide the Materials described in the Exhibit listed below, which is attached hereto and incorporated herein by reference:

Exhibit PA-1: Scope of Services

3.2 **Statement of Services.** Subject to prior review and approval by the City, as set forth more fully herein, CBH shall perform the Services described in **Exhibit PA-1**, in conformance with all of the provisions of the Contract Documents.

3.3 Nothing in this Agreement shall prohibit CBH from contracting with third parties to perform work unrelated to the Services described in **Exhibit PA-1**, provided that CBH first obtains the approval of the CBH Board of Directors, which approval will be reflected in the minutes of the meeting(s) at which such approval is given.

ARTICLE IV: COMPENSATION

4.1 **Amount.** As compensation for the Services and Materials rendered and provided, the City covenants and agrees to pay to CBH in accordance with the following Exhibit, which is attached hereto and incorporated herein by reference, subject to all limitations on the allowability of cost items imposed by the City of Philadelphia Contract Cost Principles and Guidelines:

Exhibit PA-3: Budget

Notwithstanding anything in this Agreement to the contrary, in no event shall the amount certified by the Office of the Director of Finance for Services and Materials during the Initial Term or any Additional Term exceed the maximum amount of One Billion Two Hundred Eighty Two Million Dollars (\$1,282,000,000.00)

4.2 Manner of Payment.

(a) Payment shall be made after CBH's timely submission of invoices to the Director, in the number, form and content acceptable to the Director, accompanied by such additional supporting data and documentation as the Director may require. All payments to CBH are contingent upon satisfactory performance of the terms and conditions of this Agreement. Subject to the foregoing, the City will make timely payments to CBH unless, with respect to Program Services only, Commonwealth Funds are delayed more than 120 days, suspended or terminated in accordance with the requirements of the Commonwealth Contract. CBH will reconcile monthly documentation from the Commonwealth with enrollment information from its MIS system to ensure completeness and accuracy of the payment of Commonwealth Funds to the City. All payments to CBH shall be by checks drawn by the City Treasurer.

(b) The City reserves the right to withhold or offset against any funds payable to CBH for any invoice for which the Director asserts a discrepancy exists or for CBH's failure to satisfactorily perform the terms of the Agreement, as determined solely by the City.

ARTICLE V: MISCELLANEOUS PROVISIONS

5.1 **Notice.** Any notice required or permitted to be given under this Agreement shall be given in accordance with General Provisions Section 16.16. Notwithstanding General Provisions Section 16.16, any notice, approval or consent required or permitted to be given under this Agreement may be made per email, addressed as follows:

IF TO THE CITY:

Attn.: David T. Jones,
Commissioner
Office of Behavioral Health and Intellectual
disAbility Services
1101 Market Street, Su.700
Philadelphia, PA 19107
Fax No: 215-685-4751
Email: David.T.Jones@phila.gov

IF TO CBH:

Attn.: Joan Erney, Chief Executive Officer
Community Behavioral Health
801 Market Street, 7th Floor
Philadelphia, PA 19107
Fax No.:215-413-7111
Email: joan.erney@phila.gov

Notwithstanding Section 16.16 of the General Provisions, with respect to Protected Health Information, CBH shall comply with the notice provisions set forth in Section 14.10 of the Revisions to the General Provisions (Exhibit PA-4).

5.2 **Additional Exhibits.** Consistent with the provisions of this Agreement, the following additional Exhibits are attached hereto and incorporated herein by reference:

Exhibit PA-2: The Commonwealth Contract
(A copy of the Commonwealth Contract is available upon request.)

5.3 **Interpretation; Order of Precedence.** In the event of a conflict or inconsistency between any term of this Agreement (including any attachments or Exhibits to the Agreement) and any term contained in the Commonwealth Contract, the terms of the Commonwealth Contract shall control.

5.4 **Other Provisions.** Other provisions, including, without limitation, Office of Equal Opportunity (“OEO”) participation commitments and any revisions or modifications to the General Provisions, are set forth in the following Exhibits attached hereto and incorporated herein by reference:

Exhibit PA-4: Revisions to the General Provisions
Exhibit PA-5: Instructions for Completing the Primary Contractor MCO Assessment
Report Form for Behavioral Health Medicaid Managed Care Organizations

5.5 **Acknowledgement of the General Provisions.** CBH specifically acknowledges that it has read and understands the terms and conditions contained in the General Provisions and acknowledges that by executing this Agreement, CBH shall be legally bound by all of the terms of this Agreement, including, but not limited to, those set forth in the General Provisions except as revised in Exhibit PA-4.

[The remainder of this page was intentionally left blank.]

IN WITNESS WHEREOF, the Parties hereto, intending to be legally bound by all of the Contract Documents, have caused the Contract to be executed by their respective duly authorized officers as of the date in the heading of this Provider Agreement.

APPROVED AS TO FORM

THE CITY OF PHILADELPHIA

MARCEL S. PRATT, CITY SOLICITOR

Through: Office of Behavioral Health/Intellectual
disAbility Services

Per: DocuSigned by:
Toi Shields
A88A493EFF5D41B...

By: DocuSigned by:
Jill Bowen, PhD
76B18D5D04A040C...

Name: Toi Shields

Name: Jill Bowen, PhD

Title: Senior Attorney

Title: Deputy Commissioner

**CBH – COMMUNITY BEHAVIORAL
HEALTH**

By: DocuSigned by:
Joan Erney
36EBCF9E48F545F...

Name: Joan Erney

CEO

Title: Other

ATTEST

By: DocuSigned by:
Renee Henderson
E3468D7E621F41D...

Name: Renee Henderson

Chief Financial Officer

Title: other



City of Philadelphia Contract Routing Slip

External Negotiation/Encumbrance & Budget Verification (Conformance Manager)

1. Review contract as signed by vendor and consult with supervisor.

Click the check box to attach additional documentation, if required.

2. Confirm Encumbrance then forward in ACIS to Budget Verification.
 3. Confirm Budget Verification completed in ACIS.
- ☒ Send to Law.

Approve as to Form – Attorney Upload Document (Optional)

Click the check box to attach additional documentation, if required.

After AATF – Forward in ACIS

- ☒ Forward in ACIS to Initial Certification.

Finance Certification

- ☒ Attach the Endorsement Sheet then forward in ACIS to Finance Review.



Finance Review

- ☒ Review then forward in ACIS to Department Signs Contract.

After Departmental Review – Forward in ACIS

- ☒ Forward in ACIS to Conformance.

Conformance Review (Conformance Clerk)

- ☒ Conform Contract and Conform in ACIS.

EXHIBIT PA-1: SCOPE OF SERVICES

I. RESPONSIBILITIES OF THE CITY.

The City shall provide operational policy and procedural direction to CBH in connection with CBH's implementation of the Services hereunder and monitor CBH's performance under the Contract. In addition, the City shall fulfill reporting requirements to the Commonwealth under the Commonwealth Contract and ensure compliance with the reinsurance, reserve and other Program requirements of the City under the Commonwealth Contract.

II. RESPONSIBILITIES OF CBH.

CBH covenants and agrees to arrange to provide through Subcontracts with Healthcare Providers all Medically Necessary In-Plan and supplemental and/or alternative mental health, behavioral health and substance abuse services to MA eligible residents of the City and to administer the Program in accordance with the requirements and obligations of the Contract Documents, Applicable Law, the Commonwealth Contract and policies and procedures approved by the City. Without limiting the foregoing, and subject to prior review and approval by the City, when the City deems such review and approval is necessary and so notifies CBH, CBH shall perform the following Program Services, Additional Services and Other Services that have been approved by the City and/or the Commonwealth, as may be directed by the City:

A. PROGRAM SERVICES.

1. CBH shall provide timely access to diagnostic, assessment, referral and treatment services for Members for the following benefits, referred to collectively herein as "Program Services"), as more fully set forth in the Commonwealth Contract:
 - a) inpatient psychiatric hospital services, except when provided in a state mental hospital;
 - b) inpatient drug and alcohol detoxification;
 - c) psychiatric partial hospitalization services;
 - d) inpatient drug and alcohol rehabilitation;
 - e) non-hospital residential detoxification, rehabilitation and half-way house services for drug/alcohol abuse or dependence;
 - f) psychiatric outpatient clinic, licensed psychologist and psychiatrist services;
 - g) behavioral health rehabilitation services for children and adolescents with psychiatric, substance abuse or intellectual disabilities;
 - h) residential treatment services for children and adolescents (accredited and non-accredited);

- i) outpatient drug and alcohol services, including Methadone Maintenance Clinic;
- j) methadone when used to treat narcotic/opioid dependency and dispersed by an In-Plan drug and alcohol services Provider;
- k) Laboratory and diagnostic studies and procedures for the purpose of determining response to behavioral health medication and/or treatment ordered by Healthcare Providers acting within the scope of their license;
- l) Clozapine support services;
- m) Crisis intervention services;
- n) Family-based mental health services for children and adolescents;
- o) Targeted mental health case management (intensive case management and resource coordination) in coordination with PMHCC, Inc.;
- p) Mobile mental health treatment
- q) Peer support services
- r) Supplemental and/or alternative services

2. Authorization and Payment Procedures.

- a) CBH shall maintain procedures for authorization and payment for Medically Necessary covered services which are not available within the network and for providing emergency services for individuals who are temporarily out of the service area.
- b) CBH shall timely pay claims to Healthcare Providers and in accordance with the standards and requirements of this Contract and the Commonwealth Contract.
- c) In addition to any requirements under Applicable Law, CBH shall Adjudicate fee for service claims consistent with the adjudication timeliness standards below:
 - i) 90% of Clean Claims must be Adjudicated within 30 days from the date of receipt;
 - ii) 100% of Clean Claims must be Adjudicated within 45 days from the date of receipt;
 - iii) 100% of all claims must be Adjudicated within 90 days from the date of receipt.

3. Compliance with Applicable Law. CBH shall perform the Services in accordance with Applicable Law and shall comply with the requirements of the HealthChoices Waiver, as that term is defined in the Commonwealth Contract. CBH shall perform Program

Services consistent with the standard of care to which each entity or individual is held at law and shall adhere to all applicable mental health and drug and alcohol program laws and regulations and policy directives, unless a waiver is granted by the Commonwealth. CBH and Healthcare Providers of In-Plan Services and Healthcare Providers of supplemental or alternative services must enroll in the MA Program. CBH shall not employ or engage or permit any of its Subcontractors to employ or engage the services of any Healthcare Provider or practitioner whom CBH knows to be ineligible to participate in the MA Program. CBH shall make reasonable investigative efforts, and shall cause its Subcontractors to make reasonable investigative efforts, to determine the eligibility of any Healthcare Provider or practitioner prior to their employment or enrollment in the MA Program. CBH shall include the provisions of this Section II.A.3, with appropriate adjustments for the identity of the parties, in its Subcontracts with Healthcare Providers hereunder.

4. Laboratory Testing Sites. In accordance with the terms of the HealthChoices Waiver, all laboratory testing sites providing services pursuant to this Contract shall have either a Clinical Laboratory Improvement Act (“CLIA”) certificate of waiver or a certificate of registration along with a CLIA identification number. Those laboratories with certificates of waiver will provide only the eight types of tests permitted under the terms of the HealthChoices Waiver. Laboratories with certificates of registration may perform a full range of laboratory tests.

5. Suspension from Other Programs. In the event CBH has actual knowledge that a Healthcare Provider with whom CBH contracts (directly or indirectly) is suspended or terminated from participation in the MA program of another state or from the Medicare Program, CBH shall promptly notify the City, in writing, of such suspension or termination.

6. Disclosure of Member Health Information. CBH shall disclose Member health information or other data only to the extent permitted by Applicable Law and this Contract.

B. ADDITIONAL SERVICES.

For purposes of this Contract, the term “Additional Services” shall refer to changes made to the original Scope of Services under this Contract, i.e., that do not require the payment of additional compensation to CBH in excess of the budgeted amount stated in Section 4.1, entitled “Amount,” of the Agreement. Such “Additional Services” shall be authorized by “Directive” as that term is further described in Section II.B.1. below.

1. Funding. As OBHIDS has moved to a fully integrated services system, CBH may perform services that are not chargeable to the Program budget. Attached to the Contract as Exhibit PA-3 are budgets that pertain to both HealthChoices and non-HealthChoices funding sources, collectively referred to as the “Budget.” The funding sources identified in the Budget reflect funding to carry out Services hereunder based on the eligibility of costs: (1) HealthChoices Behavioral Health program funding and (2) alternative City non-HealthChoices funding to carry out Additional Services, as set forth in this Section II.B. of Exhibit PA-1 to the Contract. CBH shall charge the appropriate funding source identified in the Budget to cover Services and Materials hereunder based on its determination of cost eligibility. The City will not

reimburse ineligible administrative or program costs. OBHIDS, in conjunction with CBH, will develop a mutually-agreeable cost allocation plan that will document the allocation of costs. Costs associated with CBH staff or operating costs that are identified as HealthChoices activities, but may not be fully attributable to CBH, will be allocated between the City and CBH.

In accordance with Section 3.3 of the General Provisions (Additional Services and Materials; Change in Scope of Services), the City may, by written change order delivered to CBH at least sixty (60) days before the intended change, unless the Parties agree to a different time frame, make changes to the Scope of Services and/or reallocations of the Budget in accordance with terms and conditions specified therein. For purposes of implementing this Section II.B., the City may authorize such Additional Services and Materials by issuance of a written directive from the Director to CBH ("Directive"). Any Directive authorized hereunder may be issued by a designee of the Director upon execution of a bona fide written designation for such purpose. Each such Directive shall constitute a written change order under Section 3.3 of the General Provisions hereto and shall be governed by the terms thereof.

As administrative budget costs may fluctuate throughout the year, actual costs which exceed 10% of the approved budgeted costs or cost allocation plan per budget category are subject to the approval of the CBH Board of Directors. However, notwithstanding the foregoing, expenditures which exceed the total contract amount must be evidenced by an Amendment to the Contract. The City shall pay CBH for any expenditures which exceed the total contract amount only if and when an Amendment to the Contract is duly executed by the Parties.

2. Services. In addition to the Program Services, CBH shall perform the following Additional Services within the three categories below (Data and Information Systems Management; Grant Administration; Operations and Associated Tasks):

Data and Information Systems Management.

- a) In addition to previously authorized tasks under this service category, CBH shall develop and manage data systems for management of CBH services, payment and quality oversight of such services. These data systems shall incorporate Protected Health Information, as defined in Section 14.10 (a)(16) of the General Provisions, received by CBH from OBHIDS. CBH may Subcontract any or all of the services in this Section II.B.2.a upon the prior written approval of the Director.
- b) Grant Administration. In addition to previously authorized tasks under this service category, CBH shall administer grant(s) that have been awarded to OBHIDS, in accordance with the Budget, and pursuant to a Directive. The scope of grant administration may include hiring of staff, hiring an evaluation team and/or authorizing CBH staff to support grant evaluations, monitoring providers' adherence to data and financial submission agreements and protocols, and compliance with grant requirements specified in the governing grant agreement between the grantor and the City which shall be identified in and attached to the Directive.

- c) Operations and Associated Tasks. CBH may use data, including Protected Health Information (as that term is defined in Section 14.10(a)(16) of the General Provisions), it receives from OBHIDS or, subject to the conditions below, other City Departments, to perform the following functions for purposes of program evaluation and administration and quality oversight: (i) to merge and de-identify data received from OBHIDS and (ii) to merge the data received from OBHIDS with data received from the City of Philadelphia Department of Human Services (“DHS”) or other City Departments to be used by OBHIDS and CBH to create de-identified aggregate data reports to be shared with CBH, OBHIDS, DHS and such other City Departments. For purposes of carrying out this service category, the City shall disclose and CBH may access data of City departments or units to conduct cross-agency/cross-City initiatives only as approved in writing by the Responsible Official of the department or unit from which the data will be obtained, the City Law Department and the following additional approvals: (i) data from units under OBHIDS, the Director, (ii) data from DHS, the Department of Public Health, the Office of Supportive Housing and other City departments and units, the Deputy Mayor for Health and Opportunity, or the occupant of a successor position.
 - i) By execution of this Contract, the Director authorizes CBH to enter into one or more Subcontract(s), and any related legally required or appropriate documentation, to carry out the program evaluation and administration tasks and projects authorized under this Section II.B.2.c. Such Subcontracts shall be subject to the following conditions: (1) Such Subcontracts shall not authorize anything that is not permitted by Applicable Law; and (2) Such Subcontracts shall comply with all applicable terms of the Contract and all applicable City policies governing requests for and disclosure of data generated by or maintained by the City or others on behalf of the City.
 - ii) CBH will forward to OBHIDS quarterly updates on the status of each program evaluation performed under Section II.B.2.c, within 45 days after the end of each City fiscal quarter.

3. Disclosure by CBH. CBH may disclose information or data to a third party outside of City government to enable the third-party to perform program evaluation or research, only upon written instructions (“Instructions”). The Instructions shall describe the information or data to be disclosed, the entity(ies) to receive such information or data, the intended purpose(s) for which such information or data shall be used and shall reflect that the Instructions have been approved by the Law Department. In so disclosing, CBH shall comply with all applicable City policies and protocols governing requests for, and disclosures of, information and data generated

by or maintained by the City or others on behalf of the City, and Applicable Law, including that governing the use and disclosure of Medicaid data under the Social Security Act Section 1902(a)(7) (42 USC § 1396a(a)(7)). Under no circumstances shall CBH disclose City information or data hereunder for purposes of research or publication or otherwise permit or authorize research or publication without the written consent of the Deputy Mayor of Health and Opportunity or the occupant of a successor position.

4. Disclosure by Others. CBH will ensure that any Subcontractor or any person or entity acting on its behalf under the Contract (i) will not divulge, disclose, communicate, publish or otherwise distribute any of the Materials or data except as may be expressly permitted under the Contract; (ii) will not, in any way, use any of the Materials or data for its business or other advantage or gain including, without limitation, use any of the Materials or data in any presentation, demonstration, conference or proposal to perform work, for the City or others, that may be conducted as part of their business activities, mission or otherwise; and (iii) upon final termination or expiration of its contractual relationship will return the Materials or data in a format readable by the City unless agreed to otherwise by OBHIDS and CBH by amendment to the Contract, and in a manner consistent with Section 14.10(f) (“Termination” as it pertains to Protected Health Information) of the General Provisions.

C. OTHER SERVICES.

For purposes of this Contract, the term “Other Services” shall refer to other services added and related to the original Scope of Services under this Contract that will require the payment of additional compensation to CBH in excess of the budgeted amount stated in Section 4.1, entitled “Amount,” of the Agreement. Such “Other Services” shall be authorized, and the funding necessary to carry out such Other Services shall be evidenced by amendment to the Contract. Such Other Services may include any necessary accounting and other administrative support systems required hereunder, financed with funds other than HealthChoices Funds. CBH shall render such Other Services in accordance with Applicable Law, the Contract and direction from the City.

D. REPORTS.

CBH shall furnish the City with performance, operational, financial and other reports required under the Contract Documents and as requested by the City in the manner, form and time periods specified by the City which, in all cases, shall be provided to the City in sufficient time to ensure the City’s compliance with reporting requirements under the Commonwealth Contract. Without limiting the generality of the foregoing, CBH shall furnish to the City all financial reports required by the City and the Commonwealth Contract within the time frames required by the City, which reports shall be in form and content acceptable to the City.

E. AUDIT REQUIREMENTS.

CBH shall comply with applicable audit requirements in accordance with the Contract Documents and Applicable Law.

F. COORDINATION OF CARE.

CBH shall coordinate Program Services in accordance with the Contract Documents and Applicable Law.

G. COMPLAINT, GRIEVANCE AND APPEAL PROCEDURES.

CBH shall develop, implement and maintain a complaint and grievance system which provides for informal settlement of Members' complaints and grievances at the lowest administrative level and a formal process for appeal ("Member Complaint and Grievance System"). The development and implementation of the Member Complaint and Grievance System shall be in complete accordance with the Commonwealth Contract and Applicable Law.

H. RECORDKEEPING AND RETENTION.

1. Medical. CBH shall maintain all books and records in accordance with the Commonwealth Contract and as may be required by the City and, upon request, shall make such records and data available to the City and/or the Commonwealth.

2. Operational Data Reports. CBH shall retain the source records for its data reports for a minimum of seven (7) years and have written policies and procedures for storing this information.

3. Clinical Records Retention. Notwithstanding record retention requirements set forth in the General Provisions to the contrary, CBH shall maintain all clinical records in accordance with the Commonwealth Contract, Applicable Law, and as may be required by the City and, upon request, shall make such records and data available to the City and/or the Commonwealth.

4. Financial Records Retention.

- a) CBH shall maintain all books, records and other evidence pertaining to revenues, expenditures and other financial activity pursuant to this Contract in accordance with the Commonwealth Contract.
- b) In accordance with 42 C.F.R. Section 420.302, CBH shall, to the extent applicable, submit to the City, within fifteen (15) days of request, information related to CBH's business transactions which shall include full and complete information regarding:
 - i) CBH's ownership of any Subcontractor with whom CBH has had business transactions totaling more than \$25,000 during the 12-month period ending on the date of the request; and
 - ii) Any significant business transactions between CBH and any wholly-owned supplier or between CBH and any other Healthcare Provider, vendor or Subcontractor during the five-year period ending on the date of the request.

5. Confidentiality.

- a) As required under the Commonwealth Contract, CBH shall maintain the confidentiality of medical records in accordance with the Contract Documents and Applicable Law and shall maintain written policies and procedures regarding the confidentiality of Member records. Such policies shall address access by Members and other entities requesting access to the Members' clinical records consistent with applicable state and federal confidentiality requirements.
- b) CBH shall return all data and Material obtained in connection with this Contract and the implementation thereof, including confidential data and Material, at the City and/or PA DHS's request consistent with applicable state and federal laws regarding confidentiality. Except as needed for adjudication of claims, notice, auditing and continuation and coordination of care of active Members as required under the Commonwealth Contract, no data or Material may be used by CBH or its Subcontractors for any purpose after the expiration or termination of this Contract. CBH agrees to transfer all information to a subsequent contractor at the direction of the City and PA DHS.

6. Review of Records. CBH shall make all records relating to the Program available for audit, review or evaluation by the City, PA DHS, its designated representatives or federal agencies. Such records shall be made available during normal business hours at a location specified by the reviewing entity.

7. CBH shall include the provisions of this Section II.H, with appropriate adjustments for the identity of the parties, in its Subcontracts and ensure that all persons and/or entities with which it contracts agree to comply with the provisions of this Section II.H.

I. ENROLLMENT/CREDENTIALING.

1. CBH shall comply with credentialing requirements in accordance with the Contract Documents and Applicable Law. CBH will, among other things, utilize the Network Inclusion Criteria ("NIC") as developed by the OBHIDS Network Inclusion & Accountability Collaborative ("NIAC") in assessing the CBH provider network.

2. In accordance with the terms of the HealthChoices Waiver and 42 C.F.R. §434.27, a Member may terminate enrollment freely at any time. CBH shall inform each recipient at the time of enrollment of the right to terminate enrollment.

J. QUALITY ASSURANCE.

1. Cooperation. CBH shall cooperate with PA DHS's independent external quality review organization. In the event the City or CBH believes that the independent external quality review organization imposes burdensome requests and is so intrusive that cooperation

interferes with the delivery of services to Members and/or the internal operations of the City or CBH, CBH shall immediately notify the City which will notify the Commonwealth to take appropriate measures to rectify the situation.

2. Consumer and Family Satisfaction. CBH must implement procedures to routinely assess Member satisfaction. These procedures should include but not be limited to an annual survey of Member satisfaction which includes face-to-face structured and unstructured interviews with Members and their families. Members and their families shall participate in the design of the survey process, the review of findings and the determination of quality improvements to be undertaken based on the findings. CBH must also have mechanisms which ensure that Member comments concerning Healthcare Provider performance can be tracked in the aggregate and be used as a component of Healthcare Provider profiling. In addition, CBH must cooperate with PA DHS's independent consumer and family satisfaction assessments.

3. CBH shall include the provisions of this Section II.J, with appropriate adjustments for the identity of the parties, in its agreements with Healthcare Providers.

K. FINANCIAL MANAGEMENT.

CBH shall establish, maintain and operate its financial management, systems and controls in accordance with generally accepted accounting principles and government accounting principles. CBH shall account to the City for all financial activity under an Enterprise Fund method of accounting.

L. PERSONNEL.

1. Hiring of the CBH Chief Executive Officer ("CEO"), Chief Medical Officer ("CMO") and Chief Financial Officer ("CFO") positions shall be subject to prior City approval.

2. All employees of CBH shall be residents of the City unless the Board of Directors of CBH approves exemptions from the residency requirement where such exemptions will assist in meeting the requirements of the Contract. The Board may determine the process whereby exemptions from the residency requirement are approved. Board approval of exemptions from the residency requirement shall be reflected in the minutes of the meetings(s) at which such approvals are given.

M. COOPERATION.

1. Commonwealth. In the event the City is required to take corrective or other action, or is otherwise required to respond to the Commonwealth under the Commonwealth Contract, CBH shall fully cooperate with the City in connection therewith within the time frames required by the City.

2. External Quality Assurance Program. CBH shall cooperate with any external quality assurance program used by PA DHS in connection with the services provided hereunder including consumer and family satisfaction programs.

N. TRANSITION PLAN.

CBH shall have written policies and procedures to authorize care and transition Members to network Healthcare Providers for Members who are in care at the time of

contract implementation. Protocols for authorization, denial of authorization, and transfer to alternative facilities or Healthcare Providers must be included. The plan must have provisions for approval of services and/or inclusion of Healthcare Providers in the network in those instances where disruption of services would have a significant negative impact on the Member. CBH shall include the provisions of this Section II.N, with appropriate adjustments for the identity of the parties, in its agreements with Healthcare Providers.

O. FISCAL RELATIONSHIP.

1. No Recourse Against Members. In no event, including but not limited to nonpayment by CBH or any applicable third-party payor, CBH's or the City's insolvency or breach of this Contract, shall CBH bill, charge, collect a deposit from, seek compensation, remuneration or reimbursement from, or have any recourse against Members for Services provided pursuant to this Contract. CBH shall include the provisions of this Section II.O.1, with appropriate adjustments for the identity of the parties, in its agreements with Healthcare Providers.

2. Third-Party Liability. CBH will comply with procedures implemented by PA DHS with regard to Third-Party Liability as set forth in the Commonwealth Contract. CBH shall include the provisions of this Section II.O.2, with appropriate adjustments for the identity of the parties, in its agreements with Healthcare Providers.

3. EPSDT Cost Avoidance Prohibited. CBH shall pay and shall require its Subcontractors to pay all Clean Claims for Early, Periodic Screening Diagnosis and Treatment ("EPSDT") services to children and then seek reimbursement from liable third parties. CBH specifically recognizes that cost avoidance of these claims is prohibited.

4. Compliance with Financial Requirements. CBH shall comply with any applicable financial requirements set forth in the Commonwealth Contract.

P. ADDITIONAL OBLIGATIONS OF CBH.

1. Accuracy of Proposal. CBH shall promptly notify the City, not later than three (3) days after notice, in writing, of any material fact, event or condition which affects the truth, accuracy or completeness of the representations in the Proposal.

2. Disclosure of Interests. CBH shall require each of its Subcontractors to disclose to it, in writing, the name of any person or entity having a direct or indirect ownership or control interest of 5% or more in the Subcontractor. CBH shall promptly inform the City, in writing, of any change in, or addition to, the ownership or control of its Subcontractors. Such disclosure shall be made within fifteen (15) days of CBH receiving notice of any change or addition. CBH acknowledges and agrees that any failure to comply with this provision, or making any representation which would cause the City to be precluded from participation in the MA Program, shall entitle the City to recover all payments made to CBH subsequent to the date of the misrepresentation.

3. Disclosure of Change in Circumstances. CBH agrees to promptly report to the City, not later than six (6) days of CBH's notice of same, any change(s) in circumstances that is likely to have a material adverse effect upon CBH's financial or operational conditions. Such

reporting shall be triggered by and include, by way of example and without limitation, the following events, any of which shall be presumed to be material and adverse:

- a) Suspension or debarment of CBH by any state or the federal government;
- b) Notice of suspension or debarment or notice of an intent to suspend/debar issued by any state or the federal government to CBH;
- c) Any lawsuits or investigations by any federal or state agency involving CBH which would have a material impact upon the City's financial condition or ability to perform under the Commonwealth Contract; and
- d) Any change in circumstances during the term of this Agreement that is reasonably likely, in magnitude and scope, to have a material and adverse effect on the financial condition or operations of CBH, or the ability of CBH to perform its material obligations under this Contract. Such notice shall be triggered by the types of events deemed to be material ("Material Events") within the meaning of Rule 15c2-12(b)(5) promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended (the "Rule"), as such Rule may be amended from time to time, and CBH shall provide notice of any such Material Events in a manner consistent with the Rule.

In the event CBH enters into a Subcontract with a Managed Care Organization, CBH shall include the requirements of this Section II.P.3. in such Subcontract with the Managed Care Organization, its parent(s) and any of its affiliates and related parties and require disclosure of Change of Circumstances within the meaning of this Section II.P.3. within three (3) days of such Managed Care Organization's notice of same.

4. Compliance with Rule on Physician Incentive Arrangements. In accordance with the terms of the HealthChoices Waiver, CBH shall disclose to the Commonwealth, and upon request, to the Department of Health and Human Services, the information on its Healthcare Provider incentive plans listed in 42 C.F.R. § 417.479(h)(1) at the times indicated at 42 C.F.R. § 434.70(e), in order to determine whether the incentive plan(s) meets the requirements of 42 C.F.R. § 417.479(d) - (g) and, as applicable, (i). CBH shall provide the information on its physician incentive plans listed in 42 C.F.R. § 417.479 (h)(3) to any Member, upon request.

5. HealthChoices MCO Assessment Report. CBH shall complete the HealthChoices Primary Contractor MCO Assessment Report for Behavioral health Medicaid Managed Care Organizations, in accordance with the Commonwealth Contract. CBH shall furnish PA DHS and the City with forms and reports relating to the Assessment as requested by the City and required under the Contract Documents which, in all cases, shall be provided to PA

DHS and the City in sufficient time and content to ensure the City's compliance under the Commonwealth Contract.

6. Cooperation with City's Legal Representative. CBH acknowledges that it provides important Services to the City and that it is expected to act in accordance with the interests of the City at all times, following consultation with the Responsible Official. The Parties recognize and agree that they share common legal interests as to the Services provided by CBH. Therefore, in addition to, and not in limitation of, its obligations under Section 8.3 of the General Provisions, entitled "Litigation Cooperation," if CBH retains its own legal counsel in connection with the performance of the Services, CBH's counsel shall consult, cooperate and coordinate with a representative of the City Law Department designated by the City Solicitor on matters of material interest to CBH and the City unless, and only to the extent, a particular matter presents an actual conflict of interest between CBH and the City. CBH shall give written notice to the City of the existence and extent of any such conflict. Neither this Section II.P.6, nor consultation, cooperation and coordination by counsel for the Parties in the absence of an actual, known conflict of interest, nor any notice of a conflict, shall be construed as requiring or indicating a waiver by the Parties of attorney-client privilege, attorney work product doctrine or any other applicable privilege.

Q. IT DELIVERABLES.

1. Rationale.

- a) The Federal government and the Commonwealth of Pennsylvania continue to put forth and refine Health Care Reform initiatives. As a result, it has become necessary for OBHIDS to manage more closely services and funds to maintain and improve service delivery to the citizens of Philadelphia. To ensure services are being delivered effectively and with the desired outcomes, the Department is increasing its focus on clinical and quality indicators, as well as the economic factors that affect eligibility for services. Simultaneously, OBHIDS is developing systems to improve its ability to perform point of service verification of benefits, identification verification and point of service payments for providers.
- b) OBHIDS must integrate and consolidate information through coordination of people, processes and technology in order to efficiently address internal and external requirements such as financial reporting, regulatory compliance and program management. Therefore, it is essential for OBHIDS to develop processes and implement technologies that support clinical operations, provide data collection, data extraction and data analytical capability for all programs within OBHIDS.

2. Data Ownership. OBHIDS is the owner of all data and data sources associated with the programs for which it has oversight responsibilities, including, but not

limited to the HealthChoices Program, the Office of Mental Health, the Office of Intellectual disAbility Services and the Office of Addiction Services programs.

3. Administrative Services Organization. CBH currently functions as an Administrative Services Organization (“ASO”) for the City’s HealthChoices Program, as well as other OBHIDS programs. To carry out these functions, OBHIDS has authorized CBH to collect, manage, store, use, and disclose a variety of data from a variety of data sources as directed by OBHIDS in a manner that facilitates and supports the Services, and that also facilitates and supports the integration of all data sources for the purpose of:

- point of service verification of benefits,
- identification verification,
- point of service payments for providers,
- supporting clinical operations,
- data collection,
- mandatory reporting compliance,
- decision support,
- data analytics,
- quality improvement, and
- audit and evaluation.

4. Definitions.

- a) “Custom Software” means any software developed by the ASO for OBHIDS; in connection with the Contract; and with funds received from OBHIDS. The term does not include ASO Proprietary Software or Third-Party Software,
- b) “ASO Proprietary Software” means software:
 - developed by the ASO prior to the Effective Date of the Contract or
 - software developed by the ASO after the Effective Date of the Contract that is not developed for OBHIDS in connection with the Contractor with funds received from OBHIDS.
- c) “Third-Party Software” means software that is: developed for general commercial use; available to the public; or not developed for OBHIDS. Third-Party Software includes without limitation: commercial off-the-shelf software; operating system software; and application software, tools, and utilities.

5. Deliverables. In its capacity as an ASO for OBHIDS, CBH has the authority and obligation to collect, manage, store, use, and disclose data from all data sources in a manner that facilitates and supports the Program Services, and that also facilitates and supports the integration of all data sources for all OBHIDS programs for the purpose of:

- point of service verification of benefits,

- identification verification,
- point of service payments for providers,
- supporting clinical operations,
- data collection,
- mandatory reporting compliance,
- decision support,
- data analytics,
- quality improvement, and
- audit and evaluation.

6. Data Collection, Management and Storage.

- a) CBH must ensure technology solutions facilitate and support:
- system-wide data definitions, calculations and business rules
 - reporting and analysis for individual data sources as well as across all data sources
 - mandatory reporting compliance for all data sources
 - HIPAA 5010 compliance for all data sources
 - development and maintenance of data warehouse fed by all data sources
 - development and maintenance of dashboard to access individual and integrated data
 - creation of a data warehouse/mart to consolidate data from disparate production data sources
 - using a combination of Custom, Proprietary and Third-Party software, development of algorithms to create a single view of the customer for the purposes of performing/supporting the following activities:
 - Entitlement determination
 - Eligibility verification
 - Identity verification
 - Payments to providers
 - Clinical operations, and
 - Various executive- and detail-level reporting
 - an infrastructure that meets City of Philadelphia Office of Innovation and Technology (“OIT”) firewall and security requirements; and

- OBHIDS staff internal and external to the City of Philadelphia firewall.

- b) CBH shall have a disaster recovery plan that has been approved by OIT.

7. Regulatory/Legal Compliance. CBH shall comply with Applicable Law concerning privacy, security and confidentiality of Protected Health Information, as more fully set forth at Section 14.10 of the General Provisions. CBH must ensure that technology solutions, including the system and all potential interfaces, are compliant with all local, state, and federal data privacy laws and security laws and regulations.

R. DUTY TO PERFORM PERIODIC EVALUATIONS.

1. Periodic Evaluations Generally. To demonstrate to the City that all components of the information system used to create, receive, transmit, or store electronic Protected Health Information for or on behalf of OBHIDS are secure, and that the collection and transmission of information conforms to City requirements security requirements or standards established by the Office of Innovation and Technology (“OIT”), and OIT and complies with the standards of the HIPAA Security Rule, CBH shall engage an independent third party, specializing in HIPAA security compliance and acceptable to the City, to conduct periodic technical and non-technical evaluations of CBH’s information system (“Periodic Evaluations”). During the Initial Term and any Additional Term during which the City elects to renew the Contract, Periodic Evaluations shall be performed no less frequently than every twelve (12) months. CBH shall assume all costs and contractual obligations for obtaining Periodic Evaluations. Periodic Evaluations shall include interviews with the appropriate CBH data custodians, physical evaluations of each CBH physical site, and testing on CBH’s internal and external networks used to create, receive, store, or transmit Protected Health Information, in order to identify vulnerabilities that can be exploited, deviations from industry security best practices, and areas of non-compliance with the HIPAA Security Rule or security and other requirements and standards established by OIT. Periodic Evaluations must reflect an appropriate level of administrative, technical, and physical security controls, and auditing and penetration testing performed at the network system, and application level, such testing to be performed upon notice to and under the supervision, as necessary, of OIT. The assessment of CBH’s information system that is forthcoming from any Periodic Evaluation shall be documented in written evaluation reports delivered to CBH by the independent third party engaged by CBH to perform a Periodic Evaluation (“Evaluation Reports”). Each Periodic Evaluation shall identify the deficiencies and vulnerabilities in the previous Evaluation Report that have been remediated and any deficiencies and vulnerabilities and risks that have not been cured, and shall confirm that appropriate safeguards are in place to address any regulatory, environmental and operational changes.

2. First Periodic Evaluation. CBH shall complete annual HIPAA Risk Assessments that shall (a) explain the extent to which deficiencies and vulnerabilities identified in the initial HIPAA Risk Assessment have been remediated, (b) identify any material vulnerabilities and risks identified in the initial HIPAA Risk Assessment that have not been cured, (c) make recommendations addressing any unremediated vulnerabilities and risks that have not been cured and any new vulnerabilities and risks that have been identified, and (d)

confirm that appropriate safeguards are in place to address regulatory, environmental and operational changes.

3. Security Assessment Reports to City Privacy Officers. CBH shall report the assessment of CBH's information system contained in any Evaluation Report to the OBHIDS HIPAA Privacy Officer and the City's HIPAA Privacy Officer, and OIT in the form of the table attached to this Exhibit PA-1 as Exhibit A ("Security Assessment Reports"). CBH shall provide such Security Assessment Reports no later than December 15 of the Initial Term and any Additional Term during which the City elects to renew the Contract. Each such report shall a) document CBH's actions in response to the current Periodic Evaluation, b) identify any material vulnerabilities and risks that have not been cured, c) summarize CBH's corrective action plan for addressing any unremediated vulnerabilities, and d) confirm that appropriate safeguards are in place to address any regulatory, environmental and operational changes. Upon request of the Director, CBH will provide the Director with a copy of the Evaluation Report that is the subject of any Security Assessment Report.

4. Virus Protection. CBH shall ensure that adequate virus protection mechanisms are provided for all components of CBH's information system.

S. OTHER CBH OBLIGATIONS RELATING TO PRIVACY AND SECURITY.

1. Upon the request of the Responsible Official or the OBHIDS HIPAA Privacy Officer, CBH shall demonstrate to the satisfaction of the City's HIPAA Security Officer CBH's capacity to render electronic Protected Health Information created, received, stored, or maintained for or on behalf of OBHIDS unusable, unreadable, or indecipherable to unauthorized persons in accordance with guidance issued under 13402(h)(2) of the HITECH Act with respect to any Protected Health Information that is in use, in transmission, or being stored. CBH shall state the methodology and technology used for encryption of Protected Health Information and the means for destroying stored or recorded Protected Health Information.

2. CBH shall require each user authorized to access Protected Health Information in CBH's information system to complete, sign, and deliver to CBH an access form. CBH's HIPAA Privacy Officer shall retain each signed access form so long as the person who signed the form has access to Protected Health Information in CBH's information system and for at least six (6) years after the access privileges granted to such person have been terminated.

3. Upon request of OBHIDS, CBH shall, within fifteen (15) business days after such receipt, demonstrate to the satisfaction of the City that CBH has the following capabilities:

- a) Capability to identify any/all members who may have been subject to a breach of unsecured protected health information by CBH or its Agents;
- b) Capability to enforce a Member's preference for restricting disclosure of Protected Health Information to a health plan when services are paid for by the Member;

- c) Capability to generate a full accounting of all disclosures of Protected Health Information by CBH or its Agents;
- d) Capability to generate an electronic copy of a Member's Designated Record Set in the possession or under the custody or control of CBH or its Agents if the Member requests it.

4. CBH acknowledges that it is responsible for (a) providing security software, including without limitation, firewalls and similar applications, to prevent unauthorized access to its computer systems, including malware prevention software to User's computers, and (b) for requiring its Users to use a password to access any system containing Protection Health Information, that meets the City of Philadelphia Office of Innovation and Technology's ("OIT") requirements or standards.

5. Throughout the term of the Contract, CBH shall demonstrate to the satisfaction of the City and OIT that CBH has developed and implemented a tested data backup plan that creates and maintains a retrievable exact copy of all Protected Health Information, an emergency mode operations plan, and a disaster recovery plan that complies with the Security Rule and has been approved by OIT.

6. CBH shall appoint a HIPAA Privacy Officer and Security Officer who are responsible for ensuring that HIPAA policies and procedures are enforced and to serve as liaisons with OBHIDS and the City HIPAA Privacy Officer and OIT for matters involving privacy, security, and security incident response.

7. CBH shall retain all HIPAA policies and procedures, records of actions, activities, or assessments, and other HIPAA compliance records for 6 years from the date of creation or the date when it last was in effect, whichever is later.

8. CBH shall track all laptops and network equipment assigned to or used by CBH staff and shall implement unique user identification for all users or laptops and computers so that all user activity is identified and tracked. All laptops and portable devices containing Protected Health Information shall be encrypted using a technology that renders the information maintained on them unusable, unreadable, or indecipherable to unauthorized persons in accordance with guidance issued under Section 14302(h)(2) of the HITECH Act.

9. CBH shall provide appropriate and ongoing training of all CBH staff, at least once each calendar year, regarding the requirements of the HIPAA Privacy and Security Rule, the Breach Notification Rule, other applicable state and federal laws and regulations, and CBH's HIPAA policies and procedures (collectively referred to as "Privacy Requirements"). Upon request of OBHIDS, CBH will provide a copy of any HIPAA training materials and verifications of HIPAA training maintained by CBH.

10. CBH shall require all CBH staff with access to Protected Health Information to agree in writing to abide by OBHIDS's Notice of Privacy Practices, CBH's HIPAA policies and procedures, the HIPAA Privacy and Security Rules, and state and federal laws and regulations that protect the privacy, confidentiality, integrity, and security of Protected Health Information and to afford Members certain rights protected by Applicable Law, such as the right to access and correct their health records.

11. Upon termination or expiration of the Contract, CBH shall return immediately to OBHIDS, or a third party designated in writing by OBHIDS, a full extract of all data relating to Services performed by CBH (including its Subcontractors and Agents) and Members served by CBH during the Term of the Contract. Such data shall be delivered in a format acceptable to the City with the inclusion of a data dictionary. The data files provided shall be readable and readily decipherable by computers and systems then regularly used by OBHIDS. CBH shall transfer to the City at no cost to the City all software and equipment in CBH's possession or under CBH's custody or control that is needed within OBHIDS's sole discretion to enable the City or a third party designated by the City to access and use the data to carry out the City's responsibilities under the Commonwealth Contract (or any successor thereto entered into by the City) and Applicable Law.

12. Provider will distribute the OBHIDS Notice of Privacy Practices to each Member in a manner and at a frequency that meets the HIPAA Privacy Rule requirements set forth at 45 C.F.R. section 164.520.

Exhibit A to Exhibit PA-1
Security Assessment Reports Table
(To be provided)

EXHIBIT PA-2

THE COMMONWEALTH CONTRACT

(A copy of the Commonwealth Contract is available upon request.)

Exhibit PA-3

Budget

**Community Behavioral Health
2019 Operating Administrative Budget**

	2019 Budget
Salaries	37,137,860
Overtime	957,612
Fringe Benefits	16,171,811
Total Compensation	54,267,283
Admin Fee Nonhealthchoices	(15,223)
Admin Medical Expense	0
Bank Fees	18,000
Business Travel	197,751
Claims & Clinical Systems Processing	3,898,162
Community Outreach	17,000
Consultants	3,356,094
Depreciation	2,523,782
Dues & Subscriptions	209,811
Electricity	132,787
Equipment Maintenance	695,225
External Training	410,463
Facility Costs	368,056
Insurance	1,013,555
Interest on Medical Payments	20,000
Internal Training	276,092
Legal Fees	254,781
Non-Capital Assets	173,027
Office Supplies	270,265
Postage	123,414
Printing & Copying	420,255
Provider Training	542,159
Rent	2,724,033
Staff Recruitment	133,554
Telephones/Communication	587,969
Total CBH Administrative Expenses	72,618,294

12-Dec-18

EXHIBIT PA – 4
REVISIONS TO THE GENERAL PROVISIONS

The General Provisions of the Contract are hereby modified only to the extent specifically set forth below:

I. Article I: Definitions

Section 1.6, “Applicable Law,” is hereby deleted in its entirety and a new Section 1.6 is added to read as follows:

1.6 Applicable Law.

“Applicable Law” means all applicable present and future laws, ordinances, rules, regulations, orders and requirements (including without limitation those relating to the environment), of all federal, state and local governments, including the City, and amendments thereto. Without limiting the foregoing, “Applicable Law” shall include all federal and Pennsylvania laws generally and specifically governing participation in the MA Program and all applicable rules and regulations promulgated under such laws including, but not limited to, 42 U.S.C. §§ 1396 et seq.; the Act of June 13, No. 21, as amended (62 P.S. §§ 101 et. seq.); Parts 431 through 481 of Title 42 and Parts 74 (Appendix G), 80, and 84 of Title 45 of the Code of Federal Regulations, and the PA DHS regulations. Without limiting the foregoing, the term “Applicable Law” shall also include Titles VI and VII of the Civil Rights Act of 1964; the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”); the Health Information Technology for Economic and Clinical Health Act of 2009 (“HITECH Act”); Standards for Privacy of Individually Identifiable Health Information and Security Standards for the Protection of Electronic Protected Health Information (45 C.F.R. Parts 160, 162 and 164); Final Rule for Breach Notification of Unsecured Protected Health Information (45 C.F.R. §§ 164.400 through 164.414); Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975, the Pennsylvania Human Relations Act of 1955, as amended, the Pennsylvania Contract Compliance Regulations (16 Pa. Code § 49.101); “Other Privacy Laws” as defined in Section 14.10(a)(15) of the General Provisions (as revised in this Exhibit PA-4); all applicable laws, regulations and policies of the Pennsylvania Department of Health and the Pennsylvania Insurance Department and, in accordance with requirements of the HealthChoices Waiver, 42 C.F.R. §§ 434.26 and 434.27.

Section 1.30, “Provider,” is hereby deleted in its entirety and a new Section 1.30 is added to read as follows:

1.30 Provider.

“Provider” means Community Behavioral Health, also referred to as CBH, as set forth in the heading of the Agreement.

Section 1.31, “Provider Agreement,” is hereby deleted in its entirety and a new Section 1.31 is added to read as follows:

1.31 Provider Agreement.

Whenever the term “Provider Agreement” is used in the General Provisions and these Revisions to the General Provisions, it shall mean the Agreement. The terms “Agreement” and “Contract” may be used interchangeably to refer to the “Contract Documents” as that term is defined in the General Provisions.

Section 1.35, “Subcontract,” is hereby deleted in its entirety and a new Section 1.35 is hereby added to read as follows:

1.35 Subcontract.

“Subcontract” means any contract (except utilities and salaried employees) between CBH and an individual, firm, governmental entity or nonprofit organization to perform part or all of CBH’s obligations hereunder. For purposes of construing Section 14.9 (Terms and Conditions Relating to Protected Health Information) of these General Provisions, the definition of “Subcontract” shall exclude contracts between CBH and Healthcare Providers engaged by CBH solely to provide Treatment to Members. The definition of “Subcontract” shall include contracts between CBH and Healthcare Providers for purposes of construing all other terms of these General Provisions except Section 14.9. For purposes of this Section 1.35, “Treatment” shall have the same meaning as such term is defined in 45 C.F.R. §164.501 (“the provision, coordination, or management of health care and related services by one or more health care providers, including the coordination or management of health care by a health care provider with a third party; consultation between health care providers relating to a patient; or the referral of a patient for health care from one health care provider to another”).

Section 1.36, “Subcontractor,” is hereby deleted in its entirety and a new Section 1.36 is hereby added to read as follows:

1.36 Subcontractor.

“Subcontractor” means any individual, firm, governmental entity or nonprofit organization that enters into a Subcontract.

Section 1.41, “Agent,” is hereby added and shall read as follows:

1.41. Agent.

“Agent” shall mean an individual who is authorized to act on behalf of CBH through employment or by contract.

A new Section 1.42, “Healthcare Provider,” is hereby added to read as follows:

1.42 Healthcare Provider.

“Healthcare Provider” means an individual, firm, corporation, or other entity which provides behavioral health or medical services or supplies to Medical Assistance (“MA”) recipients. The term “Healthcare Provider” herein shall have the same meaning as the term “Provider” under the Commonwealth Contract.

II. Article III: CBH’s Duties and Covenants

Section 3.9, “Subcontracts,” is hereby modified to add new Sections 3.9(f), (g), (h) and (i) thereunder to read as follows:

(f) CBH shall not enter into a Subcontract with a Managed Care Organization to undertake Services hereunder without the prior approval of the Commonwealth. CBH shall not enter into a Subcontract with a Managed Care Organization or any entity, licensed or unlicensed, through which risk is transferred pursuant to this Contract without the prior approval of PA DHS.

(g) If CBH enters into a Subcontract with a prepaid health plan, CBH must disclose to the Commonwealth and, upon request, to the Department of Health and Human Services, the information on its Healthcare Provider incentive plans listed in 42 C.F.R. § 417.479 (h)(1) at the times indicated at 42 C.F.R § 434.70(e), in order to determine whether the incentive plan(s) meets the requirements of 42 C.F.R. § 417.479(d) - (g) and, as applicable, (i), when there exists compensation arrangements under which payment for designated health services furnished to an individual on the basis of a physician referral would otherwise be denied under Section 1903(s) of the Social Security Act.

(h) CBH shall require its Subcontractors to comply with the terms and conditions of this Contract and the Commonwealth Contract.

(i) CBH is a “City-Related Agency” under Philadelphia Code Chapter 17- 1400. As such, it is required to comply with the requirements of Code Chapter 17-1400 in its award of Subcontracts as though such Subcontracts were directly subject to Chapter 17-1400. Further, with respect to CBH contracts with non-profit entities, exceptions to public posting and related requirements found at Code Chapter 17-1402(1)(a) and (1)(c) shall apply to CBH as if CBH were directly subject to such exceptions. CBH shall not enter into any Subcontract for the performance of the Program Services and Additional Services hereunder without approval of the Director, subject to CBH’s compliance with Applicable Law and credentialing requirements and the administration of the Subcontracts in a form and manner approved by OBHIDS. In compliance with Chapter 17-1400 of the Philadelphia Code, CBH shall require any Subcontractor that is awarded a Subcontract to update the disclosures required by Section 17-1402(1)(b) within fourteen (14) days after the Subcontract is executed.

III. Article IV: Provider's Representations and Covenants

Section 4.1 is hereby deleted in its entirety and a new Section 4.1 is added to read as follows:

4.1 CBH's Representations and Covenants.

CBH makes the following representations, warranties and covenants upon which the City has relied as a material consideration for the execution and delivery by the City of this Contract. The representations, warranties and covenants stated below shall continue throughout the Term of this Contract. In the event said representations, warranties and covenants are or become untrue or inaccurate, CBH shall promptly give notice thereof to the City, specifying the manner in which said representation, warranty or covenant is untrue or inaccurate:

... Sections 4.1 (a) through (k) continue as they appear in the General Provisions.

IV. Article V: Compensation

Section 5.2, "Unavailability of Funds," is hereby deleted and a new Section 5.2 is added to read as follows:

5.2 Unavailability of Funds/Termination of Commonwealth Contract.

A. In the event (i) the Commonwealth Contract is terminated by either the City or the Commonwealth or (ii) the Commonwealth Contract is not renewed in accordance with the terms thereof, the City may exercise one of the following options, in the sole discretion of the City:

- (1) Terminate the Contract effective upon a date specified in a Termination Notice; or
- (2) Continue the Contract by reducing, through written notice to CBH, the amount of the Contract and Services, consistent with the nature, amount, and circumstances of loss of funding.

Any termination or reduction of the Contract under this Section shall not affect any obligations or liabilities of either Party accruing prior to such termination or reduction, including retention of records and verification of overpayments or underpayments. There shall be no liability or penalty to the City as a result of such termination or reduction of the Contract.

B. In the event this Contract is terminated pursuant to this Section 5.2, CBH shall notify all Members in a form and manner approved by the Commonwealth of such termination at least forty-five (45) days in advance of the effective date of termination. CBH shall be responsible for coordinating the continuation of care for all Members who are in active treatment in accordance with the Commonwealth Contract.

Section 5.5, “Working Capital Contributions,” is hereby added to read as follows:

5.5 Working Capital Contributions.

The City may make Working Capital Contributions to CBH in such amounts as determined by the City’s Finance Director or his/her designee, in conjunction with the Director or the Director’s designee. Initial working capital shall not exceed the amount of estimated operating expenditures of CBH for one month unless it is specifically requested by the Director or the Director’s designee and approved by the City’s Finance Director or his/her designee. The Finance Director, in cooperation with the Director, shall review working capital from time to time to ensure that it allows for efficient operation of the managed care program in accordance with the terms of the Commonwealth Contract and remains consistent with good financial practice.

V. Article VIII: Independent Contractor; Indemnification; Litigation Cooperation

Section 8.2, “Indemnification,” is hereby deleted in its entirety and a new Section 8.2 is hereby added to read as follows:

8.2 Indemnification.

CBH shall indemnify, defend and hold harmless the City, its officers, employees and Agents, from and against any and all losses, costs (including, but not limited to, litigation and settlement costs and counsel fees), claims, suits, actions, damages, liability and expenses, occasioned wholly or in part by CBH’s act or omission or the act or omission of CBH’s Agents, Subcontractors, employees or servants in connection with the Contract, including, but not limited to, those in connection with loss of life, bodily injury, personal injury, damage to property, contamination or adverse effects on the environment, failure to pay such Subcontractors and suppliers, any breach of the Contract, loss of data, data security breach, and any infringement or violation of any proprietary right (including, but not limited to, patent, copyright, trademark, service mark and trade secret).

In addition to the foregoing, CBH shall indemnify, defend and hold harmless the City, its officers, employees and Agents and PA DHS from and against any and all liabilities, losses, settlement, claims, demands and expenses of any kind (including, but not limited to, attorneys’ fees)(“Claims”), which may result or arise out of any dispute with Members, Agents or clients with respect to any defamation, malpractice, fraud, negligence or intentional misconduct caused by CBH or its Agents, employees, Subcontractors or representatives in the performance or omission of any act or responsibility assumed by CBH pursuant to the Contract Documents, or other Claim which the City and/or CBH may become obligated to pay under the Commonwealth Contract. Without limiting the generality of the foregoing, CBH shall indemnify, defend and hold harmless the City, its officers, employees and Agents and PA DHS from and against any

and all Claims arising from the rendering or failure to render professional services, including professional malpractice and general professional medical services.

CBH shall include the provisions of this Section 8.2, with appropriate adjustment for the identity of the parties to cover Claims against both CBH and the City, in its agreements with Subcontractors. CBH's obligation to indemnify, defend and hold harmless the City, its officers, employees and Agents under this Section 8.2 shall survive the termination or expiration of the Contract.

VI. Article IX: Insurance

Section 9.1, "Insurance," is hereby deleted in its entirety and a new Section 9.1, is added to read as follows:

9.1 Insurance.

A. CBH.

Unless otherwise approved by the City's Risk Manager in writing, CBH shall, at its sole cost and expense, procure and maintain in full force and effect, covering the performance of the Services, the types and minimum limits of insurance specified below and in accordance with the Commonwealth Contract. All insurance shall be procured from reputable insurers admitted to do business on a direct basis in the Commonwealth of Pennsylvania or otherwise acceptable to City. Except as specifically permitted hereunder, all insurance shall be written on an "occurrence" basis and not a "claims-made" basis. In no event shall work be performed until the required evidence of insurance has been furnished. The insurance shall provide for at least thirty (30) days prior written notice to be given to the City in the event coverage is materially changed, canceled, or non-renewed. The City, its officers, employees, and Agents, are to be named as additional insureds on the General Liability Insurance policy. An endorsement is required stating that the coverage afforded the City and its officers, employees, and Agents, as additional insureds, will be primary to any other coverage available to them. CBH shall not be required to provide insurance covering the performance of any services by, or on behalf of, the Philadelphia Mental Health Care Corporation ("PMHCC").

(1) Workers' Compensation and Employers' Liability.

- (a) Workers' Compensation: Statutory Limits.
- (b) Employers' Liability: \$100,000 Each Accident - Bodily Injury by Accident; \$100,000 Each Employee - Bodily Injury by Disease; and \$500,000 Policy Limit - Bodily Injury by Disease.
- (c) Other States coverage and Pennsylvania Endorsement.

(2) **General Liability Insurance.**

- (a) Limit of Liability: \$2,000,000 per occurrence combined single limit for bodily injury (including death) and property damage liability; \$1,000,000 advertising injury; \$2,000,000 general aggregate and \$2,000,000 aggregate for products and completed operations. Provided, however, that City may require higher limits of liability if, in the City's sole discretion, the potential risk so warrants.
- (b) Coverage: Premises operations; blanket contractual liability, personal injury liability (employee exclusion deleted); products and completed operations; independent contractors, employees and volunteers as additional insureds; cross liability; and broad form property damage (including completed operations).
- (c) General liability insurance may be written on a claims-made basis provided that coverage for occurrences happening during the performance of the Services required under the Contract shall be maintained in full force and effect under the policy or "tail" coverage for a period of at least two (2) years after completion of the Services.

(3) **Automobile Liability.**

- (a) Limit of Liability: \$1,000,000 per occurrence combined single limit for bodily injury (including death) and property damage liability.
- (b) Coverage: Owned, non-owned, and hired vehicles.

- (4) Umbrella Liability Insurance at limits totaling \$5,000,000 per occurrence when combined with insurance required under (1), (2) and (3) above. Umbrella liability insurance may be written on a claims-made basis provided that coverage for occurrences happening during the performance of the Services required under the Contract shall be maintained in full force and effect under the policy or "tail" coverage for a period of at least two (2) years after completion of the Services.

(5) **Managed Care Organization Errors and Omissions Insurance.**

- (a) Minimum Limit of Liability: \$5,000,000 each occurrence; \$5,000,000 annual aggregate.
- (b) Coverage: To include negligent provider selection, vicarious liability, utilization review, network development,

treatment protocols and miscellaneous errors and omissions.

- (c) Errors and Omissions insurance may be written on a claims-made basis provided that coverages for occurrences happening during the performance of Services required under contracts shall be maintained in full force and effect under the policy or "tail" coverage for a period of at least two (2) years after completion of the Services.

(6) **Directors and Officers' Liability Insurance.**

- (a) Limit of Liability: \$5,000,000 with a deductible not to exceed \$35,000.
- (b) Coverage: Wrongful acts of the directors and officers of CBH.
- (c) Directors' and Officers' Liability Insurance may be written on a claims-made basis provided that coverage for occurrences happening during the performance of the Services required under the Contract shall be maintained in full force and effect under the policy or "tail" coverage for a period of at least two (2) years after completion of the Services.

(7) **Cyber Liability Insurance.**

- (a) Limit of Liability: \$1,000,000 Per Claim/Aggregate.
- (b) Coverage: Information security and privacy liability that arise from the Agreement, including but not limited to: data while in transit or in the possession of any third parties hired by the Provider (such as data back-up services) to electronic system; loss of, damage to or destruction of electronic data breaches arising from the unauthorized access or exceeded access; or malicious code, viruses, worms or malware; electronic business income and extra expense as a result of the inability to access website due to a cyber attack or unauthorized access; Privacy Notification Extra Expense Coverage (including Credit Monitoring Expense).
- (c) The City of Philadelphia, its officers, employees and agents shall be named as additional insureds.
- (d) Insurance may be written on a claims-made basis provided that any retroactive date applicable to coverage under the

policy precedes the effective date of this Agreement; and that continuous coverage will be maintained or an Extended Discovery Period will be purchased for a period of at least two (2) years after expiration or termination of this Agreement.

B. Healthcare Providers.

Except as set forth below and as further excepted in this Section, CBH shall include the requirements of this Article IX, with appropriate adjustments for the identity of the parties, in its agreements with Healthcare Providers, except that the insurance required under Sections 9.1.A.(4) (Umbrella Liability Insurance), 9.1.A.(5) (Managed Care Organization Errors and Omissions Insurance) and 9.1.A.(6) (Directors' and Officers' Liability Insurance) shall not apply to CBH's Healthcare Providers.

- (1) **Professional Liability Coverage.** CBH shall require its Healthcare Providers to secure the following professional liability coverages and limits or as otherwise specified by CBH:
 - (a) Health Care Providers subject to Pennsylvania MCARE Act, as amended:
 - (i) Hospital: \$1,000,000 each occurrence; \$4,000,000 per annual aggregate.
 - (ii) Other than hospitals: \$1,000,000 each occurrence; \$3,000,000 per annual aggregate.
 - (b) All Healthcare Providers not subject to Pennsylvania MCARE Act of 2002, as amended: \$1,000,000 each occurrence; \$3,000,000 annual aggregate.
 - (c) Professional Liability Insurance may be written on a claims- made basis provided that coverage for occurrences happening during the performance of the Services required under the Contract shall be maintained in full force and effect under the policy or "tail" coverage for a period of at least two (2) years after completion of the Services.
- (2) **General Liability Insurance.** In addition to general liability insurance requirements set forth above, CBH Healthcare Providers shall have the option of obtaining the required general liability coverage hereunder on a "claims-made" basis provided that, if such coverage is so provided, said Healthcare Provider shall secure

an endorsement providing, at a minimum, for a two (2) year “tail.” Notwithstanding the minimum general liability insurance coverage requirements stated in Section 9.1 A. (2) as that clause applies to CBH’s Healthcare Providers, where CBH intends to enter into a contract for a Service that is the same as a service for which OBHIDS also contracts, CBH may, without seeking the approval of the City Risk Manager, require from its Healthcare Providers the same minimum amounts of general liability insurance coverage as are required by the OBHIDS in its contracts for the same service. Provided that in no event shall the general insurance liability limits be less than \$1,000,000 per occurrence, \$2,000,000 aggregate.

VII. Article XI: Events of Default

Section 11.2, “Notice and Cure,” is hereby deleted in its entirety and a new Section 11.2 is added to read as follows:

11.2 Notice and Cure.

The City agrees that the City will not exercise any right or remedy provided for in Section 12.1 (The City's Remedies) because of any Event of Default unless the City shall have first given written notice of the Event of Default to CBH, and CBH, within a period of fifteen (15) days thereafter, or such additional cure period as the City may authorize, shall have failed to correct the Event of Default; provided, however, that no such notice from the City shall be required nor shall the City permit any period for cure if:

... the remainder of Sections 11.2(a) through (h) continue as they appear in the General Provisions.

VIII. Article XIV: Terms and Conditions Relating to Certain Applicable Laws

Section 14.9, “Protected Health Information,” is hereby deleted in its entirety and a new Section 14.9 is added to read as follows:

14.9 In performing the Services and providing the Materials pursuant to this Contract, Provider is a “Business Associate” of the City, as defined in 45 CFR §160.103, and shall comply with the City’s Terms and Conditions Relating to Protected Health Information (“City PHI Terms”) posted on the City’s website (at <https://secure.phila.gov/eContract/> under the “About” link), as amended from time to time. The City PHI Terms are hereby incorporated in this Section 14.10 as if fully set forth herein. (A printed version of the City PHI Terms, in the City’s sole discretion, also may be attached to this Contract.)

IX. Article XV: Miscellaneous

Section 15.10, “Interpretation; Order of Precedence,” is hereby deleted and a new Section 15.10 is added to read as follows:

15.10 Interpretation; Order of Precedence.

In the event of a conflict or inconsistency between the terms of these General Provisions and the terms of this Agreement, the terms of these General Provisions shall control, except to the extent (if any) that this Agreement contains an express change, by specific reference, to the General Provisions. Notwithstanding anything herein to the contrary, in the event of a conflict or inconsistency between the terms of the Contract Documents (excluding the Commonwealth Contract) and the terms of the Commonwealth Contract, the Commonwealth Contract shall control.

Instructions for Completing the Primary Contractor MCO Assessment Report Form for Behavioral Health Medicaid Managed Care Organizations

This report must be completed by any Primary Contractor who has members enrolled in a Medicaid managed care plan for the HealthChoices Behavioral Health Program, for the purpose of the MCO Assessment for any year during which the assessment is imposed.

For purposes of this report, members shall mean an individual who is enrolled to receive health care services from a Behavioral Health managed care plan during each month of the reporting period for any period of time. Monthly unduplicated members are subject to the MCO Assessment. Payments will be assessed for members enrolled during the quarter for any time period for which the Assessment applies.

Certification Form:

This form must be completed and submitted with each quarterly report.

Specific Instructions:

PART 1: CURRENT QUARTER

Section 1 – Unduplicated Members per DHS (to be completed by DHS)

DHS will obtain membership information from its information systems for all members enrolled during the quarter being assessed for any time period within the effective period of the assessment (beginning July 1, 2016). The member amounts that DHS obtains will be provided to the Primary Contractor or its designee approximately 20 days prior to the report and payment due date.

Section 2 – Unduplicated Members per the Primary Contractor (to be completed by the Primary Contractor)

DHS anticipates that the amounts in this section should be the same as the amounts provided by DHS in Section 1. However, if the Primary Contractor believes that the amounts provided by DHS are in error, the Primary Contractor should use this section to report the amounts that they have in their records. Otherwise, the amounts in this section will be the same as the amounts in Section 1.

Section 3 – Difference (to be completed by the Primary Contractor)

If Section 2 reflects differences from Section 1, this section should be used to report the amount of those differences.

Members to Be Assessed – Report the total amount of unduplicated members reported in Section 2.

Assessment Rate for Current Year– Effective July 1, 2016, Act 92 of 2015 imposes an assessment fee for each unduplicated member for each month the member is enrolled for any period of time with the managed care organization. This rate may be adjusted and notice of the adjustment will be published in the Pennsylvania Bulletin.

Assessment Rate for Prior Year – In the event the rate changes between reporting years, include the prior period assessment rate on this line and apply it to any retroactively enrolled members.

Assessment Amount Due for the Current Quarter – For members enrolled during the current reporting quarter, calculate using the current rate.

Correction of Prior Period Assessment – If, for any reason, a previous period's assessment amount has been determined to be incorrect, any balance due or credit due should be reflected on this line. An explanation must be

provided for any correction reported.

Restatement of Prior Quarter to actual – This amount is calculated in Part 2 as the difference between the estimated amount and the actual amount due for a prior quarter.

Total Assessment Being Remitted – Report the total of the Assessment Amount Due for Current period plus any Correction of Prior Period Assessment amount.

PART 2: RESTATEMENT OF PRIOR QUARTER

For quarters where an estimated amount was paid in the previous quarter, this section should be completed to restate the estimated membership to actual enrollment amounts. This part will compare what was paid based on the estimated member count to the actual amount due based on the actual member count. The total on the “Adjustment due to Restatement” line should be added to Part 1 and paid with the current quarter assessment.

Quarterly Assessment Report Form and Payment

The Primary Contractor shall email completed MCO Assessment Report forms, along with the Certification, to RA-PWMCOASSMNTRPT@pa.gov, as specified in the payment schedule below.

<u>Assessment Quarter</u>	Southwest, Southeast, Lehigh Capital and Northeast Zones	State Option And County Option Zones
Quarter 1: July 1 – September 30	<u>Due Date</u> October 31	<u>Due Date</u> November 30
Quarter 2: October 1 – December 31	January 31	February 28
Quarter 3: January 1 – March 31	April 30	May 31
Quarter 4: April 1 – June 30	June 10	June 10

The Primary Contractor shall remit the assessment electronically. If the due date falls on a banking holiday, the payment is due the next banking business day after the due date. Payments due must be transmitted by ACH transfer to the Commonwealth of PA bank account by the due dates noted above to: Wells Fargo Bank located at 123 South Broad Street, Philadelphia PA 19109 (ABA#: 121000248 and Account#: 2100019662887). The account name is Commonwealth of PA Checking account. Please make sure to include your entity’s name in addition to “MCO assessment” as part of the ACH transaction.

These instructions and the report format are subject to change periodically based on current legislation and the needs of DHS.

Remedies, Liens and Appeal Rights

Remedies, Liens and Appeal Rights provisions are specified in Sections 807-I, 808-I, and 809-I of the Act.



THE CITY OF PHILADELPHIA

PROFESSIONAL SERVICES CONTRACT

GENERAL PROVISIONS

FOR

GENERAL CONSULTANT SERVICES

The City of Philadelphia
Professional Services Contract
General Consultant
General Provisions

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GENERAL PROVISIONS

ARTICLE I: DEFINITIONS

- 1.1 **ADA** has the meaning set forth in Section 14.5 (Americans with Disabilities Act) below.
- 1.2 **Additional Services and Materials** has the meaning set forth in Section 3.3 (Additional Services and Materials; Change in Scope of Services) below.
- 1.3 **Additional Term** has the meaning set forth in Section 2.2 (Additional Terms) below.
- 1.4 **Appropriated Fiscal Year** has the meaning set forth in Section 5.3 (Crossing Fiscal Years) below.
- 1.5 **Amendment** means a written modification or change to any Contract Document signed by both Parties and, as to the City, approved by the Law Department.
- 1.6 **Applicable Law** means all applicable present and future federal, state or local laws, ordinances, executive orders, rules, regulations and all court orders, injunctions, decrees and other official interpretations thereof of any federal, state or local court, administrative agency or governmental body, including the City, the Commonwealth and the United States of America. Applicable Law includes, without limitation, the Charter (as defined below), the Code (as defined below), and the specific laws set forth in Article XIV (Additional Representations and Covenants of Provider Relating to Certain Applicable Laws) below hereof, each as amended from time to time.
- 1.7 **Applicant** means a Person who has filed an application to be awarded a Non-Competitively Bid Contract.
- 1.8 **Certification of Restrictions on Lobbying**, if required in the Provider Agreement, means a certificate in the form attached to the Provider Agreement.
- 1.9 **Charter** means the Philadelphia Home Rule Charter, as it may be amended from time to time.
- 1.10 **City** means The City of Philadelphia, a corporation and body politic existing under the laws of the Commonwealth of Pennsylvania, and includes its various executive and administrative departments, agencies, boards and commissions, including the Department and City Council. The City is a City of the First Class under the laws of the Commonwealth of Pennsylvania.
- 1.11 **City Council** means the Council of The City of Philadelphia, as described in Article II of the Charter. City Council is the legislature of the City.
- 1.12 **City Data** means any and all records, documents, and data furnished by the City to Provider in relation to the work required under the Contract; and all deliverables, work product(s), items of work, and other Materials created by Provider as part of, or to perform work required under, the Contract. "City Data" does not, however, include any information that was known to Provider, prior to the commencement of its performance of the Contract, free of any

obligation to keep it confidential; is proprietary to Provider; was generally known to the public at the time of receipt by Provider, or becomes generally known to the public through no act or omission of Provider; or was independently developed by Provider, unrelated to work performed for the City, and without knowledge or use of any information obtained from the City.

1.13 **Code** means The Philadelphia Code of Ordinances, as it may be amended from time to time.

1.14 **Consultant** means any Person used by Provider to assist in obtaining a Non-Competitively Bid Contract through direct or indirect communication by such Person with any City Agency or any City officer or employee, if the communication is undertaken by such Person in exchange for, or with the understanding of receiving payment from Provider or any other Person; provided, however, that “Consultant” shall not include a full-time employee of Provider.

1.15 **Contract** means the agreement of the Parties evidenced by the Contract Documents. References to this “Contract” shall mean this Contract as the same may be in effect at the time such reference becomes operative.

1.16 **Contract Cost Principles** means the “City of Philadelphia Contract Cost Principles and Guidelines,” as amended from time to time. This document specifies the Department’s guidelines for the qualitative and quantitative evaluation of contract services and materials, the determination of allowable costs, and the standards to determine the allowability of individual cost items, (copies are available from the Department upon request).

1.17 **Contract Documents** means these General Provisions, the Provider Agreement, and any and all other documents or exhibits incorporated by reference in either the General Provisions or the Provider Agreement, and any and all Amendments to any of these documents.

1.18 **Contributions** has the meaning set forth in the Pennsylvania Election Code, 25 P.S. § 3241.

1.19 **Department** means the department, board, commission or agency of the City of Philadelphia defined as the Department in the heading of the Provider Agreement.

1.20 **Event of Default** means an event defined and identified in or pursuant to Section 11.1 below.

1.21 **Event of Insolvency** means (a) the filing of a voluntary petition by Provider under the Federal Bankruptcy Code or any similar state or federal law; or (b) the filing of an involuntary petition against Provider under the Federal Bankruptcy Code or any similar state or federal law which remains undismissed for a period of forty-five (45) days; or (c) Provider’s making of an assignment for the benefit of creditors; or (d) the appointment of a receiver for Provider or for the property or assets of Provider, if such appointment is not vacated within forty-five (45) days thereafter; or (e) any other proceeding under any bankruptcy or insolvency law or liquidation law, voluntary or otherwise; or (f) Provider proves unable to pay its obligations as they mature; or (g) Provider is insolvent as otherwise defined under any Applicable Law.

1.22 **Fiscal Year** means the fiscal year of the City, which commences on July 1 of each calendar year and expires on June 30 of the next succeeding calendar year.

1.23 **General Provisions** means this document, entitled “The City of Philadelphia Professional Services Contract General Provisions for General Consultant Services,” which contains the standard provisions required by the City in its general consultant professional services contracts, and all exhibits or documents identified or incorporated in these General Provisions, as it or they may be amended from time to time.

1.24 **Initial Term** has the meaning set forth in Section 2.1 below.

1.25 **Interpretation; Number, Gender.** The words “herein,” “hereof,” “hereunder” and other words of similar import refer to this Contract as a whole, including all of the Contract Documents, and not to any particular article, section, subsection or clause contained in the Contract Documents. Whenever the context requires, words used in the singular shall be construed to include the plural and vice versa, and pronouns of any gender shall be deemed to include the masculine, feminine and neuter genders.

1.26 **Materials** means any and all reports, records, documents, documentation, information, supplies, plans, original drawings, specifications, computations, sketches, renderings, arrangements, videos, pamphlets, advertisements, statistics, and other data, computer tapes, computer software, and other tangible work product or materials prepared or developed by Provider in connection with the Services, or for Provider by a Subcontractor in connection with the Services, and supplied to the City by Provider or its Subcontractor pursuant to this Contract.

1.27 **Non-Competitively Bid Contract** means a contract for the purchase of goods or services to which the City or a City Agency is a party that is not subject to the lowest responsible bidder requirements of Section 8-200 of the Charter, including, but not limited to, a Professional Services Contract, and any renewal of such a contract (other than a renewal term pursuant to an option to renew contained in an executed contract).

1.28 **Party** means either the City or Provider; “Parties” means the City and Provider.

1.29 **Person** means any individual, sole proprietorship, association, company, firm, partnership, limited partnership, joint venture, corporation, limited liability company or other form of entity or association recognized at law.

1.30 **Provider** means the Person providing Services and Materials to the City as defined in the heading of the Provider Agreement.

1.31 **Provider Agreement** means the instrument by that name, part of the Contract Documents, which sets forth the terms, covenants and conditions specific to Provider’s engagement.

1.32 **Responsible Official** means the director, commissioner or other head of the Department.

1.33 **Scope of Services** means the document(s) attached as an exhibit (or as exhibits) to the Provider Agreement, setting forth the Services to be rendered and Materials to be provided under this Contract, the time frames within which the Services are to be rendered and the Materials are to be provided, and other requirements Provider must satisfy in rendering the Services and providing the Materials.

1.34 **Services** means the work to be performed under this Contract as specified in the Provider Agreement.

1.35 **Subcontract** means a contract made between Provider and a Subcontractor providing for the completion of some part or parts of the Services or Materials by a Subcontractor.

1.36 **Subcontractor** means a Person performing under a contract with Provider some part of the Services or Materials.

1.37 **Suspension Notice** means notice of full or partial suspension of the Contract served by the City on Provider pursuant to Section 13.1 (Termination or Suspension for Any Reason) below.

1.38 **Suspension Period** has the meaning set forth in Section 13.4 (Suspension) below.

1.39 **Term** means the Initial Term and any Additional Term.

1.40 **Termination Notice** means notice of full or partial termination of the Contract served by the City on Provider pursuant to Section 13.1 (Termination or Suspension for Any Reason) below.

ARTICLE II: TERM

2.1 **Initial Term.** The initial term ("Initial Term") of this Contract is set forth in Section 2.1 of the Provider Agreement.

2.2 **Additional Terms.** The City may, at its sole option, amend this Contract to add on an annual basis up to three (3) successive one (1) year terms (each an "Additional Term"), unless any shorter term (or terms) is specified in the Provider Agreement. Unless otherwise stated in the Provider Agreement, the same terms and conditions applicable in the Initial Term shall be applicable in each Additional Term. The City shall give Provider thirty (30) days written notice of its intent to amend this Contract to add an Additional Term prior to each annual Additional Term. Absent authorization of the Contract by ordinance of City Council, each Additional Term shall be subject to the availability of funds appropriated by City Council for such Additional Term. There shall be no liability or penalty to the City for electing not to amend the term of this Contract to add an Additional Term. Each Additional Term of this Contract shall be deemed to constitute a separate contract.

ARTICLE III: PROVIDER'S DUTIES AND COVENANTS

3.1 **Performance Requirements.** Provider shall provide all Services and Materials in accordance with this Contract and applicable professional standards. All payments to Provider are contingent upon satisfactory performance of the terms and conditions set forth in this Contract, as determined by the Responsible Official in his or her sole discretion.

3.2 **Compliance with Applicable Law.** Provider shall comply with the requirements of all Applicable Law with respect to Provider's activities, Services, Materials and facilities used in connection with any aspect of this Contract. Provider shall inform the Responsible Official, in writing, of any notices of violations of any Applicable Law within forty-eight (48) hours of Provider's receipt thereof, and shall correct any violations within the time prescribed by law, or immediately in the case of any emergency.

3.3 **Additional Services and Materials; Change in Scope of Services.** At any time during the term of this Contract, the City may, by written change order or request delivered by notice to Provider, make changes to the Scope of Services under this Contract, and the Parties will, if appropriate, negotiate an adjustment in compensation, subject to the availability of funds

appropriated by City Council, if necessary. Provider shall not commence to perform or provide, and the City shall not pay for, any services or materials not included in this Contract (the “Additional Services and Materials”) unless and until Provider receives written pre-authorization (by change order or other request) from the Responsible Official that specifies the Additional Services and Materials to be provided. In no event shall the rates charged by Provider for said Additional Services and Materials exceed the lowest of (a) Provider’s then current standard rates for such Services or Materials, (b) such rates as the City and Provider may have negotiated for this Contract, as set forth in the Contract Documents, or (c) the lowest rate or rates that Provider may then be charging to other purchasers of like Services and Materials. If Provider requests changes to the Scope of Services, Provider must demonstrate to the satisfaction of the City, in its sole discretion, that the changes are necessary and not due to the acts or omissions of Provider. The City shall pay Provider additional compensation above the limit set forth in the Provider Agreement only if and when an Amendment to this Contract is duly executed by the Parties. The City shall have no responsibility or liability whatsoever for any fee, or for costs incurred by Provider for any services, materials or other costs or expenses, other than the Services and Materials and any duly approved Additional Services and Materials.

3.4 **Responsibility.**

(a) Notwithstanding the acceptance and approval by the City of any Services performed or Materials provided, Provider shall continue to be responsible for the professional quality, technical accuracy and the coordination of all Materials and Services provided by Provider under this Contract. Provider shall, without additional compensation, correct any errors, defects, deficiencies or omissions in Provider’s Materials and Services.

(b) The City’s review, approval or acceptance of, or payment for, any of the Materials and Services required under this Contract shall not constitute any representation, warranty or guaranty by the City as to the substance or quality of the matter reviewed, approved or accepted and shall not be construed to operate as a waiver or estoppel of any of the City’s rights or privileges under this Contract or of any cause of action arising out of the performance of this Contract. No Person shall have any right to rely in any way on the City’s review, approval or acceptance of Provider’s Services or Materials. Provider shall be and remain liable in accordance with this Contract and Applicable Law for all damages to the City caused by Provider or the Services or Materials provided by Provider. Review, approval or acceptance by the City or the Responsible Official under this Contract shall not constitute approval otherwise required by any City department, board, commission, or other regulatory agency in the exercise of such department’s, board’s, commission’s or agency’s independent regulatory authority or police powers under Applicable Law.

(c) Without limiting Provider’s responsibility as set forth above, if any act or omission of Provider or error or deficiency or omission in the Services or Materials provided by Provider requires any change in the Scope of Services or any portion thereof, Provider shall promptly complete such change at no additional cost to the City.

3.5 **Relationship with the City.** Neither Provider’s personnel nor any Subcontractor personnel shall be employees of the City. Provider shall notify the City of any Provider personnel or any Subcontractor personnel who have any employment or other contractual relationship or agency relationship with the City.

3.6 **Time Frame for Submissions.** Provider shall perform any and all Services and shall submit any and all Materials required by this Contract within the time frames set forth in the Scope of Services attached as an exhibit to the Provider Agreement or as mutually agreed upon in writing by the City and Provider. Absent any such written time frames, Provider shall perform its obligations under this Contract diligently and promptly and before the scheduled expiration of the Term.

3.7 **Prompt Payment by Provider.** Provider agrees to pay promptly all Persons which have furnished labor or supplies in connection with the Services, the Materials or this Contract, including, without limitation, Subcontractors and suppliers. Provider will pay Subcontractors within the time period required under Section 14.3 (Executive Order 03-12: Minority, Woman and Disabled Business Enterprise Participation) of these General Provisions to the extent it applies. Provider shall provide, upon request of the City, reasonable evidence that these Persons have been fully and timely paid.

3.8 **Sales and Use Tax.** The City is not subject to federal, state or local sales or use taxes or federal excise tax. Provider hereby assigns to the City all of its right, title and interest in any sales or use tax that may be refunded as a result of any materials, including any Materials, purchased or services, including any Services, rendered in connection with this Contract; and unless directed otherwise by the City, Provider shall not file a claim for any sales or use tax refund subject to this assignment. Provider authorizes the City, in its own name or the name of Provider, to file a claim for a refund of any sales or use tax subject to this assignment.

3.9 **Subcontracts.**

(a) Provider shall not delegate or enter into any Subcontract for the performance of any of its obligations under this Contract, in whole or in part, without on each occasion first obtaining the written consent of the Responsible Official.

(b) Provider shall submit to the Responsible Official copies of all proposed Subcontract(s) to be entered into by Provider, along with Provider's written request for the City's consent. All such Subcontracts must specify, effective on the date of the Subcontract, that:

(1) Work performed by Subcontractor shall be in conformity with the terms of this Contract.

(2) Nothing contained in such Subcontract shall be construed to impair the rights of the City under this Contract.

(3) The City's consent to or approval of any Subcontract shall not create any obligation of the City to any Subcontractor.

(4) Nothing contained in such Subcontract, or under this Contract, shall create any obligation of the City to any Subcontractor.

(5) The City is expressly designated a third-party beneficiary of the Subcontract.

(6) Upon request by the City (at the City's sole option) and upon receipt of written notice from the City stating that this Contract between the City and Provider has been terminated, Subcontractor will continue to perform its obligations under the Subcontract for the benefit of the City in conformity with the terms and conditions of this Contract, provided the City pays Subcontractor for the Services rendered and Materials provided by Subcontractor from and after the date of the termination of this Contract between the City and Provider at the same

rate or in the same amount as set forth in the Subcontract for those Services and Materials provided by Subcontractor after such date of termination.

(7) Subcontractor shall be bound by the same terms, covenants and conditions as Provider under this Contract, including, without limitation, confidentiality, maintenance and preservation of records, and audit by government representatives, under this Contract.

(8) Subcontractor presently, fully and unconditionally assigns, transfers and sets over to the City all of Subcontractor's right, title and interest in and to any sales and use tax which may be refunded as a result of a claim for refund for any materials purchased in connection with the Subcontract or this Contract, and otherwise has all obligations to the City that Provider has pursuant to Section 3.8 (Sales and Use Tax) above.

(9) Subcontractor shall not be indebted to the City, and shall have all obligations to the City that Provider has pursuant to Subsection 4.1(g) ("No Indebtedness to the City") below.

(10) Subcontractor shall comply with Chapter 17-400 (Payment or Reimbursement of Employee Expenses Associated with the Use of Exclusionary Private Organizations) of the Code, and shall have all obligations to the City and to Provider that Provider has pursuant to Section 14.2 (Chapter 17-400 of the Philadelphia Code: Exclusionary Private Organizations) below.

(11) Subcontractor shall comply with Section 17-104 (Prerequisites to the Execution of City Contracts) of the Code, and shall have all obligations to the City that Provider has pursuant to Sections 14.6 (Northern Ireland) and 14.8 (Business, Corporate and Slavery Era Insurance Disclosure) below.

(12) Subcontractor shall comply with Chapter 17-1300 (Philadelphia 21st Century Minimum Wage and Benefits Standard) of the Code to the extent it is applicable to a Subcontractor that is also a Service Contractor (as defined in Chapter 17-1300) providing Services under the Subcontract, and to subcontractors at any tier that are also Service Contractors providing Services under this Contract. Provider shall notify its Subcontractors of these provisions; shall expressly incorporate this paragraph and Section 14.10 (Chapter 17-1300 of The Philadelphia Code: Philadelphia 21st Century Minimum Wage and Benefits Standard) below, with appropriate adjustments for the identity of the parties, in each Subcontract; and shall require its Subcontractors to include such terms in any lower-tier subcontract that is, or may become, covered by Chapter 17-1300.

(13) Subcontractor is and shall remain eligible for contracts with the City subject to Chapter 17-1400 (Non-Competitively Bid Contracts; Financial Assistance) of the Code, and shall have all obligations to Provider that Provider has to the City pursuant to Section 14.11 (Chapter 17-1400 of the Philadelphia Code: Contributions and Other Mandatory Disclosures) below.

(c) No permitted Subcontract shall relieve Provider of any obligation under this Contract. Provider shall be as fully responsible for the acts and omissions of its Subcontractors and Persons either directly or indirectly employed or retained by them as it is for the acts and omissions of Provider and Persons directly or indirectly employed or retained by Provider.

(d) Any purported Subcontract made in violation of this Section or of any other Section in this Contract shall be null and voidable, in the City's option.

(e) City-Related Agencies. If Provider is a City-Related Agency, as defined in Subsection 17-1401(9) of the Code, then:

(1) Provider shall abide by the provisions of Chapter 17-1400 (Non-Competitively Bid Contracts; Financial Assistance) of the Code in awarding any contract(s) pursuant to this Contract as though such contracts were directly subject to the provisions of Chapter 17-1400, except that the exception set forth at Section 17-1406(8) shall apply to Provider as if Provider were listed in that subsection.

(2) Unless approved by the City to the contrary, any approvals required by Chapter 17-1400 of the Code to be performed by the City Solicitor shall be performed by Provider's General Counsel; any approvals required to be performed by the Director of Finance shall be performed by Provider's Chief Financial Officer; and any approvals required to be performed by the Mayor shall be performed by Provider's Executive Director.

ARTICLE IV: PROVIDER'S REPRESENTATIONS AND COVENANTS

4.1 **Provider's Representations and Covenants**. Provider makes the following representations, warranties and covenants upon which the City has relied as a material consideration for the execution and delivery by the City of this Contract. The representations, warranties, and covenants stated below shall continue throughout the Term of this Contract. In the event said representations, warranties, and covenants are or become untrue or inaccurate, Provider shall promptly give notice thereof to the City, specifying the manner in which said representation, warranty, or covenant is untrue or inaccurate. ***False statements to the City in or in connection with this Contract, in or pursuant to any representation or covenant made in this Article IV or otherwise, are subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities, which may include fines and imprisonment.***

(a) Good Standing. If Provider is not an individual, Provider is a business corporation, limited liability company, partnership, limited partnership or other business entity duly organized, validly existing and in good standing under the laws of the state of its incorporation or organization. Provider is duly licensed, qualified and in good standing in the Commonwealth of Pennsylvania and in all jurisdictions in which it conducts business activities relating in any way to the performance of the Services and delivery of the Materials under this Contract, including, but not limited to, the jurisdiction in which Provider is organized. If Provider is a not-for-profit corporation or otherwise an entity determined to be tax exempt pursuant to Section 501(c) of the Internal Revenue Code by the Internal Revenue Service, then Provider has procured, and shall maintain in full force and effect, all consents and approvals necessary in connection with such tax-exempt and non-profit status.

(b) Authority to Act. Provider has full legal power and authority to execute and deliver this Contract, and provide the Services and Materials as set forth herein. Provider has duly authorized by all necessary actions the execution and delivery of this Contract on behalf of Provider by the individual or individuals signing the Provider Agreement. This Contract is the legal, valid and binding obligation of Provider, enforceable against Provider in accordance with the terms set forth herein. The execution and delivery of this Contract by Provider will not result in a default under or a breach or violation of (1) Provider's certificate or articles of incorporation or bylaws, partnership agreement, limited liability company operating agreement or other pertinent organizational documents, as applicable; (2) any Applicable Law or any judgment, decree order, license, permit or other instrument or obligation to which Provider is now a party

or by which Provider may be bound or affected; and (3) Provider's tax-exempt status, if applicable. No further consent, approval or authorization is required of any regulatory authority or governmental agency, or of any shareholder, partner, member, manager or other party related to Provider.

(c) Legal Obligation. This Contract has been duly authorized, executed and delivered by Provider, by and through individuals duly authorized to execute this Contract on behalf of Provider, and constitutes the legal, valid and binding obligation of Provider, enforceable against Provider in accordance with its terms.

(d) No Litigation Preventing Performance. There is no litigation, claim, consent order, settlement agreement, arbitration, agency proceeding, investigation, challenge or other proceeding pending or threatened against Provider, its properties or business or any individuals acting on Provider's behalf, including, without limitation, Subcontractors, in which any Person seeks to enjoin or prohibit Provider from entering into or performing its obligations under this Contract.

(e) Requisite Licensure and Qualifications. Provider and all Persons acting on Provider's behalf, including, without limitation, Subcontractors, in connection with the Services and Materials under this Contract, possess and, at all times during the Term of this Contract, shall possess all licenses, certifications, qualifications or other credentials required in accordance with Applicable Law and the terms of this Contract, to perform the Services and provide the Materials. Provider shall provide the City with copies of all licenses, credentials and certifications required under this Section within five (5) days of request by the City.

(f) No Adverse Interests. Except as disclosed in writing and approved in advance by the Responsible Official, neither Provider nor any of its directors, officers, members, partners or employees, has any interest, or will acquire any interest, directly or indirectly, that would or may conflict in any manner or degree with the performance or rendering of the Services and Materials.

(g) No Indebtedness to the City. Provider and any and all entities controlling Provider, under common control with Provider or controlled by Provider are not currently indebted to the City, and will not at any time during the Term of this Contract (including any Additional Term(s)) be indebted to the City, for or on account of any delinquent taxes (including, but not limited to, taxes collected by the City on behalf of the School District of Philadelphia), water bills, sewer bills, liens, judgments, fees or other debts for which no written agreement or payment plan satisfactory to the City has been established. Provider shall remain current during the Term of this Contract under all such agreements and payment plans, and shall inform the Responsible Official in writing of Provider's receipt of any notices of delinquent payments under any such agreement or payment plan within five (5) days after receipt. In addition to any other rights or remedies available to the City at law or in equity, Provider acknowledges that any breach or failure to conform to this representation, warranty and covenant may, at the option of the City, result in the withholding of payments otherwise due to Provider under this Contract or any other agreement with the City under which the City may then owe payment of any kind, and, if such breach or failure is not resolved to the City's satisfaction within a reasonable time frame specified by the City in writing, may result in the offset of any such indebtedness against said payments or the termination of this Contract for default (in which case Provider shall be liable for all excess costs and other damages resulting from the termination), or both.

(h) Commercial Activity License. If Provider is a “business” as defined in Section 19-2601 of the Code, Provider has and shall maintain during the Term of this Contract, a valid, current Commercial Activity License, issued by the City’s Department of Licenses and Inspections, to do business in the City.

(i) Subcontractor Licensure; No Indebtedness to the City. Each Subcontractor, if any, holds and shall maintain during the term of the Subcontract, a valid, current Commercial Activity License to do business in the City, if required by Applicable Law. To the best of Provider’s knowledge, information and belief, the representations made in any Subcontract that Subcontractor is not indebted to the City are true and correct.

(j) Non-Suspension; Debarment. Provider and all individuals acting on Provider’s behalf including, without limitation, Subcontractors, are not under suspension or debarment from doing business with the Commonwealth of Pennsylvania, any other state, or the federal government, or any department, agency or political subdivision of any of the foregoing. If Provider cannot so warrant, then Provider shall submit to the Responsible Official a full, complete written explanation as to why Provider cannot so warrant. Provider shall reimburse the City for the reasonable cost of investigation incurred by the City or the Commonwealth of Pennsylvania Office of Inspector General for investigation of Provider’s compliance with the terms of this or any other contract between Provider and the City which results in the suspension or debarment of Provider. Such costs shall include, but are not limited to, salaries of investigators, including overtime, travel and lodging expenses, expert witness and documentary fees and attorney fees and expenses. Provider shall not be responsible for costs of investigations which do not result in Provider’s suspension or debarment.

(k) Additional Representations and Covenants. See Article XIV (Additional Representations and Covenants of Provider Relating to Certain Applicable Laws).

ARTICLE V: COMPENSATION

5.1 **Certification of Available Funds**. Provider acknowledges that payments under this Contract shall not exceed the amount certified by or on behalf of the City’s Director of Finance as available for this Contract. A copy of the form signed by the Office of the Director of Finance showing the amount of currently available funds will be attached to the fully executed Contract returned to Provider. During the Initial Term and any Additional Term(s) of this Contract, the City reserves the right to fund any remaining balance of this Contract amount in varying amounts from time to time as funds become available, not to exceed in total the maximum amount stated in this Contract. Provider agrees that the City shall not be obligated to fund this Contract except out of funds certified by or on behalf of the City’s Director of Finance as currently available, even if those funds are less than the maximum amount stated in this Contract. If sufficient funds are not certified as available at any time, the City may exercise its options described in Section 5.2 (Unavailability of Funds) below.

5.2 **Unavailability of Funds**. If funding for this Contract from any source is not obtained and continued at an aggregate level sufficient to allow for payment for the Services performed and Materials delivered under this Contract, the City may exercise one of the following options without liability or penalty to the City:

(a) Terminate this Contract effective upon a date specified in a Termination Notice; or

(b) Continue this Contract by reducing, through written notice to Provider, the amount of this Contract and Services and Materials, consistent with the nature, amount and circumstances of available funding.

The City's exercise of either option under this Section shall not affect any obligations or liabilities of either Party accruing prior to such termination or reduction of Services or Materials. Provider shall be compensated in accordance with the terms of this Contract for Services and Materials satisfactorily performed and delivered prior to such termination or modification of this Contract under this Section.

5.3 Crossing Fiscal Years. If any portion of the compensation set forth in this Contract is to be paid in any City fiscal year following the fiscal year in which the Initial Term or any Additional Term of this Contract commences (in either case, "Appropriated Fiscal Year"), Provider understands and agrees that the portion of the compensation under this Contract payable with City funds for any period following the Appropriated Fiscal Year is subject to the discretion of City Council as to future appropriations. If, for any reason, funds for any such portion of the compensation are not appropriated by City Council in any Fiscal Year following the Appropriated Fiscal Year, this Contract and the City's liability under this Contract shall automatically terminate at the end of the then current Appropriated Fiscal Year; provided, however, that subject to the other provisions of this Article V, Provider shall be compensated in accordance with the terms of this Contract for Services and Materials satisfactorily performed and delivered prior to the end of the then current Appropriated Fiscal Year.

5.4 Allowability of Cost Items. All payments by the City under this Contract are subject to the limitations on the allowability of cost items imposed by the Contract Cost Principles.

ARTICLE VI: AUDITS; INSPECTION RIGHTS; RECORDS

6.1 City Audit. From time to time during the Term, and for a period of five (5) years after the expiration or termination of this Contract, the City may audit any and all aspects of Provider's performance under this Contract, including but not limited to its billings and invoices. Audits may be conducted by representatives, agents or contractors of the City, including the Department, or other authorized City representatives including, without limitation, the City Controller. If requested by the City, Provider shall submit to the City all vouchers or invoices presented for payment pursuant to this Contract, all cancelled checks, work papers, books, records and accounts upon which the vouchers or invoices are based, and any and all documentation and justification in support of expenditures or fees incurred pursuant to this Contract. All books, invoices, vouchers, records, reports, cancelled checks and other materials shall be subject to periodic review or audit by the City.

6.2 Inspection. All Services and Materials shall be subject to inspection and review by City, federal and state representatives, as may be applicable, or their designees, at the offices of Provider in the City, or in another location with the City's consent. Provider shall cooperate with all City, state and federal inspections and reviews conducted in accordance with the provisions of this Contract. Such inspection and review of Provider's Services and Materials, including, without limitation, programs and facilities, shall be in the sole discretion of the inspecting or reviewing entity. Such inspection or review may include, without limitation, meetings with consumers, review of staffing ratios and job descriptions, and meetings with any of Provider's staff members who are either directly or indirectly involved in providing Services or Materials.

6.3 **Availability of Records.** Provider shall make available, in the City at reasonable times during the Term of this Contract and for the period set forth in Section 6.4 (Retention of Records) below, all records pertaining to this Contract for the purpose of inspection, audit or reproduction by any authorized representative (including any agent or contractor and the City Controller) of the City, the Commonwealth of Pennsylvania Auditor General, and any other federal and state auditors, as may be applicable.

6.4 **Retention of Records.** Provider shall retain all records, books of account and documentation pertaining to this Contract for the period set forth in Section 6.1 above. If any litigation, claim or audit is commenced prior to expiration of said five (5) year period, then the records shall be retained until all litigation, claims or audit findings have been completely terminated or resolved, without right of further appeal, or if Applicable Law requires a longer period, then the records shall be retained for such longer period.

6.5 **Audits Pursuant to Section 6-400 of the Home Rule Charter.** Any Provider that is an Agency, as defined in Section 6-400 (Auditing Department) of the Charter, shall permit the City Controller to audit its affairs as authorized in Section 6-400 during the Initial Term or any Additional Term. Under Section 6-400, an Agency is any entity that a) receives funds from the City; and either b) is created by, or whose board of directors is in whole or part appointed by, one or more City officials or bodies, or c) is organized pursuant to legal authority granted to it by City ordinance.

ARTICLE VII: ASSIGNMENT

7.1 **Assignment By Provider.** Provider shall not assign this Contract, or any part of this Contract, or delegate performance of this Contract (other than to its own work forces), without obtaining the prior written consent of the Responsible Official. The decision whether to consent to an assignment, the timing of consent (if any), and conditions to such consent, if any, shall each be at the City's sole discretion. Any consent to the assignment of any monies to be paid under this Contract shall not relieve Provider from the faithful performance of any of its obligations under this Contract or change any of the terms and conditions of this Contract. Any purported assignment in violation of this provision shall be void and of no effect. The City's consent to an assignment shall not release the assignor from any liability accrued or thereafter accruing under this Contract. Any assignment or purported assignment shall be in writing and shall contain an express assumption by the assignee of all liability accrued or thereafter accruing under this Contract. Consent by the City to any assignment shall not be deemed a course of conduct, dealing or performance with respect to any other assignment or proposed assignment. For purposes of this Section 7.1 (Assignment by Provider), an assignment includes the acquisition of Provider, or a controlling interest therein, through a corporate or other merger, and the appointment of a receiver or bankruptcy trustee, and the transfer of this Contract or Provider in any bankruptcy or other insolvency proceeding.

7.2 **Applicability in Case of Bankruptcy or Insolvency.** A receiver or trustee of or for Provider in any federal or state bankruptcy, insolvency or other proceedings concerning Provider shall comply with the requirements set forth in Section 7.1 (Assignment by Provider) above.

7.3 **Personal Services.** Provider acknowledges that the Services and Materials are the personal services of Provider and the City shall have no obligation to accept performance by a third party without the Responsible Official's prior and express written consent.

ARTICLE VIII: INDEPENDENT CONTRACTOR; INDEMNIFICATION; LITIGATION COOPERATION

8.1 **Independent Contractor.** Provider is an independent contractor and shall not in any way or for any purpose be deemed or intended to be an employee or agent of the City. Neither Provider nor its agents, employees or Subcontractors shall in any way represent that they are acting as employees, officials or agents of the City.

8.2 **Indemnification.** Provider shall indemnify, defend and hold harmless the City and its officers, employees and agents from and against any and all losses, costs (including, but not limited to, litigation and settlement costs and counsel fees and expenses), claims, suits, actions, damages, liability and expenses, occasioned wholly or in part by Provider's act or omission or negligence or fault or the act or omission or negligence or fault of Provider's agents, Subcontractors, independent contractors, suppliers, employees or servants in connection with this Contract, including, but not limited to, those in connection with loss of life, bodily injury, personal injury, damage to property, contamination or adverse effects on the environment, intentional acts, failure to pay any Subcontractors and suppliers, any breach of this Contract, loss of data, data security breach, and any infringement or violation of any proprietary right (including, but not limited to, patent, copyright, trademark, service mark and trade secret).

8.3 **Litigation Cooperation.** If, at any time, the City becomes involved in a dispute or receives notice of a claim or is involved in litigation concerning the Services and Materials provided under this Contract, the resolution of which requires the services or cooperation of Provider, and Provider is not otherwise obligated to indemnify and defend the City pursuant to the provisions of Section 8.2 (Indemnification) above, Provider agrees to provide such services and to cooperate with the City in resolving such claim or litigation as Additional Services and Materials under Section 3.3 (Additional Services and Materials; Change in Scope of Services) above.

8.4 **Notice of Claims.** If Provider receives notice of a legal claim against it in connection with this Contract, Provider shall submit appropriate written notice of such claim to its insurance carrier within the time frame required for submission of claims by the applicable insurance policy and, within ten (10) business days of receipt of notice of the claim, to the Responsible Official.

ARTICLE IX: INSURANCE

9.1 **Insurance.** Unless otherwise approved by the City's Risk Management Division in writing, Provider shall, at its sole cost and expense, procure and maintain, or cause to be procured and maintained, in full force and effect, the types and minimum limits of insurance specified below, covering Provider's performance of the Services and the delivery of the Materials. Provider shall procure, or cause to be procured, all insurance from reputable insurers admitted to do business on a direct basis in the Commonwealth of Pennsylvania or otherwise acceptable to the City. All insurance herein, except Professional Liability insurance, shall be written on an "occurrence" basis and not a "claims-made" basis. In no event shall Provider perform any Services or other work until Provider has delivered or caused to be delivered to the City's Risk Management Division the required evidence of insurance coverages. All insurance coverages shall provide for at least thirty (30) days prior written notice to be given to the City in

the event coverage is materially changed, cancelled, or non-renewed. The City, its officers, employees, and agents, shall be named as additional insureds on the General Liability Insurance policy. Provider shall also deliver or cause to be delivered to the City an endorsement stating that the coverage afforded the City and its officers, employees and agents, as additional insureds, will be primary to any other coverage available to them and that no act or omission of the City, its officers, employees or agents shall invalidate the coverage.

(a) Workers' Compensation and Employers' Liability:

(1) Workers' Compensation: Statutory Limits.

(2) Employers' Liability: \$100,000 Each Accident - Bodily Injury by Accident; \$100,000 Each Employee - Bodily Injury by Disease; and \$500,000 Policy Limit - Bodily Injury by Disease.

(3) Other states insurance including Pennsylvania.

(b) General Liability Insurance:

(1) Limit of Liability: \$1,000,000 per occurrence combined single limit for bodily injury (including death) and property damage liability; \$1,000,000 advertising injury; \$2,000,000 general aggregate and \$1,000,000 aggregate for products and completed operations. The City may require higher limits of liability if, in the City's sole discretion, the potential risk warrants.

(2) Coverage: Premises operations; blanket contractual liability; personal injury liability; products and completed operations; independent contractors, employees and volunteers as insureds; cross liability; and broad form property damage (including completed operations).

(c) Automobile Liability Insurance:

(1) Limit of Liability: \$1,000,000 per occurrence combined single limit for bodily injury (including death) and property damage liability.

(2) Coverage: Owned, non-owned, and hired vehicles.

(d) Professional Liability Insurance:

(1) Limit of Liability: \$1,000,000 with a deductible not to exceed \$50,000.

(2) Coverage: Errors and omissions including liability assumed under Contract.

(3) Professional Liability Insurance may be written on a claims-made basis provided that coverage for occurrences happening during the performance of the Services required under this Contract shall be maintained in full force and effect under the policy or "tail" coverage for a period of at least two (2) years after completion of the Services.

9.2 Self-Insurance. Provider may self-insure any of the coverages required under this Contract only with the prior written approval of the Responsible Official and the City's Risk Manager. If Provider wants to self-insure any of the coverages listed above, it shall submit to the Responsible Official and the City's Risk Management Division, prior to Provider's commencement of Services or delivery of any Materials hereunder, a certified copy of Provider's most recent audited financial statement and such other evidence of its qualifications to act as self-insurer (e.g. state approval) as the Responsible Official or the City's Risk Manager may request. If the City grants such approval, Provider understands and agrees that the City, its officers, employees and agents shall be entitled to receive the same coverages and benefits under

Provider's self-insurance program that they would have received had the insurance requirements set forth above been satisfied by a reputable insurer admitted and duly authorized to do business in the Commonwealth of Pennsylvania or otherwise acceptable to the City. If at the time of commencement of any Term of this Contract, Provider self-insures its professional liability or workers' compensation and employers' liability coverage, Provider may, in lieu of the foregoing, furnish to the City a current copy of the state certification form for self-insurance or a current copy of the State Insurance Commissioner's letter of approval, whichever is appropriate. The insurance (including self-insurance) requirements set forth herein are not intended and shall not be construed to modify, limit or reduce the indemnifications made in this Contract by Provider to the City, or to limit Provider's liability under this Contract to the limits of the policies of insurance (or self-insurance) required to be maintained by Provider hereunder.

9.3 Evidence of Insurance Coverage. Certificates of insurance evidencing the required coverages must specifically reference the City contract number for which they are being submitted. The original certificates of insurance must be submitted to the City's Risk Manager at the following address:

The City of Philadelphia
Office of the Director of Finance
Division of Risk Management
1515 Arch Street, 14th Floor
Philadelphia, PA 19102-1579
(Fax No.: 215-683-1705)

A copy of the certificates of insurance shall be submitted to the Responsible Official at the address of the Department set forth in the Notice Section of the Provider Agreement. Both submissions must be made at least ten (10) days before work is begun and at least ten (10) days before each Additional Term. The City, in its sole discretion, may waive the ten (10) day requirement for advance documentation of coverage in situations where such waiver will benefit the City. The actual endorsement adding the City as an additional insured must specifically reference the City contract number and be submitted to the City's Risk Management Division at the above address. The City reserves the right to require Provider to furnish certified copies of the original policies of all insurance required under this Contract at any time upon ten (10) days written notice to Provider.

9.4 Fidelity Bond. When required by the City, Provider shall, at its sole cost and expense, obtain and maintain during the Initial Term and any Additional Term(s) of this Contract, a fidelity bond in an amount equal to the greater of (a) Ten Thousand Dollars (\$10,000) or (b) the amount specified in the Provider Agreement, covering Provider's employees who have financial responsibilities related to the receipt and disbursement of funds under this Contract. In lieu of a fidelity bond, Provider may obtain coverage for crime insurance with limits that are the greater of (a) \$10,000 or (b) the amount specified in the Provider Agreement. The fidelity bond or crime insurance, whichever is obtained by Provider, shall name the City as a beneficiary. Evidence of the existence of the fidelity bond or crime insurance shall be submitted to the City prior to the commencement of Services in conformity with the requirements of Section 9.3 (Evidence of Insurance Coverage) above.

ARTICLE X: OWNERSHIP OF MATERIALS; PROPRIETARY INFORMATION; CONFIDENTIALITY

10.1 Ownership of Materials.

(a) Subject to Applicable Law, all Materials shall be the sole and absolute property of the City and the City shall have title thereto and unrestricted use thereof. To the extent that any Materials relating to this Contract developed by or for Provider embody a copyrightable work, including, but not limited to, a “compilation” as that term is used in 17 U.S.C. § 101, as amended from time to time, the City and Provider agree that such copyrightable work(s) shall be considered as one or more “works made for hire” by Provider for the City, as that term is used in 17 U.S.C. §§ 101 and 201(b), as amended from time to time. To the extent that any Materials relating to this Contract developed by or for Provider embody one or more copyrightable works but are neither a “compilation” nor any other form of “work made for hire,” Provider hereby assigns, and agrees to execute instruments evidencing such assignment, all copyrights in all of such works to the City. Provider shall cause all Materials developed or produced by Provider and any Subcontractor in connection with this Contract which embody a copyrightable work to bear the following designation: “© ____ The City of Philadelphia” [complete then current year in blank line].

(b) Provider shall make available to the City, upon the City’s request, a copy of any Materials prepared by or for Provider in performance of this Contract, at no cost to the City.

(c) All computer programs, tapes and software developed under this Contract shall be compatible with specifications set by the Department.

(d) Provider hereby grants, and shall require its Subcontractors to grant, to the City a royalty-free, nonexclusive and irrevocable right to publish, translate, reproduce, deliver, perform and authorize others to do so, all studies, media, curricula, reports and other Materials not owned by the City under this Contract but which relate to the performance of the Services, Materials or this Contract; provided, however, that Provider shall not be required to grant such right to the City with respect to any Materials for which Provider would be liable to pay compensation to third parties because of such grant.

10.2 Non-Disclosure and Destruction of Data. Provider and its employees, agents, Subcontractors, suppliers, and any person or entity acting on its behalf (i) will maintain in strict confidence all City Data; (ii) will not, without the City’s written permission, issue, divulge, disclose, publish, communicate, or distribute any City Data to any person or entity except as may be strictly necessary to perform under the Contract; (iii) will not, without the City’s written permission, in any way use any City Data for their businesses, research, or other advantage or gain (except as may be strictly necessary to perform under the Contract), including, without limitation, any use of City Data in any presentation, demonstration, or proposal to perform work, to the City or to others, that may be conducted or created as part of their business activities or otherwise; and (iv) except as required by Applicable Law, will immediately upon termination of the Contract return all City Data to the City, destroy any and all copies of any City Data that are in their possession, whether on paper or in electronic or other form and, if requested by the City in writing, will certify in writing that there has been full compliance with this section. See also Section 14.9 (Protected Health Information).

ARTICLE XI: EVENTS OF DEFAULT

11.1 **Events of Default.** Each of the following shall be an Event of Default by Provider under this Contract:

- (a) Failure by Provider to comply with any provision of this Contract.
- (b) Occurrence of an Event of Insolvency with respect to Provider.
- (c) Falseness or inaccuracy of any warranty or representation of Provider contained in this Contract or in any other document submitted to the City by Provider.
- (d) Any act, omission, or misrepresentation which renders Provider ineligible for a City contract or renders the contract voidable under Chapter 17-1400 of the Code.
- (e) Misappropriation by Provider of any funds provided under this Contract or failure by Provider to notify the City upon discovery of any misappropriation.
- (f) A violation of law which results in a guilty plea, a plea of nolo contendere, or conviction of a criminal offense by Provider, its directors, employees, or agents (1) directly or indirectly relating to this Contract or the Services or Materials provided under this Contract, whether or not such offense is ultimately adjudged to have occurred; or (2) which adversely affects the performance of this Contract.
- (g) Indictment of or other issuance of formal criminal charges against Provider, its directors, employees or agents for any criminal offense or any other violation of Applicable Law directly relating to this Contract or Services or Materials, or which adversely affects Provider's performance of this Contract in accordance with its terms, whether or not such offense or violation is ultimately adjudged to have occurred.
- (h) Debarment or suspension of Provider or any agent, employee or Subcontractor of Provider under a federal, state or local law, rule or regulation.

11.2 **Notice and Cure.** The City agrees that the City will not exercise any right or remedy provided for in Section 12.1 (The City's Remedies) below because of any Event of Default unless the City shall have first given written notice of the Event of Default to Provider, and Provider, within a period of ten (10) days thereafter, or such additional cure period as the City may authorize, shall have failed to correct the Event of Default; provided, however, that no such notice from the City shall be required nor shall the City permit any period for cure if:

- (a) Provider has temporarily or permanently ceased providing Services and Materials.
- (b) The Event of Default creates an emergency which requires, as determined by the City in the City's sole discretion, immediate exercise of the City's rights or remedies.
- (c) The City has previously notified Provider in the preceding twelve (12) month period of any Event of Default under this Contract.
- (d) An Event of Default occurs as described in Section 11.1(e), 11.1(f), or 11.1(h) above.
- (e) Provider has failed to obtain or maintain the insurance or any bond required under this Contract.

Nothing contained in this Section shall limit the City's rights under Article XII (Remedies) below.

ARTICLE XII: REMEDIES

12.1 The City's Remedies.

(a) In the event Provider has committed or permitted an Event of Default and has been notified thereof in accordance with Section 11.2 (Notice and Cure) above, then the City may, but shall not be obligated to, take any or all of the following actions without further notice to or demand on Provider and without waiving or releasing Provider from any of its obligations under this Contract:

(1) Perform (or cause a third party to perform) this Contract, in whole or in part, including, without limitation, obtaining or paying for any required insurance or performing other acts capable of performance by the City. Provider shall be liable to the City for all sums paid by the City and all expenses incurred by the City (or a third party) pursuant to this Section 12.1(a)(1), together with interest at the highest legal rate permitted in the Commonwealth of Pennsylvania thereon from the date the City or its agent incurs such costs. The City shall not in any event be liable for inconvenience, expense or other damage incurred by Provider by reason of the City's performance or paying such costs or expenses, and the obligations of Provider under this Contract shall not be altered or affected in any manner by the City's exercise of its rights under this Section 12.1 (The City's Remedies).

(2) Withhold payment of, or offset against, any funds payable to or for the benefit of Provider.

(3) Collect, foreclose or realize upon any bond, collateral, security or insurance provided by or on behalf of Provider.

(4) Exercise any other right the City has or may have at law, in equity, or under this Contract.

(b) In the event Provider has committed or permitted an Event of Default and has been notified thereof in accordance with Section 11.2 (Notice and Cure) above, then the City may, but shall not be obligated to, without waiving or releasing Provider from any of its obligations under this Contract, terminate or suspend this Contract in whole or in part, as set forth more fully in Article XIII (Termination and Suspension) below. In the event of partial termination or suspension, Provider shall continue the performance of this Contract to the extent not terminated or suspended.

(c) The Services and Materials purchased from Provider are unique and not otherwise readily available. Accordingly, Provider acknowledges that, in addition to all other remedies to which the City is entitled, the City shall have the right, to the fullest extent permitted under Applicable Law, to enforce the terms of this Contract without limitation, by a decree of specific performance or by injunction restraining a violation, or attempted or threatened violation, of any provision of this Contract.

12.2 Concurrent Pursuit of Remedies; No Waiver. The City may exercise any or all remedies set forth in this Article XII, each of which may be pursued separately or in conjunction with such other remedies as the City in its sole discretion shall determine. No extension or indulgence granted by the City to Provider shall operate as a waiver of any of the City's rights in connection with this Contract. The rights and remedies of the City as described in this Article XII and as described elsewhere in this Contract shall not be exclusive and are in addition to any other rights or remedies available to the City under this Contract at law or in equity.

ARTICLE XIII: TERMINATION AND SUSPENSION

13.1 Termination or Suspension for Any Reason. In addition to its rights under Articles V (Compensation) and XII (Remedies) above, the City shall have the right to terminate this Contract or suspend Provider's performance under this Contract at any time during the Term of this Contract, in whole or in part, for any stated reason, including, without limitation, the convenience of the City. The City shall give written notice to Provider of any full or partial termination or suspension, stating the reason(s) for its action, setting forth the effective date of the termination or suspension and describing any partial termination or suspension.

13.2 Provider's Responsibilities Upon Termination or Suspension.

(a) Upon the City's service of a Termination Notice or a Suspension Notice under any provision of this Contract, Provider and its agents, employees and Subcontractors, shall

(1) take immediate action in an orderly manner to discontinue Services and Materials, and demobilize work forces to minimize the incurrence of costs; and

(2) upon request by the City by notice to Provider, collect, assemble and transmit to the City all Materials in such state of completion as may exist as of the effective date of the termination or suspension. All such Materials shall be clearly labeled and indexed to the satisfaction of the Responsible Official and delivered to the Responsible Official by Provider on or before the date set forth in the Termination Notice for delivery of the Materials or, if no such date is set forth in the Termination Notice, then before the effective date of termination set forth in the Termination Notice. Provider waives and releases any and all right to any retaining or charging liens or similar right or remedy in favor of Provider.

(b) The City's termination or suspension of this Contract shall not affect any obligations or liabilities of either Party accruing prior to the effective date of such termination or suspension.

(c) There shall be no liability, cost or penalty to the City for termination or suspension of this Contract.

13.3 Payment of Provider upon Termination or Suspension.

(a) Upon termination or suspension of this Contract by the City for an Event of Default, Provider shall be entitled to payment of such an amount, to be determined by the City and subject to audit, as shall compensate it for the work satisfactorily performed prior to the termination date; provided, however, that:

(1) no allowance shall be included for termination expenses or for anticipated profits, unabsorbed or underabsorbed overhead, or unperformed Services; and

(2) the City shall deduct from any amount due and payable to Provider prior to the termination date, but withheld or not paid, the total amount of fees, costs or additional expenses incurred by the City in order to satisfactorily complete the Services and Materials required to be performed by Provider under this Contract, including the expense of engaging another provider for this purpose, and such other damages, costs, losses and expenses of the City as may be incurred or result from such termination for an Event of Default.

(b) In the event of termination or suspension of this Contract by the City for the City's convenience, Provider shall be paid such an amount as shall compensate Provider for the portion

of the Services satisfactorily performed and Materials satisfactorily delivered prior to the date of termination. The City shall not pay Provider any amount for Provider's termination or suspension expenses or anticipated profits, unabsorbed or underabsorbed overhead or unperformed Services and Materials not satisfactorily delivered.

(c) In no event shall Provider be entitled to payment beyond the maximum amounts set forth elsewhere in the Contract.

13.4 **Suspension.**

(a) Suspension after an Event of Default, or pending investigatory or criminal proceedings concerning an event that would constitute an Event of Default if resolved contrary to the interests of Provider or a Person for which Provider may be responsible, shall not constitute a waiver or release of any liability of Provider for such Event of Default or any of the City's damages or other remedies arising out of such Event of Default; nor shall such suspension be deemed an election of remedies in derogation of any other remedy.

(b) Provider acknowledges that the City shall have the right, at its sole discretion, to suspend Provider's performance in the event City Council does not appropriate funds for the performance of this Contract.

(c) If the City issues a Suspension Notice to Provider, such suspension shall continue from the effective date specified in the Suspension Notice until a date specified in the Suspension Notice which shall be not more than one hundred and eighty (180) days after the effective date (the "Suspension Period"). On or prior to the expiration of the Suspension Period, the City shall either terminate this Contract by giving a Termination Notice pursuant to Section 13.1 (Termination or Suspension for Any Reason) above; or issue a new Suspension Notice; or by notice to Provider, instruct Provider to resume the delivery of Services and Materials pursuant to this Contract upon the expiration of the Suspension Period. The City may exercise its right to amend the Contract to add an Additional Term without waiving the suspension; but in the absence of the City's notice of intent to enter into such amendment, Provider shall terminate Services and Materials at the end of the Term even if the Suspension Period has not yet expired.

(d) After issuing a Suspension Notice, the City shall pay any invoices submitted by Provider for Services rendered prior to the commencement of the Suspension Period or otherwise payable by the City to Provider under this Contract, subject to all the City's rights and remedies against Provider, including but not limited to its rights of set off and its right to review and accept Services and Materials prior to payment therefor.

ARTICLE XIV: ADDITIONAL REPRESENTATIONS AND COVENANTS OF PROVIDER RELATING TO CERTAIN APPLICABLE LAWS

In addition to the representations, warranties and covenants made by Provider in Article IV, Provider further represents, warrants and covenants that, to the extent of their applicability to Provider, Provider is in compliance with the laws, ordinances, regulations and executive orders described below. By executing this Contract, Provider thereby certifies to such compliance. Provider further certifies that the representations, warranties and covenants provided pursuant to this Article shall continue to remain true throughout the Term of this Contract or any other period of time required by such laws. ***False statements to the City in or in connection with this Contract, in or pursuant to any representation or covenant made in this Article XIV or otherwise, are subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to***

authorities, which may include fines and imprisonment. In the event said representations, warranties and covenants are or become untrue or inaccurate, Provider shall promptly give notice thereof to the City, specifying the manner in which said representation, warranty or covenant is untrue or inaccurate. The provisions of this Article are not intended to limit the applicability of the other provisions of this Contract, including, without limitation, Provider's agreement to comply with all Applicable Law.

14.1 Non-Discrimination; Fair Practices. This Contract is entered into under the terms of the Charter, the Fair Practices Ordinance (Chapter 9-1100 of the Code) and the Mayor's Executive Order No. 04-86 (the "Executive Order"), as they may be amended from time to time, and in performing this Contract, Provider shall not discriminate or permit discrimination against any individual because of race, color, religion, ancestry or national origin, sex, gender identity, sexual orientation, age or disability. Nor shall Provider discriminate or permit discrimination against individuals in employment, housing and real property practices, and/or public accommodation practices whether by direct or indirect practice of exclusion, distinction, restriction, segregation, limitation, refusal, denial, differentiation or preference in the treatment of a person on the basis of actual or perceived race, ethnicity, color, sex, sexual orientation, gender identity, religion, national origin, ancestry, age, disability, marital status, source of income, familial status, genetic information or domestic or sexual violence victim status, Human Immunodeficiency Virus (HIV) infection, or engage in any other act or practice made unlawful under the Charter, Chapter 9-1100, the Executive Order, or under the nondiscrimination laws of the United States or the Commonwealth of Pennsylvania. In the event of any breach of this Section 14.1, the City may, in addition to any other rights or remedies available under this Contract, at law or in equity, suspend or terminate this Contract forthwith.

14.2 Chapter 17-400 of the Philadelphia Code: Exclusionary Private Organizations.

(a) In accordance with Chapter 17-400 of the Code, Provider agrees that its payment or reimbursement of membership fees or other expenses associated with participation by its employees in an exclusionary private organization, insofar as such participation confers an employment advantage or constitutes or results in discrimination with regard to hiring, tenure of employment, promotions, terms, privileges or conditions of employment on the basis of race, color, sex, sexual orientation, religion, national origin or ancestry, constitutes, without limiting the applicability of Articles XI (Events of Default) and XII (Remedies) above, a substantial breach of this Contract entitling the City to all rights and remedies provided in this Contract or otherwise available at law or in equity.

(b) Provider agrees to cooperate with the Commission on Human Relations of the City in any manner which the Commission deems reasonable and necessary for the Commission to carry out its responsibilities under Chapter 17-400 of the Code. Provider's failure to so cooperate shall constitute, without limiting the applicability of Articles XI (Events of Default) and XII (Remedies) above, a substantial breach of this Contract entitling the City to all rights and remedies provided in this Contract or otherwise available at law or in equity.

14.3 Executive Order 03-12: Minority, Woman and Disabled Business Enterprise Participation. In accordance with Executive Order 03-12 (the "Antidiscrimination Policy"), the City, acting through its Office of Economic Opportunity ("OEO"), has established an antidiscrimination policy that relates to the solicitation and participation of Minority Business Enterprises ("MBE"), Woman Business Enterprises ("WBE"), and Disabled Business

Enterprises (“DSBE”) (collectively, “M/W/DSBE”) in City contracts. The purpose of this Antidiscrimination Policy is to ensure that all businesses desiring to do business with the City have an equal opportunity to compete by creating access to the City’s procurement process and meaningfully increasing opportunities for the participation by M/W/DSBEs in City contracts at all tiers of contracting, as prime contractors, subcontractors and joint venture partners. In furtherance of this policy, the City will, from time to time, establish participation ranges for City Contracts and City Related Special Projects. Provider agrees to comply with the requirements of the Antidiscrimination Policy by exercising its Best and Good Faith Efforts to include M/W/DSBEs in its contract, and where participation ranges are established by OEO, Provider agrees, without limitation, to submit documentation responsive to each of the participation ranges established for the Contract.

(a) **General Requirements.** In furtherance of the purposes of the Antidiscrimination Policy, Provider agrees to the following:

(1) Provider, if it has achieved participation commitments with M/W/DSBEs, represents that it has entered into legally binding agreement(s) (“M/W/DSBE Subcontract(s)”) with M/W/DSBEs as participants under this Contract for the services and in the dollar amount(s) and percentage(s) as specified in the M/W/DSBE Participation Exhibit to this Contract (the “Contract Commitment(s)”).

(2) Provider shall secure the prior written approval of the OEO before making any changes or modifications to any Contract Commitments made by Provider herein, including, without limitation, substitutions for its MBEs, WBEs and/or DSBEs, changes or reductions in the services provided by its M/W/DSBE participants, or changes or reductions in the dollar amounts and/or percentage value paid to its M/W/DSBE participants.

(3) Unless otherwise specified in a M/W/DSBE Subcontract between the Provider and its M/W/DSBE participant, as described in (a) (1) above, Provider shall, within five (5) business days after receipt of a payment from the City for services performed under the Contract, deliver to its M/W/DSBE participant its proportionate share of such payment for services performed by the M/W/DSBE participant. In connection with payment of its M/W/DSBE participants, Provider agrees to fully comply with the City’s payment reporting process which may include the use of electronic payment verification systems.

(4) Provider shall, in the event of an increase in units of work and/or compensation under the Contract, increase its Contract Commitment(s) with its M/W/DSBE participants proportionately, which increase shall be reflected in the M/W/DSBE Subcontract(s) described in (a) (1) above. OEO may from time to time request documentation from Provider evidencing compliance with this provision.

(5) Provider shall submit, within the time frames prescribed by the City, any and all documentation the City may request, including, but not limited to, copies of M/W/DSBE Subcontracts, participation summary reports, M/W/DSBE participant invoices, telephone logs and correspondence with M/W/DSBE participants, cancelled checks and certification of payments.

Provider shall maintain all documentation related to this Section for a period of five (5) years from the date of Provider's receipt of final payment under the Contract.

(6) Provider agrees that the City may, in its sole discretion, conduct periodic reviews to monitor Provider's compliance with the terms of this Antidiscrimination Policy.

(7) Provider agrees that in the event the City determines that Provider has failed to comply with any of the requirements of this Antidiscrimination Policy, including substantial compliance with any Contract Commitment, the City may, in addition to any other rights and remedies it may have under the Contract which includes termination of the Contract, exercise one or more of the following remedies which shall be deemed cumulative and concurrent:

(.a) Debar Provider from proposing on and/or participating in any future contracts for a maximum period of three (3) years.

(.b) Withhold payment(s) or any part thereof until corrective action is taken. If corrective action is not taken to the satisfaction of OEO, the City may, without institution of a lawsuit, deduct money in an amount equal to the M/W/DSBE shortfall, which amount shall be collected and considered not as a penalty, but as liquidated damages for the Provider's failure to comply with the contract.

(8) No privity of contract exists between the City and any M/W/DSBE participant identified herein and the City does not intend to give or confer upon any such M/W/DSBE participant(s) any legal rights or remedies in connection with the subcontracted services pursuant to the Antidiscrimination Policy or by reason of this Contract except such rights or remedies that the M/W/DSBE participant may seek as a private cause of action under any legally binding contract to which it may be a party. The remedies enumerated above are for the sole benefit of the City and City's failure to enforce any provision or the City's indulgence of any non-compliance with any provision hereunder, shall not operate as a waiver of any of the City's rights in connection with this Contract nor shall it give rise to actions by any third parties including identified M/W/DSBE participants.

(b) **Special Requirements Applicable to Non-Profit Providers.** In the event the Provider is a non-profit, the Contract may not be subject to M/W/DSBE participation ranges, but

Provider shall demonstrate its compliance with the Antidiscrimination Policy by providing annually to OEO the following information:

(1) a statement identifying the race, gender, disability status and ethnic composition of its workforce and board of directors;

(2) a list of the non-profit's five highest dollar value M/W/DSBE suppliers of products and services; and

(3) the non-profit's written "equal opportunity statement," an assurance of the non-profit's efforts to maintain a diverse workforce and board of directors and operate a fair and effective supplier diversity program.

(c) **Criminal Liability for Fraudulent or False Statements.** Provider hereby verifies that all information submitted to the City in connection with the Antidiscrimination Policy is true and correct and is notified that the submission of false information is subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities, which may include payment of a fine of at least \$1,000 and a term of imprisonment of not more than two years. Provider also acknowledges that under 18 Pa.C.S. §4107.2(a)(4), it is a felony in the third degree, punishable by a term of imprisonment of not more than seven years in addition to the payment of any fines or restitution, if, under this Contract, Provider fraudulently obtains public moneys reserved for or allocated or available to minority business enterprises or women's business enterprises.

14.4 **Federal Laws.** Provider shall comply with the provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d - 2000d.7), Section 504 of the Federal Rehabilitation Act of 1973 (29 U.S.C. § 794), the Age Discrimination Act of 1975 (42 U.S.C. §§ 6101 - 6107), Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681), and 45 C.F.R. Part 92, as they may be amended from time to time, which together prohibit discrimination on the basis of race, color, national origin, sex, handicap, age and religion.

14.5 **Americans With Disabilities Act.** Provider understands and agrees that no individual with a disability shall, on the basis of the disability, be excluded from participation in this Contract or from providing Services or Materials under this Contract. By executing and delivering this Contract, Provider covenants to comply with all provisions of the Americans with Disabilities Act (the "ADA"), 42 U.S.C. §§ 12101-12213, and all regulations promulgated thereunder, as the ADA and regulations may be amended from time to time, which are applicable (a) to Provider; (b) to the benefits, Services, Materials, activities, facilities and programs provided in connection with this Contract; (c) to the City or the Commonwealth of Pennsylvania; (d) to the benefits, services, activities, facilities and programs of the City or the Commonwealth; and (e) if any funds under this Contract are provided by the federal government, to federal funds, benefits, services, activities, facilities and programs applicable to this Contract. Without limiting the applicability of the preceding sentence, Provider shall comply with the "General Prohibitions Against Discrimination," 28 C.F.R. Part 35.130, and all other regulations promulgated under Title II of the ADA, as they may be amended from time to time, which are applicable to the benefits, services, facilities, programs and activities provided by the City through contracts with outside contractors.

14.6 **Northern Ireland.**

(a) In accordance with Section 17-104 of the Code, Provider (including any parent company, subsidiary, exclusive distributor or company affiliated with Provider) (1) confirms that it does not have, and agrees that it will not have at any time during the Term of this Contract, any investments, licenses, franchises, management agreements or operations in Northern Ireland and (2) agrees that no product to be provided to the City under this Contract will originate in Northern Ireland, unless Provider has implemented the fair employment principles embodied in the MacBride Principles.

(b) In the performance of this Contract, Provider agrees that it will not use any suppliers, Subcontractors or subconsultants at any tier (1) who have (or whose parent, subsidiary, exclusive distributor or company affiliate have) any investments, licenses, franchises, management agreements or operations in Northern Ireland or (2) who will provide products originating in Northern Ireland unless said supplier, subconsultant or Subcontractor has implemented the fair employment principles embodied in the MacBride Principles.

(c) Provider agrees to cooperate with the City's Director of Finance in any manner which the said Director deems reasonable and necessary to carry out the Director's responsibilities under Section 17-104 of the Code. Provider expressly understands and agrees that any false certification or representation in connection with this Section 14.6 (Northern Ireland) and any failure to comply with the provisions of this Section 14.6 shall constitute a substantial breach of this Contract entitling the City to all rights and remedies provided in this Contract or otherwise available at law (including, but not limited to, Section 17-104 of the Code) or in equity.

14.7 **Limited English Proficiency.** Provider understands and agrees that no individual who is limited in his or her English language proficiency shall be denied access to Services provided under this Contract on the basis of that limitation. As a condition of accepting and executing this Contract, Provider shall comply with all provisions of Title VI of the Civil Rights Act of 1964, Executive Order No. 12250 of the President of the United States, publication of the Mayor of the City of Philadelphia's Executive Order entitled, "Access to Federally Funded City Programs and Activities for Individuals with Limited English Proficiency" dated September 29, 2001, and all regulations promulgated thereunder, as the Act and regulations may be amended from time to time, which are applicable (a) to Provider, (b) to the benefits, services, activities and programs provided in connection with this Contract, (c) to the City, or the Commonwealth of Pennsylvania, and (d) to the benefits, services, activities and programs of the City or of the Commonwealth, and if any funds under this Contract are provided by the federal government, which are applicable to the federal government and its benefits, services, activities and programs. Without limiting the applicability of the preceding sentence, Provider shall comply with 45 C.F.R. 80 et. seq. and all other regulations promulgated under Title VI of the Civil Rights Act of 1964, as they may be amended from time to time, which are applicable to the benefits, services, programs and activities provided by the City through contracts with outside contractors.

14.8 **Business, Corporate and Slavery Era Insurance Disclosure.**

(a) In accordance with Section 17-104 of the Code, Provider, after execution of this Contract, will complete an affidavit certifying and representing that Provider (including any parent company, subsidiary, exclusive distributor or company affiliated with Provider) has searched any and all records of Provider or any predecessor company regarding records of

investments or profits from slavery or slaveholder insurance policies during the slavery era. The names of any slaves or slaveholders described in those records must be disclosed in the affidavit.

(b) Provider expressly understands and agrees that any false certification or representation in connection with this Section and/or any failure to comply with the provisions of this Section shall constitute a substantial breach of this Contract entitling the City to all rights and remedies provided in this Contract or otherwise available in law (including, but not limited to, Section 17-104 of the Code) or equity and the Contract will be deemed voidable.

14.9 Protected Health Information.

(a) The City of Philadelphia is a “Covered Entity” as defined in the regulations issued pursuant to the federal Health Insurance Portability and Accountability Act of 1996 (“HIPAA”). The City’s business activities include both (1) functions which make the City a Covered Entity, and, therefore, subject to HIPAA, and (2) functions that are not subject to HIPAA. In accordance with 45 CFR §164.105(a)(2)(iii)(D), the City has designated certain departments and units of the City as health care components that must comply with HIPAA (“Covered Components”). The Covered Components of the City as of April 1, 2017 include: Ambulatory Health Services (a unit of the Philadelphia Department of Public Health (“PDPH”)); the Philadelphia Nursing Home (a unit of PDPH); the Sexually Transmitted Disease Control Program (a unit of PDPH); the Philadelphia Public Health Laboratory (a unit of PDPH); the Benefits Administration Unit of the Office of Human Resources; Emergency Medical Services (a unit of the Philadelphia Fire Department); and the Office of Behavioral Health and Intellectual disAbility Services. This list is subject to change, and any department or unit of the City that the City in the future determines to be a Covered Component under HIPAA shall be deemed to be a Covered Component for purposes of this Section 14.9.

(b) To the extent (1) this Contract is entered into by the City for or on behalf of a Covered Component and/or requires the performance of services that will be delivered to or used by a Covered Component (whether or not the City department or unit through which the City entered the Contract is a Covered Component), and (2) Provider is a “Business Associate” of the City, as defined in 45 CFR §160.103, Provider shall comply with the City’s Terms and Conditions Relating to Protected Health Information (“City PHI Terms”) posted on the City’s website (at <https://secure.phila.gov/eContract/> under the “About” link). The City PHI Terms are hereby incorporated in this Section 14.9 as if fully set forth herein. (A printed version of the City PHI Terms, in the City’s sole discretion, also may be attached to this Contract.)

14.10 Chapter 17-1300 of The Philadelphia Code: Philadelphia 21st Century Minimum Wage and Benefits Standard.

(a) Provider is a “Service Contractor” in that by virtue of entering into this Contract, Provider has entered into a “Service Contract,” as those terms are defined in Chapter 17-1300 of the Code. Any Subcontract between Provider and a Subcontractor to perform Services under this Contract is a “Service Contract” and such Subcontractors are also “Service Contractors” for purposes of Chapter 17-1300, as are any subcontract and subcontractor at any tier providing Services under this Contract. (Chapter 17-1300 is accessible at <http://www.amlegal.com/library/pa/philadelphia.shtml>.) If such Service Contractor (Provider or any subcontractor at any tier) is also an “Employer,” as that term is defined in § 17-1302 (more than 5 employees), and further described in §17-1303 of the Code, then absent a waiver, during the Initial Term and any Additional Term, in addition to any applicable state and federal

requirements, Provider shall provide, and shall enter into Subcontracts and otherwise cause any subcontractors at any tier that are also Service Contractors to provide, their respective covered Employees (persons who perform work for a covered Employer that arises directly out of a Service Contract), with at least the minimum wage standard and minimum benefits standard, and required notice thereof, stated in federal and state law and in Chapter 17-1300 of the Code. A summary of the current requirements is as follows:

(1) Minimum Wage.

For wages to be provided on and after January 1 of each year during which the Initial Term and any Additional Term is in effect, Provider, and any Subcontractor at any tier, shall provide their covered Employees with an hourly wage, excluding benefits, that is no less than the result of multiplying \$12 by the then current Consumer Price Index Multiplier (CPI Multiplier) as annually adjusted. For purposes of determining the minimum hourly wage required, the CPI Multiplier is calculated annually by the City's Director of Finance by dividing the most recently published Consumer Price Index for all Urban Consumers All Items Index for Philadelphia, Pennsylvania, by the most recently published Consumer Price Index for all Urban Consumers (CPI-U) of each calendar year. The then current minimum hourly wage applicable to City contractors and subcontractors will be posted on the City's website. As of January 1, 2018 that wage is \$12.20 per hour.

(2) Minimum Benefits.

(A) to the extent an Employer provides health benefits to any of its employees, provide each full-time, non-temporary, non-seasonal covered Employee with health benefits at least as valuable as the least valuable health benefits that are provided to any other full-time employees of the Employer; and

(B) provide to each full-time, non-temporary, non-seasonal covered Employee at least the minimum number of earned sick leave days required by Code Section 17-1305(2).

(3) Generally. Chapter 17-1300 of the Philadelphia Code requires that employers pay the higher of either: 150% of the federal minimum wage, or \$12 multiplied by the CPI Multiplier. To the extent a change in law would require an increase in wages or benefits under Chapter 17-1300 (for example, an increase in the federal minimum wage to \$9.00/hour, which would increase the required City minimum wage to \$13.50 due to the Chapter's requirement of 150% of the federal minimum wage), such new requirement will take effect only at the start of an Additional Term, if any, commencing on or after the date of the new legal requirement.

(b) If covered, absent a waiver, Provider shall promptly provide to the City all documents and information as the City may require verifying its compliance, and that of all Service Contractors providing Services under the Contract, with the requirements of Chapter 17-1300. Each covered Service Contractor shall notify each affected Employee what wages and benefits are required to be paid pursuant to Chapter 17-1300.

(c) Absent a waiver, if Provider is subject to Chapter 17-1300, Provider shall comply with all of its requirements as they exist on the date when Provider entered into this Contract with the City or into an amendment thereto. Provider shall take such steps as are necessary to notify its Subcontractors of these requirements, and to cause such Subcontractors to notify lower-tier subcontractors that are Service Contractors of these requirements, including, without limitation, by incorporating this Section 14.10, with appropriate adjustments for the identity of

the parties, in its Subcontracts with such Subcontractors. A Provider or subcontractor at any tier subject to Chapter 17-1300 that fails to comply with these provisions may, after notice and hearing before the Director of Finance or such other officer or agency designated by the Mayor, be suspended from receiving financial assistance from the City or from bidding on and/or participating in future City contracts, whether as a prime contractor or a subcontractor, for up to three (3) years. City Council may also initiate a similar suspension or debarment process. Such suspension or debarment shall be in addition to any of the other sanctions or remedies set forth in Chapter 17-1300 or this Contract.

(d) Without limiting the applicability of Articles XI (Events of Default) and XII (Remedies) above, Provider's failure to comply, or the failure of subcontractors at any tier to comply, with the requirements of Chapter 17-1300 shall constitute a substantial breach of this Contract entitling the City to all rights and remedies provided in this Contract or otherwise available at law or in equity.

(e) Provider's covered Employees shall be deemed third-party beneficiaries of Provider's representation, warranty, and covenant to the City under this Section 14.10 only, and the covered Employees of a subcontractor at any tier that is also a covered Employer performing Services directly or indirectly under a subcontract at any tier shall be deemed third-party beneficiaries of their Employer's representation, warranty and covenant to Provider or such subcontractors at any tier, as the case may be, under this Section.

(f) The City may grant a partial or total waiver of Chapter 17-1300 based on specific stipulated reasons elaborated in Section 17-1304 of the Code. An overview offering guidance on the applicability of, and requirements placed on City contractors and subcontractors by Chapter 17-1300 of the Code is available on the City's website at <https://secure.phila.gov/eContract/> under the "About" link; see "Minimum Wage and Equal Benefits Ordinances Impacting Some City Contractors."

14.11 Chapter 17-1400 of the Philadelphia Code: Contributions and Other Mandatory Disclosures.

(a) Provider confirms on behalf of itself and its Subcontractor(s) that no contribution(s) have been made, and agrees that none shall be made during the Term of this Contract by Provider, any Subcontractor, or any party from which a contribution can be attributed to Provider or Subcontractor, that would render Provider or Subcontractor, as applicable, ineligible to apply for or enter into a Non-Competitively Bid Contract under the provisions of Sections 17-1404(1) and 17-1405 of the Code; and that disclosures made as part of its application to receive a Non-Competitively Bid Contract contain no material misstatements or omissions. Breach of this covenant shall constitute an event of default and render the Contract voidable at the City's option, and, as to contributions made by or attributable to Provider, shall make Provider liable for liquidated damages to the City in the amount of ten percent (10%) of the maximum payments to Provider allowed under the Contract, regardless whether actually paid. The City may exercise any or all the remedies set forth in this Section 14.11 (Contributions and Other Mandatory Disclosures), each of which may be pursued separately or in conjunction with such other remedies as the City in its sole discretion shall determine. No extension or indulgence granted by the City to Provider shall operate as a waiver of any of the City's rights in connection with this Contract. The rights and remedies of the City as described in this Section

14.11, and as described elsewhere in this Contract, shall not be exclusive and are in addition to any other rights or remedies available to the City under this Contract at law or in equity.

(b) Provider shall, during the Initial Term of the Contract, any Additional Term, and for one year thereafter, disclose any contribution of money or in-kind assistance that Provider, or any Subcontractor or Consultant utilized by Provider in connection with this Contract, has made, or any individual or entity has made if such contributions can be attributed to Provider, or such Subcontractor or Consultant pursuant to the attribution rules of Section 17-1405 of the Code, during such time period to a candidate for nomination or election to any public office in the Commonwealth of Pennsylvania or to an individual who holds such office, or to any political committee or state party in the Commonwealth of Pennsylvania, or to any group, committee or association organized in support of any such candidate, office holder, political committee or state party, and the date and amount of such contribution.

(1) It shall not be a violation of this Section 14.11(b) if Provider fails to disclose a contribution made by a Consultant because Provider was unable to obtain such information from the Consultant, provided Provider demonstrates that it used reasonable efforts to attempt to obtain such information, including, at a minimum:

(A) Entering into a written agreement with the Consultant for such Consultant's services, before the filing of the application for the Contract, and before the Consultant communicated with a City department or office, official or employee on behalf of Provider;

(B) Including in such agreement a provision requiring the Consultant to provide Provider in a timely manner with all information required to be disclosed under the provisions of Chapter 17-1400 of the Code, and providing, in effect, that the agreement will be terminated by Provider if the Consultant fails to provide all required information on a timely basis and that no further payments, including payments owed for services performed prior to the date of termination, will be made to the Consultant by or on behalf of Provider as of the date of such termination;

(C) Communicating regularly with the Consultant concerning the Consultant's obligations to provide timely information to permit Provider to comply with the provisions of Chapter 17-1400; and

(D) Invoking the termination provisions of the written agreement in a full and timely manner.

(c) Provider shall, during the Initial Term of the Contract, any Additional Term, and for one year thereafter, disclose the name and title of each City officer or employee who, during such time period, asked Provider, any officer, director or management employee of Provider, or any Person representing Provider, to give money, services, or any other thing of value (other than a Contribution as defined in Section 17-1401) to any Person, and any payment of money, provision of services, or any other thing of value (other than such a Contribution) given to any Person in response to any such request. Provider shall also disclose the date of any such request, the amount requested, and the date and amount of any payment made in response to such request.

(d) Provider shall, during the Initial Term, and any Additional Term, of the Contract disclose the name and title of each City officer or employee who directly or indirectly advised Provider, any officer, director or management employee of Provider, or any Person representing

Provider that a particular Person could be used by Provider to satisfy any goals established in the Contract for the participation of minority, women, disabled or disadvantaged business enterprises. Provider shall also disclose the date the advice was provided, and the name of such particular Person.

(e) The disclosures required by Sections 14.11(b), (c) and (d) shall be made utilizing the online disclosure update process through Provider's eContract Philly account which can be accessed on the City's website at www.phila.gov/contracts by clicking on eContract Philly. Such disclosures shall be made within five (5) business days of the action or event requiring Provider to update its disclosures. In the case of updates to political contributions made by Provider required by Section 14.11(b), the attribution rules of Section 17-1405 shall apply to determine what contributions must be disclosed under this provision as contributions of Provider or of a Consultant. Provider is advised that any individual who submits an update on eContract Philly must be an authorized signatory of Provider, authorized to make the required updated disclosures.

(f) Reports generated automatically by the online process for the updated disclosures required by Sections 14.11(b), (c) and (d) will be automatically forwarded to the President and Chief Clerk of Council, and to the Mayor, Director of Finance, Procurement Department, and the Department of Records.

14.12 **Executive Order 10-16: Gifts.**

(a) Pursuant to Executive Order 10-16, no City officer or employee may accept or receive a payment, subscription, advance, forbearance, rendering or deposit of money, services, entertainment, invitation, food, drink, travel, lodging or anything of value, unless consideration of equal or greater value is conveyed in return, from any person who, at time or within 12 months preceding the time a gift is received:

(1) is seeking, or has sought, official action from the officer or employee;

(2) has operations or activities regulated by the officer's or employee's agency, department, office, board or commission, or, in the case of gifts to members of the Mayor's Cabinet, has operations or activities that are regulated by any agency, department, office, board or commission within the Executive and Administrative branch;
or

(3) has a financial or other substantial interest in acts or omissions taken by the officer or employee, which the officer or employee could substantially affect by his or her official action.

(b) Additionally, no City officer or employee shall accept or receive a gift of any value from any person that engages in lobbying on behalf of a principal for economic consideration, and is registered as such, pursuant to the requirements of Section 20-1202 of The

Philadelphia Code or any other Applicable Law, including any attorney-at-law while engaged in lobbying.

(c) Provider understands and agrees that if it offers anything of value to a City official or employee under circumstances where the receipt of such item would violate the provisions of this Executive Order, Provider shall be subject to sanctions with respect to future City contracts. Such sanctions may range from disqualification from participation in a particular contract to debarment, depending on the nature of the violation.

(d) All City employees presented with gifts or gratuities as indicated in Executive Order 10-16 are required to report these actions to the appropriate authorities. All Providers that are solicited for gifts or gratuities by City employees must report these incidents to the appropriate authorities, including but not limited to the Office of the Inspector General.

14.13 Chapter 17-1900 of the Philadelphia Code: Equal Benefits Ordinance.

(a) Unless Provider is a government agency, this is a “Service Contract” as that term is defined in Section 17-1901(4) of the Code. If the Service Contract is in an amount in excess of \$250,000, then pursuant to Chapter 17-1900 of the Code, Provider shall, for any of its employees who reside in the City, or any of its employees who are non-residents subject to City wage tax under Section 19-1502(1)(b) of the Code, extend the same employment benefits that Provider extends to spouses of its employees to life partners of such employees. Provider certifies that (i) it is in compliance with the requirements of Chapter 17-1900, (ii) its employees have been notified of the employment benefits available to life partners pursuant to Chapter 17-1900, and (iii) such employment benefits are currently, or will be made available within the time required by Section 17-1902(2), or that Provider does not provide employment benefits to the spouses of married employees.

(b) Provider acknowledges and agrees that the following terms are included in this Contract:

(1) Provider shall notify its employees of the employment benefits available to life partners pursuant to Chapter 17-1900 of the Code.

(2) Noncompliance by Provider with the requirements of Chapter 17-1900 of the Code shall be a material breach of this Contract.

(3) Discrimination or retaliation by Provider against any employee on account of having claimed a violation of Chapter 17-1900 shall be a material breach of this Contract.

(4) In addition to any other rights and remedies available to the City pursuant to this Contract at law or in equity, a material breach of this Contract related to Chapter 17-1900 may result in the suspension or debarment of Provider from participating in City contracts for up to three (3) years.

(c) An overview offering guidance on the applicability of, and requirements placed on City contractors by Chapter 17-1900 of the Code is available on the City’s website (at <https://secure.phila.gov/eContract/> under the “About” link) (see “Minimum Wage and Equal Benefits Ordinances Impacting Some City Contractors”).

ARTICLE XV: MISCELLANEOUS

15.1 **Governing Law.** This Contract shall be deemed to have been made in Philadelphia, Pennsylvania. This Contract and all disputes arising under this Contract shall be governed, interpreted, construed and determined in accordance with the laws of the Commonwealth of Pennsylvania, without giving effect to principles of Pennsylvania law concerning conflicts of laws.

15.2 **Amendments; Waiver.** This Contract may not be amended, supplemented, altered, modified or waived, in whole or in part, except by a written Amendment signed by the Parties. Except to the extent that the Parties may have otherwise agreed in writing in an Amendment, no waiver, whether express or implied, by either Party of any provision of this Contract shall be deemed: (a) to be a waiver by that Party of any other provision in this Contract; or (b) to be a waiver by that Party of any breach by the other Party of its obligations under this Contract. Any forbearance by a Party in seeking a remedy for any noncompliance or breach by the other Party shall not be deemed to be a waiver of rights and remedies with respect to such noncompliance or breach.

15.3 **Integration.** The Contract Documents forming this Contract, including the Provider Agreement and the General Provisions and the exhibits incorporated by reference therein, contain all the terms and conditions agreed upon by the Parties, constitute the entire agreement among the Parties pertaining to the subject matter hereof, and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, of the Parties (except to the extent specifically set forth herein). No other prior or contemporaneous agreements, covenants, representations or warranties, oral or otherwise, regarding the subject matter of this Contract shall be deemed to exist or to bind any Party or to vary any of the terms contained in this Contract.

15.4 **No Joint Venture.** The Parties do not intend to create, and nothing contained in this Contract shall be construed as creating, a joint venture arrangement or partnership between the City and Provider with respect to the Services or the Materials.

15.5 **No Third Party Beneficiaries.** With the exception of the remedy provided to third party beneficiaries by Section 14.10(e), nothing in this Contract, express or implied, is intended or shall be construed to confer upon or give to any Person, other than the Parties, any rights, remedies, or other benefits, including but not limited to third-party beneficiary rights, under or by reason of this Contract. This Contract shall not provide any third party with any remedy, claim, liability, reimbursement, cause of action or other right other than any such remedy, claim, etc. existing without reference to the term of or the existence of this Contract.

15.6 **Counterparts.** This Contract may be executed in one or more counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one and the same instrument.

15.7 **Severability and Partial Invalidity.** The provisions of this Contract shall be severable. If any provision of this Contract or the application thereof for any reason or in any circumstance shall to any extent be held to be invalid or unenforceable, the remaining provisions of this Contract and the application of such provision to Persons, or circumstances, other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each provision of this Contract shall be valid and enforceable to the fullest extent permitted by law.

15.8 Survival. Any and all provisions set forth in this Contract which, by its or their nature, would reasonably be expected to be performed after the termination of this Contract shall survive and be enforceable after such termination. Any and all liabilities, actual or contingent, which shall have arisen in connection with this Contract shall survive the expiration or earlier termination of this Contract, including without limitation: Provider's representations, warranties and covenants set forth in Article IV (Provider's Representations, Warranties and Covenants) above; audit, inspection and record retention requirements set forth in Article VI (Audits; Inspection Rights; Records) above; Provider's obligation to indemnify, defend and hold harmless the City, its officers, employees and agents as set forth in Section 8.2 (Indemnification) above; the Parties' rights and obligations set forth in Article X (Ownership of Materials; Proprietary Information; Confidentiality) above; and Providers continuing obligations related to section 14.11 (Chapter 17-1400 of the Philadelphia Code: Contributions and Other Mandatory Disclosures).

15.9 Determination of Disputes. Any dispute arising between the City and Provider under or with respect to either Party's covenants, obligations, powers, rights or duties under this Contract shall be submitted to and decided by the Responsible Official or his or her designee. The Responsible Official or his or her designee shall render and reduce to writing his or her decision, and furnish a copy to Provider by notice under this Contract. In connection with any dispute under this Contract, the Responsible Official shall offer Provider an opportunity to offer evidence in support of its position concerning the subject matter of the dispute. This section shall not be construed to limit the benefit to the City of Articles XI (Events of Default) or XII (Remedies) above.

15.10 Interpretation; Order of Precedence. In the event of a conflict or inconsistency between the terms of the Contract Documents, the terms of the General Provisions shall govern, followed by the terms of the Provider Agreement, and lastly by any exhibit, attachment, or other document incorporated by reference into the Contract. The foregoing notwithstanding, the Provider Agreement or an amendment agreement may expressly supersede, create exception to, or otherwise modify the General Provisions by specific reference thereto in the Provider Agreement, an amendment agreement, or an exhibit to either specifically labeled for such purpose.

15.11 Headings. The titles, captions or headings of Articles, Sections and Exhibits or schedules in this Contract are inserted for convenience of reference only; do not in any way define, limit, describe or amplify the provisions of this Contract or the scope or intent of the provisions, and are not a part of this Contract.

15.12 Statutes and Other Citations. All statutory or other citations of law referenced in the Contract shall refer to the statute or citation referenced, as it may be amended or superseded from time to time.

15.13 Days. Any references to a number of days in this Contract shall mean calendar days unless this Contract specifies business days.

15.14 Forum Selection Clause; Consent to Jurisdiction. The Parties irrevocably consent and agree that any lawsuit, action, claim, or legal proceeding involving, directly or indirectly, any matter arising out of or related to this Contract, or the relationship created or evidenced thereby, shall be brought exclusively in the United States District Court for the Eastern District of Pennsylvania or the Court of Common Pleas of Philadelphia County. It is the express intent

of the Parties that jurisdiction over any lawsuit, action, claim, or legal proceeding shall lie exclusively in either of these two (2) forums. The Parties further irrevocably consent and agree not to raise any objection to any lawsuit, action, claim, or legal proceeding which is brought in either of these two (2) forums on grounds of venue or *forum non conveniens*, and the Parties expressly consent to the jurisdiction and venue of these two (2) forums. The Parties further agree that service of original process in any such lawsuit, action, claim, or legal proceeding may be duly effected by mailing a copy thereof, by certified mail, postage prepaid to the addresses specified in Section 5.1 (Notice) of the Provider Agreement.

15.15 Waiver of Jury Trial. Provider hereby waives trial by jury in any legal proceeding in which the City is a party and which involves, directly or indirectly, any matter (whether sounding in tort, contract or otherwise) in any way arising out of or related to this Contract or the relationship created or evidenced hereby. This provision is a material consideration upon which the City relied in entering into this Contract.

15.16 Notices. All notices, demands, requests, waivers, consents, approvals or other communications which are required or may be given under this Contract shall be in writing and shall be deemed to have been duly made (a) when received or refused if delivered by hand with receipt given or refused; (b) on the next business day if delivered by a nationally recognized overnight courier service (*e.g.*, Federal Express or United Parcel Service); (c) on the date confirmed for receipt by facsimile if delivered by facsimile; and (d) upon receipt or refusal of delivery if sent by certified or registered United States mail, return receipt requested. In each case notices shall be sent to the addresses set forth in Section 5.1 (Notice) of the Provider Agreement, or to such other address as either Party may specify to the other by a notice complying with the terms of this Section 15.16 (Notices).

CONTRACT SUMMARY AND ENDORSEMENT						DATE 1/22/2019			
TO THE LAW DEPARTMENT: The attached bid and award described below is referred to you for certification as to form, and where annual surety bond is on file, to have Contractor post satisfactory bond.									
CONTRACTOR CBH - Community Behavioral Health						FINANCE CONTR. NO. 19 20332		LAW DEPT. NO. 19 20332	
						AMT. OF CONTRACT \$1,282,000,000.00		ANN. SURETY BOND	
DESCRIPTION BEHAVIORAL HEALTH SVCS						PERIOD COVERED 1/1/2019 - 12/31/2019			
ENDORSEMENT									
OFFICE OF THE DIRECTOR OF FINANCE-ACCOUNTING DIVISION Examined: Pat Preston						OFFICE OF THE CITY CONTROLLER Examined:			
(For the Director of Finance)						(Date)		(For the City Controller)	
(Date)						(Date)			
This contract approved as to availability of funds under the budget and appropriations pursuant to section 8-200 (2) (d) of the Home Rule Charter.									
Robert McGarry						1-23-19			
(For the Director of Finance)						(Date)		(For the City Controller)	
(Date)						(Date)			
DOCUMENT NO.	ACCOUNT CODE					DEPARTMENT OR AGENCY	AMOUNT CHARGEABLE TO ACCOUNT		
	FUND	DEPT	ELEMENT	SUB ELEMENT	CLASS				
SBXX19000815 01	060	15	03	01	0254	OFFICE OF BH-MR SERVICES	\$435,000,000.00 ✓		
SBXX19000885 01	060	15	03	02	0254	OFFICE OF BH-MR SERVICES	\$3,000,000.00 ✓		
TOTAL							\$438,000,000.00 ✓		
Partial Certification.									

Certificate Of Completion

Envelope Id: 7E776DF450DE419083C0C84E337AAB42

Status: Completed

Subject: Contract # 1920332 (Community Behavioral Health)

Source Envelope:

Document Pages: 83

Signatures: 4

Envelope Originator:

Certificate Pages: 4

Initials: 0

City of Philadelphia Law Department

AutoNav: Enabled

1234 Market Street

Envelopeld Stamping: Enabled

Suite 1800

Time Zone: (UTC-08:00) Pacific Time (US & Canada)

Philadelphia, PA 19107

law.contractinitiation@phila.gov

IP Address: 170.115.248.21

Record Tracking

Status: Original

Holder: City of Philadelphia Law Department

Location: DocuSign

1/17/2019 8:22:13 AM

law.contractinitiation@phila.gov

Signer Events

Joan Erney

Joan.Erney@phila.gov

Security Level: Email, Account Authentication (None), Access Code

Signature

DocuSigned by:

Joan Erney
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Signature Adoption: Pre-selected Style

Using IP Address: 157.130.54.90

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Viewed: 1/18/2019 10:11:55 AM

Signed: 1/18/2019 10:12:50 AM

Electronic Record and Signature Disclosure:

Accepted: 1/18/2019 10:11:55 AM

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Renee Henderson

Renee.Henderson@phila.gov

Security Level: Email, Account Authentication (None), Access Code

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Renee Henderson
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Signature Adoption: Pre-selected Style

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Electronic Record and Signature Disclosure:

Accepted: 1/18/2019 10:30:36 AM

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Pamela Shaw

Pamela.Burton@phila.gov

Security Level: Email, Account Authentication (None)

Completed

Using IP Address: 170.115.248.22

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Signed: 1/18/2019 10:42:40 AM

Electronic Record and Signature Disclosure:

Accepted: 10/25/2018 7:13:56 AM

ID: c00c543e-5f01-484d-af42-bc583ce117b1

Toi Shields

Toi.Shields@phila.gov

Security Level: Email, Account Authentication (None)

DocuSigned by:

Toi Shields
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Signature Adoption: Pre-selected Style

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Signed: 1/18/2019 11:24:01 AM

Electronic Record and Signature Disclosure:

Accepted: 8/11/2017 8:55:53 AM

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Signer Events	Signature	Timestamp
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Electronic Record and Signature Disclosure: Not Offered via DocuSign		
Jacqueline Dunn Jacqueline.Dunn@phila.gov City of Philadelphia Security Level: Email, Account Authentication (None)	Completed Using IP Address: 170.115.248.23	Sent: 1/23/2019 12:25:05 PM Viewed: 1/23/2019 12:34:32 PM Signed: 1/23/2019 12:34:43 PM
Electronic Record and Signature Disclosure: Not Offered via DocuSign		
Jill Bowen, PhD jill.bowen@phila.gov Security Level: Email, Account Authentication (None)	<div> <div>DocuSigned by:</div> <div><i>Jill Bowen, PhD</i></div> <div>76B18D5D04A040C...</div> </div> Signature Adoption: Pre-selected Style Using IP Address: 170.115.248.23	Sent: 1/23/2019 12:34:48 PM Viewed: 1/23/2019 1:32:39 PM Signed: 1/23/2019 1:36:20 PM
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In Person Signer Events	Signature	Timestamp
Editor Delivery Events	Status	Timestamp
Agent Delivery Events	Status	Timestamp

Agent Delivery Events	Status	Timestamp
Pamela Shaw Pamela.Burton@phila.gov Security Level: Email, Account Authentication (None)	<div>VIEWED</div> Using IP Address: 170.115.248.21	Sent: 1/17/2019 9:36:57 AM Viewed: 1/17/2019 10:38:55 AM Completed: 1/17/2019 10:41:56 AM
Electronic Record and Signature Disclosure: Accepted: 10/25/2018 7:13:56 AM ID: c00c543e-5f01-484d-af42-bc583ce117b1		
Intermediary Delivery Events	Status	Timestamp
Certified Delivery Events	Status	Timestamp
Carbon Copy Events	Status	Timestamp
Joan Erney Joan.Erney@phila.gov Security Level: Email, Account Authentication (None), Access Code	<div>COPIED</div>	Sent: 1/17/2019 10:41:57 AM Viewed: 1/18/2019 9:58:56 AM
Electronic Record and Signature Disclosure: Accepted: 1/18/2019 10:11:55 AM ID: c6615598-a6dd-4c5e-81f5-359abd86dd45		
Pamela Shaw Pamela.Burton@phila.gov Security Level: Email, Account Authentication (None)	<div>COPIED</div>	Sent: 1/23/2019 12:34:46 PM Viewed: 1/24/2019 6:23:14 AM
Electronic Record and Signature Disclosure: Accepted: 10/25/2018 7:13:56 AM ID: c00c543e-5f01-484d-af42-bc583ce117b1		
Controller Contracts Controller.Contracts@phila.gov Security Level: Email, Account Authentication (None)	<div>COPIED</div>	Sent: 1/24/2019 10:01:10 AM
Electronic Record and Signature Disclosure: Not Offered via DocuSign		
Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	1/24/2019 10:01:10 AM
Certified Delivered	Security Checked	1/24/2019 10:01:10 AM
Signing Complete	Security Checked	1/24/2019 10:01:10 AM
Completed	Security Checked	1/24/2019 10:01:10 AM
Payment Events	Status	Timestamps
Electronic Record and Signature Disclosure		

This Electronic Records and Signature Disclosure is provided by the City of Philadelphia in connection with a pending electronic transaction. Any party proceeding with such electronic transaction is deemed to have consented i) to conduct the transaction by electronic means; and ii) where execution of an agreement is required, to the use of electronic signatures using the method provided in the agreement. Questions regarding this Electronic Records and Signature Disclosure should be addressed to econtractphilly@phila.gov.